

Crimean Conflict as a Barrier for International Trade



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Having annexed the Crimean Peninsula, Russia nationalized numerous facilities, recognized as the state property of Ukraine, which among others, also included seaports located on its territory — Yevpatoria, Kerch, Sevastopol, Feodosia and Yalta.

However, the reaction of international community and, in particular, non-recognition of annexation of the Crimean Peninsula by the Russian Federation, clearly manifested that in the modern world it is not feasible to physically capture territory and property of other country without bearing the relevant consequences for such aggressive actions.

Since Crimea had been annexed, the majority of the world's leading traders ceased to trade through Crimea, and shipowners refused to send the vessels to the ports of the peninsula. This resulted in a significant decrease in turnover of the ports located on the peninsula.

Realizing this fact, the Russian authorities, mainly through the adoption of various laws at the national level, as well as by addressing international organizations, are trying to "return" the former cargo turnover to Crimean ports.

On the other hand, the Ukrainian authorities, being in the position of legitimate owners, have no intention to "give up without a fight". Using the principle of "sea blockade", Ukraine quite successfully endeavors internal and external political legal mechanisms, in order to prevent ports from functioning normally.

What specific steps and actions are taken by Russian and Ukrainian authorities during wartime for the seaports of Crimea? Whose policy is more effective? How and to what extent has the ongoing conflict influenced international trade? What

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steps should be taken in future? How does the international community respond? And what happens *de facto* on the territory of the peninsula's ports? In this article the authors will try to provide answers to these and many other questions.

Russia's actions

It all started in March 2014 when the State Council of the Republic of Crimea nationalized enterprises and property of Ukrainian seaports located on the territory of Crimea and Sevastopol, and handed them over to the newly created company "Crimean ports". In the same month, the already existing Russian (!) Federal Agency of Sea and River Transport in Crimea appointed new captains of sea ports in the peninsula.

Later, in June, the sea ports of Yevpatoria, Kerch, Sevastopol, Feodosia and Yalta were included and listed in the Register of sea ports of the Russian Federation.

This was followed by a series of actions taken to affect the international maritime community. The same month, the Russian Federation sent a note to the International Maritime Organization (IMO) providing that starting from this moment, it undertakes the actual implementation of security measures in the ports of Crimea and their water areas, referring to the fact that Ukraine had already notified all that Ukrainian authorities will no longer ensure the safety of navigation in the ports of the peninsula.

Somewhat later, in September, the Russian government included the seaport of Sevastopol in the list of ports that are allowed to accept foreigners and stateless persons arriving to Russia by ferry for the purposes of tourism.

Immediately thereafter, the Russian government opened Crimean sea

ports to foreign vessels and thereby assigned to them international status.

As we can see, as soon as annexation occurred, the Russian authorities promptly carried out a series of deliberate measures at national and international level aimed at (i) nationalization of Crimean ports and (ii) recognition by the international community that from now on, the ports of Crimea are Russian, not Ukrainian.

What has Ukraine done?

From April to May 2014, the Government of Ukraine actively took steps at both national and international level. At domestic level, Ukrainian authorities, via a series of legislative acts recognized Crimea as temporarily occupied territory, closed Crimean seaports for shipping, and imposed administrative and criminal liability for violating rules of entry and exit from the peninsula.

According to new order, those who violate the order of entry into the territory of the peninsula and out of it, can be punished with fines and administrative arrests (15 days), the confiscation of vehicles, and even imprisonment of such persons (from 3 to 8 years of imprisonment).

The government officially reported the inability to handle ships and passengers, to ensure a proper level of navigation safety and to comply with international agreements of Ukraine in the sea ports situated in the territory of Crimea. Any vessel that sailed into the ports of the peninsula does so at its own risk. The owners and crew of a ship that ignore the ban can be punished by a fine or even imprisonment.

At international level, Ukraine notified the IMO that it no longer provides proper navigation safety and compliance with international obligations arising from the need to

preserve human life at sea, search, rescue, as well as the high level of property risks in the waters and nearby Crimean seaports. This information was transmitted to the IMO Secretariat and circulated among its Member States and representatives of foreign companies accredited by the organization.

Thus, in the space of a couple of months Ukraine officially closed the Crimean ports in accordance with the norms of both international and national law and duly notified the international community.

How did the international community respond?

One of the most important decisions on the “Crimean issue” at international level was made on 27 March 2014, when the UN General Assembly adopted a resolution on Ukraine, which called upon States, international organizations and other institutions — not to recognize the annexation of Crimea and Sevastopol, refrain from any action that may directly or indirectly be interpreted as recognition of the annexation. This resolution was supported by 100 member states of the UN.

It should also be recalled that both governments handled their notes to the IMO. Ukraine reported on the impossibility of ensuring navigation safety standards stipulated by international conventions and IMO codes at the peninsula ports, and Russia, in turn, guaranteed the safety of the Crimean port for shipping in their note to the IMO.

However, since the IMO is a specialist United Nations agency in the field of international commercial shipping and, accordingly, does not recognize the annexation of Crimea by the Russian Federation, it is unlikely that the organization will provide the Russian authorities with the right to ensure the safety of Ukrainian ports to IMO Member States.

In other words, this means that the status of Crimean ports is no longer in line with international safety standards and, theoretically, for every vessel, corresponding to such standards, entry into one of these ports can subsequently become the reason for inspections or even detention of a vessel.

Unfortunately, the IMO has no right to force governments and/or

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shipowners to comply with their decisions. This organization can only recommend to vessels of all member states of the IMO to avoid visits to Crimean sea ports. And those, in turn, shall decide to adhere to the recommendations of the maritime community or not.

Another significant event was that Crimean ports were not included in the list of ports authorized to issue Ship Sanitation Certificates under International Health Regulations, published by the World Health Organization, according to which, all vessels are required to obtain such certificates in order to be able to sail to further ports.

The EU has also imposed sanctions against Crimea and Sevastopol. In particular it banned the import of goods originating from Crimea and the export of certain goods and technologies by Crimean companies. The EU imposed a ban on investment in Crimea. Europeans and EU companies can no longer buy the property or establish the entities or other organizations in Crimea, nor can they finance Crimean companies or provide similar services.

European tour operators are prohibited from offering travel services in Crimea and Sevastopol. European cruise ships can no longer enter the ports of the Crimean Peninsula, only for emergency.

Therefore, it is evident from the above facts that there is a clear position of the world’s leading organizations with regard to the annexation of Crimea and the nationalization of Crimean ports by the Russian Federation. International organizations impose all sorts of bans and sanctions, excluding Crimean ports from their

lists and do not recommend or even prohibit vessels of their member states to visit Crimean ports.

Reality: what is actually happening?

In fact, the Crimean ports continue to operate, and vessels of European countries including those who voted for the UN resolution, continue to enter the ports, despite the ban imposed by Ukrainian authorities and strong recommendations of the international community, and even neglecting risks of being detained by the Ukrainian authorities for breach of national legislation.

Thus, the last published list of non-governmental organizations dealing with tracking of “intruders” has 216 trading vessels from 16 countries. Indeed, the overwhelming majority of intruders are vessels (181 of them) of Russia, Turkey and Greece. However, there are some European countries, like Germany, Italy, Switzerland, Lithuania and others, among the violators.

It is important to note though that among 105 foreign vessels (not including the vessels of Russia and Ukraine), about half — 51 ship — committed violations only once and have not entered the ports of annexed Crimea since then. This reflects a real tendency connected both with the effect of international sanctions, and dissemination of information about “intruding” vessels in media — foreign shipowners are less and less willing to enter into the Crimean contracts. Therefore, those are more actively replaced by Russian shipowners.

The Ukrainian authorities have already applied to the countries of “intruders” with a request to explain

the actions of its vessels. Also, the Prosecutor-General's Office has opened and investigated more than 69 criminal cases regarding unauthorized entry into Crimean ports. Some individual governments, for instance Moldova, had expressly reacted to violations of its vessels and prohibited sea vehicles under the Moldovan flag from entering the ports of Crimea.

However, only in February 2015, almost a year after the annexation, the Ukrainian authorities were able to use the long-awaited mechanisms for punishing violators. A Singapore intruder repeatedly coming to the occupied Crimea was detained in the port of Ilyichevsk. The detention lasted about three days. However, this period was enough for the ship owner to suffer losses and make appropriate conclusions.

Then in March, the court arrested a Turkish vessel for entering one of the ports of Crimea. As it turned out, the vessel has repeat-

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edly entered Crimean ports illegally annexed by Russia, thus violating not only a number of international rules, but also Ukrainian criminal law.

During the inspection of another ship, this time Ukrainian, the state bodies found that the vessel had entered the port of Kerch. In this case, the Court considered it sufficient to limit the punishment by imposing a fine on the whole crew and the ship's captain. However, the main point behind is that the Ukrainian authorities have actually begun to punish offenders, and next time the court may not limit itself to fines.

Conclusion

Having nationalized Crimean ports, Russia has faced with condemnation and non-recognition of its actions by the international community. Moreover, Ukraine has quite effectively implemented the mechanism of "sea blockade" of the peninsula ports, thereby creating obstacles for Russia to benefit from owing the ports. Special attention should be

paid to actions taken by the Ukrainian mass media and public organizations monitoring and publishing information about the offending vessels.

However, in reality, despite implied sanctions and bans and significantly reduced level of economic activity, Crimean ports are still involved in international trade. Obviously, in such circumstances rather than wait for help from other countries Ukraine must be "tougher" in prohibiting any business activity within Crimean ports and insist on compliance with its own national legislation as well as pursue for the enforcement of other international sanctions.

As we can see, Ukraine has virtually commenced to use internal mechanisms of protection. By detaining an offending vessel illegally entering Crimean ports, Ukraine has set a precedent in practice, thereby preventing such violations in the future, and giving effect to the principle of inevitability of punishment for violations.

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