

International Organizations and Settlement of the Conflict in Ukraine

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Abstract

The situation in Ukraine has been a matter of concern for the international community since January 2014 and remains a central focus of legal and political scientists. The United Nations (UN) Security Council appeared to be unable not only to settle the conflict but also to take any feasible measures for its settlement. As a result, a range of regional organizations became involved in the crisis. This article examines the legal perspectives of the activity of the UN and regional organizations which aimed to prevent, detain and settle the conflict in Ukraine. It also determines the specifics of methods used by each organization, assesses the efficacy of their activity and develops proposals for enhancement of their effectiveness.

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I. Introduction

The United Nations (UN) Security Council is conferred with primary responsibility for the maintenance of international peace and security in accordance with Art. 24 of the UN Charter¹. However, the extension of the notion “security”, the emergence of a wide range of new threats and challenges, the low efficacy of the UN Security Council and other UN organs, has encouraged regional organizations to take measures aimed at the prevention and settlement of international and internal conflicts, as well as the peaceful settlement of disputes, and confidence and security building.

The situation in Ukraine came to the attention of the international community in January 2014. However, only in September were the first steps for its settlement seen with the conclusion of the Minsk agreement (Protocol) of 5.9.2014. This Protocol agreed a ceasefire and launched a political process to resolve the crisis². The International Committee of the Red Cross and Amnesty International refer to the crisis Ukraine as a war³ and an international military conflict,⁴ respectively. At the same time, neither of the involved parties acknowledges the existence of a military conflict. It is believed in this article that the conflict in Ukraine may be viewed as a sort of indicator for assessment of activity and efficacy of international organizations in the sphere of prevention, detainment and settlement of international and internal conflicts.

The activity of international organizations in the Ukrainian conflict has not previously been the subject of any legal analysis. Nevertheless, there can be found a number of works devoted to the legal nature, mechanisms and consequences of application of enforcement measures by international organizations (*G. Sparrow*,⁵ *T. N. Neshataeva*,⁶ *J. A. Frowein*⁷) as well as as-

¹ Charter of the United Nations, 24.10.1945, 1 UNTS XVI.

² Protocol on the results of the trilateral Contact Group concerning Joint Measures aimed at Implementation of the Peace plan of President of Ukraine *P. Poroshenko* and initiatives of President of Russia *V. Putin*, available at <<http://www.osce.org>>.

³ Ukraine war crimes trials a step closer after Red Cross assessment, available at <<http://www.reuters.com>>.

⁴ Ukraine: Evidences of war crimes and Russian intervention are multiplied, available at <<http://www.amnesty.org.ru>>.

⁵ *G. Sparrow*, Sanctions, 1972.

⁶ *T. N. Neshataeva*, *Mezhdunarodno-pravovye sanktsii spetsializirovannyh uchrezhdenij OON* (International Legal Sanctions of the UN Specialized Agencies), autoreferat, 1985.

⁷ *J. A. Frowein*, *Zwangsmaßnahmen von Regionalorganisationen*, in: U. Beyerlin/M. Bothe/R. Hofmann/E.-U. Petersmann (eds.), *Recht zwischen Umbruch und Bewahrung*, 1995, 57 et seq.

assessment of their application in specific conflicts (*A. Eide*,⁸, *M. Akehurst*⁹). Numerous works consider activities of regional organizations of collective security (*F. Evers, M. Kahl, W. Zellner*¹⁰). The majority of these works are, however, politically oriented or focus only on theoretical issues. Owing to the very controversial nature of the conflict in Ukraine and the involvement of the UN and a large number of regional Eurasian and Euro-Atlantic organizations, an assessment of their involvement and impact on the prevention, detainment and settlement of the conflict in Ukraine seems to be timely.

It should be taken into account that the conflict in Ukraine involves a number of issues to be qualified under international law, namely:

- the criteria, threshold and possible response to the use of force or an armed attack (if any) by Russia in Crimea (statements by the Ukrainian representative at the UN, *Y. Sergeyev*, at the meetings of the UN Security Council of 3.3.2014,¹¹ 19.3.2014¹²);
- the correlation of territorial integrity of Ukraine and the right or principle of self-determination as concerns Crimea (statement by Russian representative at the UN, *V. Churkin*, at the meeting of the UN Security Council of 3.3.2014),¹³ Donetsk People's Republic (DPR), Lugansk People's Republic (LPR);
- the criteria and possible consequences of recognition of the self-proclaimed entities (LPR, DPR);
- the results of the Crimea referendum as well as accession¹⁴ of Crimea to the Russian Federation;
- the applicability of norms of international humanitarian law when neither party to the conflict proclaims a state of war or even accepts its existence;
- the qualification of the situation in eastern Ukraine that stipulates the choice of measures applicable by and to the involved actors.

⁸ *A. Eide*, Peace-Keeping and Enforcement by Regional Organizations: Its Place in the UN System, JPR 3(1966), No. 2, 125 et seq.

⁹ *M. Akehurst*, Enforcement Action of Regional Organizations with Special Reference to the Organization of American States, BYIL 42 (1967), 175 et seq.

¹⁰ *F. Evers/M. Kahl/W. Zellner*, The Culture of Dialogue: the OSCE Acquis 30 Years after Helsinki, 2005.

¹¹ UN Security Council, Meeting 7125, 3.3.2014, accessible at <<http://www.un.org>>.

¹² UN Human Rights Monitoring Mission Deployed to Crimea amid Crisis between Russian Federation, Ukraine, Assistant-Secretary-General Brief Members on Events since Crimea Vote, UN Doc. SC/11328.

¹³ UN Security Council, Meeting 7125 (note 11).

¹⁴ The term "accession" will be used here as a neutral one, while the article contains no analysis, whether it was incorporation of territory to Russian Federation or occupation of this territory.

Both the UN and regional organizations have been involved in the analysis and settlement of the Ukrainian conflict at length. Accordingly the situation should not be reduced exclusively to the conflict between Ukraine and Russia as concerns Crimea, especially in view of the fact that the United States, the United Kingdom and France have repeatedly referred to the “Crimea scenario” in the UN Security Council when discussing any further developments in the country (e.g. meetings 7167 of 2.5.2014,¹⁵ 7205 of 24.6.2014¹⁶). Therefore the activity of international organizations shall rather be assessed as it concerns all aspects of the conflict, including public disorder, conflict in the east of Ukraine and observance of international law by all involved parties.

Meanwhile, as regularly happens, involved parties assess the situation differently. All of them allege violation of *jus cogens* norms by the opponent (e.g. use of force in Crimea, threat to use force in the south-east of Ukraine, intervention in the domestic affairs of states by Russia – according to Ukraine; violation of rights of Russian-speaking minorities in Crimea, impeding the exercise of the right to self-determination by the inhabitants of the south-east of Ukraine; military activity against the own population (meeting of the UN Security Council 7167 of 2.5.2014) and ethnic cleansing by Ukraine – according to Russia (statement of the Russian Foreign Minister *S. Lavrov* on 17.6.2014 – referred to at the meeting of the UN Security Council 7205 of 24.4.2014). On the other hand, both Russia and Ukraine have repeatedly referred to the need for protection of some “high” values to justify their own activity (protection of human rights, protection of national minorities, assistance in the process of self-determination, struggle against international terrorism), again at meetings of the UN Security Council (e.g. meeting 7125 of 3.3.2014¹⁷). This all makes this complex situation even more complicated.

This article investigates the international reaction towards the conflict in Crimea and Eastern Ukraine. It considers approaches, activities and efforts of international organizations within their possible legal framework.

¹⁵ Diplomatic Solution Only Way Out, as Situation in Ukraine Deteriorates, Under-Secretary-General Tells Security Council.

¹⁶ UN Security Council, Meeting 7205 of 24.6.2014.

¹⁷ UN Security Council, Meeting 7125 (note 11).

II. The United Nations and the Conflict in Ukraine

1. UN Security Council

Different aspects of the situation in Ukraine have been repeatedly monitored and examined by the UN Security Council since 1.3.2014 upon the requests of both – Ukraine (Letter of 28.2.2014)¹⁸ and Russian Federation (Letter of 13.4.2014)¹⁹. The UN Security Council considered issues of the Crimea (meetings 7124 of 1.3.2014,²⁰ 7125 of 3.3.2014, 7134 of 13.3.2014,²¹ 7144 of 19.3.2014), the general situation and observance of human rights in Ukraine (meetings 7154 of 13.4.2014,²² 7157 of 16.4.2014,²³ 7205 of 24.6.2014²⁴), activity of insurgents in the south-east of Ukraine (meetings 7165 of 29.4.2014,²⁵ 7167 of 2.5.2014, 7185 of 28.5.2014,²⁶ 7205 of 24.6.2014) and the aircraft crash (meetings 7219 of 18.7.2014,²⁷ 7221 of 21.7.2014²⁸).

As concerns any practical action, however, the UN Security Council was rather cautious. Due to the at least partial involvement of Russia in the conflict, its application of veto in the course of voting on a Resolution on 15.3.2014 (S/2014/189)²⁹ and the possibility of Russia's veto if any further voting takes place, the UN Security Council adopted only one resolution on the situation in Ukraine (Resolution 2166 [2014] of 21.7.2014)³⁰, devoted to the downing of Malaysian Airlines flight MH17. The Council stressed

¹⁸ Letter of the Permanent Representative of Ukraine to the United Nations, 28.2.2014, S/2014/136.

¹⁹ Letter of the Permanent Representative of Russian Federation to the United Nations, 13.4.2014, S/2014/264.

²⁰ Ukraine, in Emergency Meeting, Calls on Security Council to Stop Military Intervention by Russian Federation.

²¹ Peaceful Resolution of Ukraine Crisis Remains Possible, Under-Secretary-General Tells Security Council during Briefing.

²² Ukraine Situation "More Combustible than Ever", Assistant Secretary-General Warns Security Council, Calling for Action to De-escalate Crisis.

²³ Assistant Secretary-General Stresses Need to Uphold Human Rights Standards in Security Council Briefing on Ukraine Visits.

²⁴ Peace Plan, Unilateral Ceasefire Offer Hope for Resolving Conflict in Ukraine, Political Affairs Official Tells Security Council.

²⁵ Emerging Spirit of Compromise' Evaporates' as Violence Escalates in Ukraine, Under-Secretary-General Tells Security Council.

²⁶ Reaching Out to East Critical after Ukraine Elections, Under-Secretary-General Tells Security Council in Briefing.

²⁷ Security Council Calls for Immediate, Credible Investigation Into Downing of Civilian Aircraft over Ukraine.

²⁸ Security Council condemns downing of Malaysian airliner, calls for international probe.

²⁹ Draft resolution of the UN Security Council S/2014/189, 15.3.2014.

³⁰ UN Security Council Resolution 2166 (2014), 21.7.2014.

the need for a full and thorough international investigation of the crash (preamble, para. 3) and demanded provision of the conditions necessary for this investigation (paras. 6-7).

In effect the UN Security Council has merely provided a forum for discussion. Summarising the positions of states at the meetings of the Council it should be noted that three of its permanent members (United States, United Kingdom and France) as well as Lithuania put the main emphasis on blaming Russia for every negative event in the course of the conflict. China and the majority of non-permanent members called, in the first instance, for peaceful (political) settlement of the crisis and proposed to establish mechanisms for a peaceful settlement of international disputes. However, most of these states did not recognise the legality of the results of the Crimean referendum (meetings 7134 of 13.3.2014; 7144 of 19.3.2014), blamed the activity of illegal armed groups or downing of a military helicopter (meetings 7167 of 2.5.2014; 7205 of 24.6.2014), and acknowledged the need to bring perpetrators to justice (Nigeria at 7205th meeting). The need for impartiality, neutrality and objectivity was stressed by China at all meetings of the UN Security Council.

The UN Security Council also made no attempt to establish whether the situation in Crimea or any other part of the conflict could be qualified as a dispute between Russia and Ukraine. If the facts of such a dispute were established, Russia would have to abstain in the process of voting in accordance with Art. 27(3) of the UN Charter at least as concerns the Council's decisions under Chapter VI. The UN Security Council could thus recommend to use specific types of dispute settlement or establish at least a UN fact-finding mission. Inaction of the Security Council in this situation seems to be all the more strange as a substantial number of Council members proposed to use diplomatic means (United Kingdom, China, Jordan, Nigeria, Argentina – at the 7134th meeting, Nigeria, Luxembourg – at the 7205th meeting) and/or to start particular dispute settlement mechanisms (mediation – Chad at the 7134th meeting, Nigeria – at the 7144th meeting; arbitration – Nigeria at the 7144th meeting). They also called for the UN Security Council to act (e.g. Luxembourg, Rwanda at the 7134th meeting). As correctly noted by the representative of Rwanda, Mr. *Gasana* at the 7167th meeting of 2.5.2014: “*The strongest condemnations [...] will not resolve the Ukrainian conflict.*”

2. UN General Assembly

The UN General Assembly has not been much involved in consideration of the situation in Ukraine. On 27.3.2014 it adopted Resolution 68/262 and called on states not to recognise the results of the referendum in Crimea as well as the transfer of Crimea to the Russian Federation.³¹ Formally this Resolution, in accordance with Art. 11 of the UN Charter, is only a recommendation. It is generally believed, however, that resolutions of the UN General Assembly may have some legal consequences. They demonstrate the approach of states to specific issues and thus play an important role in the formation of international customs. However, their legal impact, as correctly noted by *J. E. Alvarez*, can only be judged over time.³² The consequences of Resolution 68/262, however, are not clear. There were 100 affirmative votes and 11 negative. 58 states abstained.³³ Art. 18(2) of the UN Charter states that any decisions of the UN General Assembly on important questions shall be made by a “*two-thirds majority of the members present and voting*”. The same article expressly specifies that recommendations with respect to the maintenance of international peace and security are included in the first place into the scope of “important” questions. In accordance with para. 86 (126) of the UN General Assembly Rules of Procedure “*members present and voting’ means members casting an affirmative or negative vote. Members which abstain from voting are considered as not voting.*”³⁴ Viewed in this way, the requirement of Art. 18(2) was formally observed with 90 % of affirmative votes. At the same time this approach has been supported by only 59 % of states which were present at the meeting and behaved actively (i.e. pressed the button) and only 51 % of the UN members. Accordingly, it is the opinion of the author that in this situation voting results do not demonstrate the general approach and cannot be viewed even as *opinio juris* on behalf of the existence or formation of the corresponding international custom.

³¹ UN General Assembly Resolution 68/262, 27.3.2014.

³² *J. E. Alvarez*, International Organisations as Law Makers, 2006, 165.

³³ Press release of 27.3.2014 GA/11493.

³⁴ Rules of Procedure of the General Assembly (with amendments and additions adopted by General Assembly in September 2007) A/520/Rev.17.

3. Other UN Organs

The situation in Ukraine has been in the focus of the UN Secretary-General too. In particular, he condemned the activity of unidentified armed groups in Lugansk and Donetsk (statements of 2.5.2014,³⁵ 7.7.2014³⁶), violence (statement of 3.5.2014³⁷), capture of a group of the OSCE military observers (statement of 28.4.2014³⁸) and the downing of a Ukrainian military airplane (statement of 14.6.2014³⁹). He also welcomed the prolongation of the cease-fire period (statement of 28.6.2014⁴⁰), efforts for de-escalation of the conflict or its prevention (statement of 27.6.2014⁴¹), Geneva talks (statement of 17.4.2014⁴²); expressed concern about violence in Kiev (statements of 20.1.2014,⁴³ 18.2.2014,⁴⁴ 19.2.2014⁴⁵) and the situation in Crimea (statements of 1.3.2014,⁴⁶ 17. 3.2014⁴⁷) and in the south-east of Ukraine (statements of 12.4.2014,⁴⁸ 24.4.2014⁴⁹). These statements, however, are political ones. They provide no legal assessment or qualification and propose no specific means for settlement of the conflict, despite the fact that the UN

³⁵ Statement Attributable to the Spokesman for the Secretary-General on the Situation in Ukraine.

³⁶ Ukraine: *Amidst* intensified military offensive, *Ban* condemns violence against civilians.

³⁷ Statement Attributable to the Spokesman for the Secretary-General on the Situation in Ukraine – release of OSCE monitors and the violence in Odessa, 3.5.2014.

³⁸ Statement Attributable to the Spokesperson for the Secretary-General on the Situation in Ukraine, 28.4.2014.

³⁹ Statement Attributable to the Spokesman for the Secretary-General on Violence in Ukraine, 14.6.2014.

⁴⁰ Deeply concerned about eastern Ukraine, *Ban* welcomes extension of cease-fire.

⁴¹ Statement Attributable to the Spokesman for the Secretary-General on Ukraine, 27.6.2014.

⁴² Statement Attributable to the Spokesman for the Secretary-General on Ukraine, 17.4.2014.

⁴³ Statement Attributable to the Spokesperson for the Secretary-General on Ukraine, 20.1.2014.

⁴⁴ Statement Attributable to the Spokesperson for the Secretary-General on the Situation in Ukraine.

⁴⁵ Statement Attributable to the Spokesperson for the Secretary-General on Ukraine, 19.2.2014.

⁴⁶ Statement Attributable to the Spokesperson for the Secretary-General on Ukraine, 1.3.2014.

⁴⁷ Statement Attributable to the Spokesman for the Secretary-General on Ukraine, 17.3.2014.

⁴⁸ Statement Attributable to the Spokesperson for the Secretary-General on Ukraine, 12.4.2014.

⁴⁹ Statement Attributable to the Spokesman for the Secretary-General on Ukraine, 24.4.2014.

Secretary General has repeatedly been involved in good offices or mediation. No proposal of this type has been made.

Some steps have also been taken by other UN organs. In particular, the UN High Commissioner for Human Rights proclaimed the need to respect the rule of law, called on all parties to observe human rights (statement of 6.5.2014)⁵⁰ and to cease violence; he condemned military groups in the DPR and LPR for violation of human rights and threats to civilian population (statement of 4.7.2014⁵¹). Established in April 2014, the UN Human Rights Monitoring Mission observes the situation in Ukraine and reports monthly (reports of 15.4.2014,⁵² 15.5.2014,⁵³ 15.6.2014,⁵⁴ 15.7.2014⁵⁵).

In general the UN confined itself to the monitoring of the situation and to provide a platform for discussion without making any legal assessment of the legality or taking any steps for settlement of the conflict.

III. Regional Organizations and the Conflict in Ukraine

Approaches of regional organizations involved in the maintenance of international peace and security to the situation in Ukraine differ greatly.

1. Organization for Security and Cooperation in Europe

The Organization for Security and Cooperation in Europe (OSCE) has made multiple efforts for the observation and settlement of different aspects of the conflict. The OSCE appointed a special envoy to Ukraine (28.2.2014), who visited Ukraine repeatedly. He conducted bilateral talks with involved parties, established a national dialogue program (20.3.2014-30.4.2014), a mission of military observers (5.-12.3.2014), a human rights assessment mission in cooperation with the OSCE High Commissioner on

⁵⁰ Ukraine: Alarmed by surging violence, UN rights chief urges greater effort to resolve crisis.

⁵¹ UN rights chief urges all sides in eastern Ukraine to “turn away from destructive path”.

⁵² Report on the Human Rights Situation in Ukraine, 15. 4.2014, available at <<http://www.ohchr.org>>.

⁵³ Report on the Human Rights Situation in Ukraine, 15.5.2014, available at <<http://www.ohchr.org>>.

⁵⁴ Report on the Human Rights Situation in Ukraine, 15.6.2014, available at <<http://www.ohchr.org>>.

⁵⁵ Report on the Human Rights Situation in Ukraine, 15.7.2014, available at <<http://www.ohchr.org>>.

National Minorities (18.3.-12.5.2014), the presidential elections observation mission (20.3.-26.05.2014), and the Special Monitoring Mission for Ukraine (decision of the OSCE Permanent Council No. 1117 of 21.3.2014)⁵⁶.

The OSCE also organised military verification visits within the framework of the Vienna Document 2011 (5.-12.3.2014) and called parties for consultations and cooperation as regards unusual military activity under the Vienna Document 2011 (April 2014). OSCE officials, including the High Commissioner on National Minorities, the Representative on the Freedom of the Media and the OSCE Project Coordinator, have travelled to/been stationed in Ukraine. The OSCE Secretary-General, *L. Zannier*, made contact with all involved parties and called for a settlement of the conflict.

The OSCE together with Russia and Ukraine is a member of the Trilateral Contact group on Ukraine.⁵⁷ It should be noted that the settlement of the conflict in Ukraine was included in the agenda of the annual OSCE Security Review Conference which took place on 24.6.2014. This conference provided a platform to establish a dialogue between the parties.⁵⁸ On 18.7.2014 the OSCE Permanent Council adopted a Declaration on the tragic crash of Malaysian airlines flight MH17 in Ukraine, in which it called for an investigation into the causes of the crash (para. 4) and called the parties to armistice and cease-fire in the east of Ukraine (para. 1).⁵⁹

The OSCE played an important role in the monitoring of the situation. For example, the Special Monitoring Mission reports daily⁶⁰. The OSCE monitoring is recognised as a reliable source of information. It played and continues to play an important role in the settlement of the conflict. The OSCE Special Mission is named in the Geneva Declaration of 17.4.2014 as a key actor to de-escalate the conflict⁶¹ and it continues to perform this role.⁶² The Minsk agreement of 5.9.2014 refers to only one organization – the OSCE – and expressly entitles it to monitor and verify both the cease-fire

⁵⁶ Different forms of the OSCE engagements with Ukraine on 5.9.2014, available at <<http://www.osce.org>>.

⁵⁷ Press Statement by the Trilateral Contact Group of 4.10.2014, available at <<http://www.osce.org>>.

⁵⁸ Ukraine Crisis Tops Agenda of OSCE Annual Conference in Vienna, available at <<http://www.osce.org>>; Swiss Chair Discusses Next Steps in Implementing Peace Plan and Calls for Reconsolidating European Security During Visit in Vienna, available at <<http://www.osce.org>>.

⁵⁹ Declaration on the Tragic Crash of the Malaysia Airlines Flight MH17 in Ukraine, OSCE Permanent Council PC.DOC/2/14, 18.07.2014, available at <<http://www.osce.org>>.

⁶⁰ Daily updates from the Special Monitoring Mission to Ukraine, available at <<http://www.osce.org>>.

⁶¹ Geneva Declaration on Ukraine, 17.4.2014, available at <<http://www.news-mail.by>>.

⁶² Press Statement by the Trilateral Contact Group of 4.10.2014 (note 57).

and the Ukrainian-Russian border (paras. 2, 4). Since then the OSCE Observer Mission at Russian checkpoints Gukovo and Donetsk has provided weekly updates concerning the transfer of people, vehicles and arms to and from both sides of the border.⁶³

2. Council of Europe

The Council of Europe demonstrates a much narrower approach. On 23.1.2014 it adopted a resolution, noting problems in observance of democratic standards and human rights in Ukraine and imposing sanctions over a range of Ukrainian officials.⁶⁴ The Parliamentary Assembly of the Council of Europe (PACE) condemned the use of force by Russia in Crimea, occupation of Crimean territory as well as the threat of force in the south-east of Ukraine and suspended voting rights of Russia in the PACE until the end of the 2014 session (Resolution 1990 [2014] of 1.3.2014, para. 15).⁶⁵ The decision was taken by an overwhelming majority (145 – pro, 21 – contra, 22 – abstained).⁶⁶ PACE did not recognise the results of the referendum in Crimea. It announced that Russian activity caused a threat to security and stability in Europe (paras. 3, 6) and it condemned Russian appeals over the violation of rights of national minorities in Crimea (para. 8.) as well as Russian violations of the sovereignty and territorial integrity of Ukraine (para. 13). The Council of Europe also expressed support for the Unitarian status of Ukraine (Statement of the Secretary General of 30.4.2014).⁶⁷

The latter statement, however, is not entirely unambiguous from an international law perspective. According to the 1970 Declaration on Principles of International Law concerning Friendly Relation and Cooperation among States in accordance with the Charter of the UN every state has a right to choose its political system just as people have a right to choose its

⁶³ See e.g. Reports of 12.9.2014; 1.10.2014, 8.10.2014 – Reports from the Observer Mission at the Russian Checkpoints Gukovo and Donetsk, available at <<http://www.osce.org>>.

⁶⁴ Ukraine. Council of Europe Threatens With Sanctions, available at <<http://www.eastbook.eu>>.

⁶⁵ Reconsideration on substantive grounds of the previously ratified credentials of the Russian delegation. Resolution 1990 (2014), available at <<http://www.voltairenet.org>>; Russia Delegation Suspended from Council of Europe over Crimea, available at <<http://www.theguardian.com>>.

⁶⁶ Votes on Resolution 1990 (2014) of 1.3.2014, available at <<http://www.assembly.coe.int>>.

⁶⁷ Council of Europe Pledges Continued Support to Ukraine, available at <<http://www.neurope.eu>>.

political status.⁶⁸ Therefore, the right to decide on a Unitarian or Federal status of Ukraine rests only with Ukraine and its people.

3. European Union

The European Union's (EU) approach has been very similar to that of the Council of Europe. The EU ceased negotiations with Russia on visa issues and announced its readiness to suspend Russia's participation in the G8 until the final settlement of the conflict in Ukraine (Statement of the Heads of States and Governments of 6.3.2014).⁶⁹ The EU does not recognise the results of the referendum in Crimea (Statement of the High Representative for foreign affairs and security policy of 12.5.2014).⁷⁰ It also condemned the accession of Crimea to Russia as well as the deteriorating human rights situation in Crimea after the accession (Statement of the Heads of States and Governments of 27.5.2014).⁷¹ Referring to its adherence to the territorial integrity of Ukraine, the EU prohibited import to the EU of goods from Crimea and Sevastopol without Ukrainian certificates (Conclusions of the European Council of 27.6.2014).⁷²

The European Union imposed sanctions on a number of Ukrainian officials and organizations for the misappropriation of state funds and violations of human rights (Decisions of the EU Council 2014/119/CFSP of 6.3.2014, 2014/216/CFSP of 15.4.2014)⁷³ as well as on a number of individuals and organizations from the Russian Federation (Decisions of the EU Council EC 2014/145/CFSP of 17.3.2014, 2014/265/CFSP of 12.5.2014⁷⁴). It also recommended to states that are non-members of the European Union

⁶⁸ Declaration on the Principles of International Law Concerning Friendly Relation and Cooperation among States in Accordance with the Charter of the United Nations A/RES/25/2625 of 24.10.1970.

⁶⁹ Statements of the Heads of States or Governments on Ukraine, 6.3.2014, available at <<http://www.consilium.europa.eu>>.

⁷⁰ Press Release 3312th Council Meeting, 12.5.2014, Foreign Affairs, available at <<http://www.consilium.europa.eu>>.

⁷¹ Statement of the Heads of State or Government on Ukraine, 27.5.2014, <<http://www.consilium.europa.eu>>.

⁷² European Council Conclusions. Ukraine, 27.6.2014, available at <<http://www.consilium.europa.eu>>.

⁷³ European Union. Restrictive Measures in Force as for 2.9.2014, available at <<http://eeas.europa.eu>>.

⁷⁴ European Union. Restrictive Measures in Force (note 73).

to apply the same sanctions (Declaration of 7.7.2014).⁷⁵ Leaving aside a rather disputable legality of targeted sanctions by the European Union as such, it is believed here that international law provides absolutely no grounds for international organizations to impose sanctions on state officials of non-member states for alleged misappropriations of state funds⁷⁶. Even if proved, this activity constitutes a crime under national law, rather than international law. It does not breach any international treaty with the European Union and stays thus within the *domaine réservé* of Ukraine. Therefore it is only Ukraine which may start any sort of prosecution against these people.

Meanwhile the EU offered Ukraine financial help (Statement of the Heads of States and Governments of 6.3.2014), launched a Support group for Ukraine at the European Commission (9.4.2014⁷⁷) and signed the Association Agreement with Ukraine, which includes *inter alia* provisions on cooperation in the sphere of security (Title III) and human rights (Art. 14)⁷⁸. It is remarkable that neither the Association Agreement and cooperation within it, nor financial help are conditioned by the settlement of the conflict or observance of human rights or norms of international humanitarian law (Joint conclusions of the High level meeting on Ukraine of 8.7.2014, para. 4).⁷⁹

In contrast to the Council of Europe, the European Union took certain steps for the establishment of contacts between the parties to the conflict. It welcomed, supported and financed OSCE activity in the settlement of the conflict⁸⁰ and participated in the Geneva talks between Russia and Ukraine

⁷⁵ Declaration by the High Representative on behalf of the European Union on the alignment of certain third countries with the Council Decision 2014/308/CFSP amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine, 7.07.2014, available at <<http://www.consilium.europa.eu>>.

⁷⁶ That has been asserted in regard to regional organizations, which enjoy absolutely no competence towards third states: See *R. Pernice*, Die Sicherung des Weltfriedens durch Regionale Organisationen und die Vereinten Nationen (eine Untersuchung zur Kompetenzverteilung nach Kapitel VIII der UN-Charta), 1972, 127, 133; *H. Körbs*, Die Friedenssicherung durch die Vereinten Nationen und Regionalorganisationen nach Kapitel VIII der Satzung der Vereinten Nationen, 1997, 568.

⁷⁷ Support Group for Ukraine, 9.4.2014, available at <<http://www.ec.europa.eu>>.

⁷⁸ EU-Ukraine Association Agreement. The complete texts, available at <<http://www.eeas.europa.eu>>.

⁷⁹ Joint Conclusions. High Level Meeting on Ukraine: Coordinating and Implementing the International Support, 8.7.2014, available at <<http://www.europa.eu>>.

⁸⁰ Increased EU Support for the OSCE's Work in Ukraine. Press Release of 23.5.2014, available at <<http://www.eeas.europa.eu>>.

on 17.4.2014, which resulted in the signing of the Declaration on the settlement of the conflict⁸¹.

4. North Atlantic Treaty Organization

The situation in Ukraine has been repeatedly analyzed within the North Atlantic Treaty Organization (NATO).⁸² It condemned breaches of international law, committed by Russia, called upon Russia to honour its international commitments, came into negotiations with Ukraine and discussed the issue within the NATO-Russia Council (Statement of the North Atlantic Council of 2.3.2014⁸³), and expressed its support for Ukraine (Statement after the Wales summit of 4.9.2014⁸⁴).

NATO Secretary General, *A. F. Rasmussen*, has made repeated statements concerning the Ukrainian conflict. He condemned Russia's annexation of the Crimea (Statement of 16.9.2014),⁸⁵ the entry of a Russian convoy into the territory of Ukraine saying that it could only escalate the conflict (Statement of 22.8.2014⁸⁶), reported the election in Crimea of 14.9.2014 (Statement of 16.9.2014), expressed solidarity with Ukraine and condemned the escalation of Russia's military aggression against Ukraine (Statement of 29.8.2014⁸⁷). He also announced that Russia is currently fighting Ukraine and Russian troops and tanks are attacking the Ukraine (Statement of 5.9.2014)⁸⁸ and called for immediate international investigation of the downing of the Malaysian Airlines flight MH17 (Statement of 17.7.2014⁸⁹).

⁸¹ Geneva Declaration on Ukraine, 17.4.2014, available at <<http://www.news-mail.by>>.

⁸² Russia's Accusations – Setting the Records Straight. Press Release, updated July 2014, available at <<http://www.nato.int>>.

⁸³ North Atlantic Council Statement on the Situation in Ukraine, Press Release (2014) 033, issued 2.3.2014, available at <<http://www.nato.int>>.

⁸⁴ NATO Leaders Pledge Support to Ukraine at Wales Summit, 4.9.2014, available at <<http://www.nato.int>>.

⁸⁵ NATO Secretary General on the Reported Elections in Crimea, Ukraine, Press Release (2014) 133 of 16.9.2014, available at <<http://www.nato.int>>.

⁸⁶ NATO Secretary General Condemns Entry of Russian Convoy into Ukraine, Press Release (2014) 125, issued on 22.8.2014, available at <<http://www.nato.int>>.

⁸⁷ NATO Secretary General Statement after the Extraordinary Meeting of the NATO-Ukraine Commission, Press Release (2014) 129, issued on 29.8.2014, available at <<http://www.nato.int>>.

⁸⁸ Joint Press Conference by the NATO Secretary General *Anders Fogh Rasmussen* and the President of Ukraine, *Petro Poroshenko* during the NATO Summit held in Newport, Wales, 5.9.2014, available at <<http://www.nato.int>>.

⁸⁹ NATO Secretary General Statement on the Crash of Malaysia Airlines Aircraft, Press Release (2014) 111, issued on 17.7.2014, available at <<http://www.nato.int>>.

It should be noted that the NATO considered the option of applying military measures in Ukraine against the Russian Federation⁹⁰ but then limited itself to the disapproval of Russia's activities (Statement by NATO Foreign Ministers of 1.4.2014⁹¹).

5. Collective Security Treaty Organization

The Collective Security Treaty Organization (CSTO) is a regional organization of collective security⁹² originated in the Collective Security Treaty (CST) concluded on 15.5.1992⁹³ within the Commonwealth of Independent States. It has functioned since 2003 when the Charter of the CSTO⁹⁴ came into force. The CSTO was firstly viewed as a defence union (CST, Art. 4; CSTO Charter, Art. 3) but developed later two types of collective forces: peace-keeping forces and collective quick-reaction forces. The Organization has capacity for suppression of different types of contemporary threats and challenges, including the struggle against international terrorism, illegal migration and drug-trafficking.⁹⁵

The CSTO has monitored and considered different aspects of the situation in Ukraine at the meetings of its organs (Military Committee, Permanent Council)⁹⁶ and at informal meetings⁹⁷. The CSTO expressed its readiness to cooperate with Ukraine in any form (Statement of the CSTO Secretary-General of 1.2.2014)⁹⁸, called upon both parties to engage in a dialogue, to observe the Geneva Agreement of 21.2.2014 (Statement of the CSTO

⁹⁰ M. R. Gordon, NATO Weighs Assistance for Ukraine to Dissuade Further Moves by Moscow, available at <<http://www.nytimes.com>>.

⁹¹ Statement by NATO Foreign Ministers, 1.4.2014, available at <<http://www.nato.int>>.

⁹² Currently 6 states are members of the CSTO – Armenia, Belarus, Kazakhstan, Kyrgyzstan, Russia, Tajikistan.

⁹³ Dogovor o Kollektivnoj Bezopasnosti (Collective Security Treaty), 15.5.1992, available at <<http://www.odkb-csto.org>>.

⁹⁴ Ustav Organizatsii dogovora o Kollektivnoj Bezopasnosti (Charter of the Collective Security Treaty Organization), 7.10.2002, available at <<http://www.odkb-csto.org>>.

⁹⁵ A. F. Douhan/A. A. Rozanov, Collective Security Treaty Organization (2002–2012), 2013; A. F. Douhan, Collective Security Treaty Organization, in: R. Wolfrum (ed.), MPEPIL, Vol. II, 2012, 322 et seq.

⁹⁶ O zasedanii Postojannogo Soveta ODKB po situatsii na Ukraine (On the Meeting of the CSTO Permanent Council on the Situation in Ukraine), available at <<http://www.odkb-csto.org>>.

⁹⁷ Available at <<http://www.odkb-csto.org>>.

⁹⁸ N. Bordjuzba, Učastie Ukrainy v ODKB dast strane vazhnye preimuschestva (Participation of Ukraine in the CSTO Will Provide It With Feasible Advantages), available at <<http://www.odkb-csto.org>>.

Secretary-General of 28.2.2014)⁹⁹ and to de-escalate the conflict in Eastern Ukraine (Commentary of the CSTO Secretary-General of 4.6.2014)¹⁰⁰.

In contrast to the EU, NATO and the Council of Europe the CSTO does not view Russia as a party to the conflict in Ukraine (Statement of the CSTO Secretary General of 13.3.2014).¹⁰¹ As a consequence of disagreement between the CSTO and Euro-Atlantic organizations in the assessment of the conflict, the CSTO suspended any attempts to establish contacts with NATO (Statement of the CSTO Secretary-General of 24.4.2014).¹⁰² This statement should be viewed, however, exclusively as a political gesture. Even before 2014 all CSTO proposals to cooperate at least in the suppression of international terrorism and transnational organised crimes have been ignored by NATO.¹⁰³

For a variety of political reasons, the CSTO, like NATO has not taken any practical measures. First of all, this organization has not established any mechanisms for the peaceful settlement of international disputes. Secondly, due to Russia's presence and domination in the CSTO, it could hardly be expected that Ukraine would consent to use its "military" mechanisms e.g. for peace-keeping. It should thus be positively noted that the CSTO abstained from any involvement in the situation and proclaimed that any external military involvement could only deteriorate the situation in the region (Statements of the CSTO Secretary General of 19.3.2014, 10.4.2014,¹⁰⁴ 16.5.2014¹⁰⁵).

⁹⁹ Statement of the CSTO Secretary General *N. Bordjuzha* on the Situation in Ukraine, available at <<http://www.odkb-csto.org>>.

¹⁰⁰ Commentary of the CSTO Secretary General *N. Bordjuzha* Concerning the Tragedy in Lugansk, available at <<http://www.odkb-csto.org>>.

¹⁰¹ CSTO Does Not Consider Russian as a Party of the Conflict in Ukraine, available at <<http://www.odkb-csto.org>>.

¹⁰² CSTO Won't Contacts NATO Because of NATO Activity in Ukraine and Will Orientate to Other Countries, Statement of the CSTO Secretary General, 24.4.2014, available at <<http://www.odkb-csto.org>>.

¹⁰³ *N. Bordjuzha*, Sotrudnichestvo ODKB i NATO povoshilo by urovenj bezopasnosti (Cooperation between the CSTO and NATO Would Increase the Level of Security), 25.4.2012, available at <<http://www.odkb-csto.org>>.

¹⁰⁴ *N. Bordjuzha* made a speech in Minsk on the suppression of external intervention ad "color" revolutions, 10.04.2014, available at <<http://www.odkb-csto.org>>.

¹⁰⁵ *N. Bordjuzha*, Intervention of the NATO or CSTO in the Conflict in Ukraine Would Escalate Tension in the Country, available at <<http://www.odkb-csto.org>>.

IV. Conclusions

The UN has been monitoring and considering the situation in Ukraine at all stages. Nevertheless, apart from political claims it did not take any steps to establish a dialogue between the parties, to prevent deterioration of the situation or to facilitate its settlement. The UN Security Council meetings provide parties and members of the Security Council with the possibility to express their position. Unfortunately, this fact does not mean that the position or proposals of states have been heard. This concerns not only the parties to the conflict but also other members of the UN Security Council, in particular those who proposed to establish particular means of conflict settlement. Unfortunately the UN did not even use the mechanisms at its disposal. In particular, it has neither authoritatively established whether there is a dispute between Russia and Ukraine, nor has it established a fact-finding mission, which could provide some clarity and help to avoid allegations and misuse of facts.

It should be taken into account that the UN approach to the settlement of international and internal conflicts in the XXI century can be qualified as generally a very cautious one. For example, with regard to Kosovo, it is rather illustrative that the International Court of Justice chose a narrow understanding of the request of the UN General Assembly concerning the legality of the unilateral declaration of independence of Kosovo and assessed only the legality of the unilateral declaration as a document,¹⁰⁶ leaving aside the framework and the criteria of the right to self-determination as well as the forms of self-determination. The UN Security Council often prefers not to act. For example it did not assess the legality of and therefore neither condemned nor welcomed NATO action in Kosovo. For the last 20 years the UN Security Council has not controlled regional organizations in the sphere of maintenance of international peace and security. It rather welcomes any activity they take for the maintenance of peace and security in a region (see e.g. UN Security Council Resolutions 1150 [1998] of 30.1.1998, preamble;¹⁰⁷ 1423 [2002] of 12.7.2002, para. 20;¹⁰⁸ 1575 [2004] of 22.11.2004, para. 11¹⁰⁹ etc.). The Security Council does not even require regional organ-

¹⁰⁶ Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, I.C.J. Reports, 2010, 403 et seq.

¹⁰⁷ UN Security Council Resolution 1150 (1998), 30.1.1998, available at <<http://www.daccess-dds-ny.un.org>>.

¹⁰⁸ UN Security Council Resolution 1423(2002), 12.7.2002, available at <<http://www.daccess-dds-ny.un.org>>.

¹⁰⁹ UN Security Council Resolution 1575 (2004), 22.11.2004, available at <<http://www.daccess-dds-ny.un.org>>.

izations to submit information on their activity in accordance with Art. 54 of the UN Charter, and indeed it did not in the conflict under consideration.

The absence of an explicit condemnation of NATO activity in Kosovo has begun to be viewed, in the course of time, as tacit approval¹¹⁰. In a view of the absence of any real negative consequences or condemnation for past breaches of international law, as well as very little (if any) control of the UN Security Council over the activity of regional organizations, the very idea to achieve benefits through a breach of international law becomes very attractive for states and regional organizations. Dubious legality of certain activity of the UN Security Council (e.g. violation of fundamental human rights by targeted sanctions imposed on individuals¹¹¹) provides the possibility to refer to the breaches committed by the council in order to justify similar or often worse breaches of international law.

Regional organizations reacted to the situation in Ukraine differently. The OSCE, despite its repeatedly criticised “soft” approach¹¹² and the absence of any enforcement mechanism, demonstrated an impartial approach. It monitored and considered all aspects of the conflict, made all possible efforts for conflict detainment and settlement. It played and continues to play a decisive role in the settlement of the conflict.

The Council of Europe and the European Union acted rather unevenly. These organizations view the conflict exclusively as a conflict between Russia and Ukraine and seek to settle it by applying pressure on Russia and providing financial aid to Ukraine. Other aspects of the conflict as well as other facts are mostly ignored. This approach can hardly help to settle the conflict. It is generally recognised that efficacy of sanctions of international

¹¹⁰ O. Y. Sorokina, *Polnomochia Soveta Bezopasnosti Organizatsii Objedinennykh Natsij* (Powers of the UN Security Council), Dissertation, 2009, 91; A. Abass, *Regional Organizations and the Development of Collective Security: Beyond Chapter VIII of the UN Charter*, 2004, 53 et seq.

¹¹¹ N. Ronzitti, *The Report of the High-Level Panel on Threats, Challenges and Change, the Use of Force and the Reform of the United Nations*, IYIL XIV (2004), 11; A. Bianchi, *Assessing the Effectiveness of the UN Security Council's Anti-Terrorism Measures: The Quest for Legitimacy and Cohesion*, in: EJIL 17 (2006), 891 et seq.; A. F. Douban, *Regional Mechanisms of Collective Security: The New Face of Chapter VIII of the UN Charter?*, 2013, 90 et seq.; Resolution 1597 (2008) United Nations Security Council and European Union Blacklists, PACE, available at <<http://www.assembly.coe.int>>, para. 6 [741].

¹¹² G. N. Makarova, *Sovremennye mezhdunarodno-pravovye i organizatsionnye aspekty povysheniya effektivnosti dejatel'nosti OBSE* (Contemporary International Legal and Institutional Aspects of the Enhancement of Efficacy of the OSCE Activity), Dissertation, 2008, 130; V. N. Fisenko, *Proekt Dogovora o Evropejskoj bezopasnosti i OBSE* (Draft of the European Security Treaty and the OSCE), in: *Actual Problems of International Public and International Private Law* 3 (2011), 85.

organizations is rather low.¹¹³ Apparently they often have an adverse effect, pushing a sanctioned actor away from cooperation. In particular, the Russian Federation considered ceasing its membership of the Council of Europe after its voting rights in PACE were suspended.¹¹⁴ This is more significant when the legality of the sanctions is dubious. For example, EU targeted sanctions against the Ukrainian state authorities for misappropriation of state funds as well as the Council of Europe's claims that Ukraine is to remain a Unitary state set a bad precedent. *De facto* they may be viewed as intervention into the domestic affairs of Ukraine and therefore undermine its sovereignty.

The CSTO and NATO – the only organizations with a developed military structure – monitor the situation, call for the settlement of the conflict and observance of international law but abstain from intervention in the conflict. These steps are in this case justifiable and indeed are the only steps possible. Military involvement by either one could only escalate and internationalise the conflict.

This brings me to my final conclusions. The situation in Ukraine provides a clear illustration of inadequacy and low effectiveness of the existing system of collective security. Because of this, both states and international organizations find themselves involved in a politicised game, in which every actor manipulates with terminology in a voluntary way, refers to “high” values to justify his activity and blames the opponent or opponents for the breach of peremptory norms of public international law. The situation is worsened by the fact that not only parties but also some international organizations apply double standards and focus primarily on finding “the guilty” – a bad guy, omitting violations committed by other “white” party/parties. This all took place without any real attempt to settle the emerging and now existing conflict. On the other hand, the conflict can only escalate when certain measures are taken by international organizations *ultra vires*, with the use of double standards or when the willingness to point to “the guilty” party prevails over the need to settle the conflict. It was correctly noted by the Russian representative at the UN V. Churkin at the UN Security Council meeting 7144 of 19.3.2014: “*it is not true that without ‘evil’ Russia people in Ukraine would live long and happily*”. Besides the internal problems in Ukraine we should be aware that multiple violations

¹¹³ R. Thakur, *The United Nations, Peace and Security: From Collective Security to Responsibility to Protect*, 2006, 136 et seq.; D. Courtright/G. A. Lopez/L. Gerber-Stellingwerf, *The Sanctions Era: Themes and Trends in UN Security Council Sanctions since 1990*, in: V. Lowe (ed.), *The United Nations Security Council and War: The Evolution of Thought and Practice since 1945*, 2008, 205 et seq.

¹¹⁴ Russia Delegation Suspended from Council of Europe over Crimea (note 65).

took place on all sides of the conflict. The Amnesty International Report of 8.9.2014 gives a good substance to this statement, citing examples of unlawful detention and torture not only by separatists but equally by Ukrainian authorities and pro-Ukrainian volunteer battalions.¹¹⁵

Therefore, there is a clear need to enhance the rule of law especially in the sphere of maintenance of international peace and security at all levels. It is high time to stop playing “black and white” games and to start looking for the solution. International organizations, due to their collective nature, should stop using double standards but rather should demonstrate impartiality and aspiration for legality and settlement of conflicts.

The situation in Ukraine also clearly demonstrates the insufficiency of mechanisms of cooperation between the UN and regional organizations. There is thus a need to develop mechanisms for the coordination of activities of regional organizations with the UN and international organizations in a state of emergency. Such coordination would help to shorten the period that is needed to start any action for prevention, deterrence and settlement of conflict.

¹¹⁵ Ukraine: Abuses and War Crimes by the Aidar Volunteers Battalion in the North Luhansk Region, 8.9.2014, AI Index: EUR 50/040/2014, available at <<http://www.amnesty.org>>.