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Kremlin Aggression in Ukraine: The Price Tag

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KREMLIN AGGRESSION IN UKRAINE: THE PRICE TAG

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TABLE OF CONTENTS

INTRODUCTION

The purpose of this report is to assess the material losses Ukraine has suffered as a result of the Russian occupation and annexation of Crimea in February-March 2014 and Russia's military aggression in parts of the Ukrainian eastern regions of Luhansk and Donetsk since April 2014. These two cases of military aggression were quite different, and their differences have persisted in relation to both the damage caused and how the territories have been governed. While conditions are bad in both territories, they are far worse in the Donbas.

The costs are of several kinds. First, assets have been seized by the government of the Russian Federation or by Russian-backed forces. Second, enterprises, buildings, and infrastructure have been destroyed by warfare; some of these assets belonged to the Ukrainian state, others to private firms or individuals, but all are Ukrainian legal entities. Another group of losses is flows. Since the summer of 2013, Russia has imposed ever more severe trade sanctions on Ukraine, which eventually responded with sanctions of its own. Furthermore, the warfare minimized the flow of real foreign direct investment into Ukraine.

This report deals with purely economic losses, not with military or humanitarian costs. Thus, it deals only glancingly with public expenditures on citizens in the occupied territories and does not discuss the costs of internally displaced people (IDPs).

In his famous book *Capital in the Twenty-First Century,* economist Thomas Piketty estimates that the total value of assets has averaged slightly more than four times gross domestic product (GDP) for Europe over the last 140 years.[1] The simplest and broadest measure of the losses Ukraine has suffered is therefore to multiply the share of GDP that Ukraine lost by four. The Donbas was the source of 10 percent of Ukraine's GDP and Crimea 3.7 percent.[2] The International Monetary Fund (IMF) assessed Ukraine's GDP in the pre-crisis year of 2013 at $179.6 billion.[3] Thus, the total asset value of Crimea and Donbas would amount to 13.7 percent of $179.6 billion multiplied by four, or $98.4 billion. This roughly represents the value lost to Ukraine if it loses these territories forever.

HOW IT HAPPENED

The Russian occupation of Crimea started on February 27, 2014, as "little green men"— Russian special forces without insignia—seized the regional parliament in Simferopol. It was unprovoked military aggression and came as a complete surprise. The unprepared Ukrainian armed forces made no resistance, and the occupation was nearly bloodless. On March 18, the Russian Federation annexed the whole of Crimea.

In April 2014, "little green men" tried to initiate warfare in eight other regions in the south and east of Ukraine, the pretense being that this was a local uprising of Russian-speaking Ukrainians against the new, "illegitimate" government in Kyiv. With surprising speed, Ukrainian forces, many of them voluntary, got organized and resisted. In August, their offensive compelled the Kremlin to send in a large contingent of regular Russian troops, whom Moscow initially claimed were using their holidays to voluntarily join the conflict in Ukraine.

Two cease-fire agreements were concluded in Minsk after major Russian offensives. The first was signed on September 5, 2014 (with a follow-up memorandum signed two weeks later), the second on February 12, 2015. The parties involved were Russia, Ukraine, France, Germany, and the Organization for Security and Cooperation in Europe (OSCE), but the actual agreements were signed by representatives of Ukraine and the so-called Donetsk People's Republic (DNR) and Luhansk People's Republic (LNR). Russia is not mentioned in the text, although there is a reference to "foreign troops" that Ukraine and the West understand to mean Russian forces. Neither cease-fire took hold, and daily shootings and killings have continued.

After September 2014, the big question was wheth-

1 Thomas Piketty, *Capital in the Twenty-First Century* (Cambridge, MA: Belknap, 2013), 165.

2 *Ukrainian Economy: Forecasts Revised to Factor in Protracted Military Conflict*, Dragon Capital, October 2, 2014.

3 "World Economic Outlook Database," International Monetary Fund, October 2017, https://www.imf.org/external/pubs/ft/weo/2017/02/weodata/index.aspx.

Russian special forces without insignia patrol Simferopol Airport on February 28, 2014 in Crimea, Ukraine. *Photo credit: Elizabeth Arrott / VOA*

er Russian troops would try to seize the big industrial city of Mariupol. Doing so would have devastated the Ukrainian economy, as Mariupol is the country's second biggest port, accounting for about one-third of Ukraine's exports. So far that has not happened. One reason may be that the economic destruction would be too great. However, Russian forces control the narrow Strait of Kerch that leads out to the Black Sea, and Russia has imposed many restrictions on shipping from Mariupol, so that much of its freight has been diverted to ports on the other side of Crimea. The share of Ukraine's cargo export going through the country's two Azov Sea ports, Mariupol and Berdyansk, fell from 16 percent in 2013 to 8 percent in 2016.[4]

Ukraine publicizes its military and civilian death toll from the war, which now exceeds 10,300. Russia and its subaltern regimes in Donetsk and Luhansk offer no records of civilian or military losses, but a reasonable guess is that a similar number of people have been killed on the other side. By comparison, a score of people have disappeared in Crimea, and six are thought to have been killed. While Crimea is subject to a hard dictatorship, occupied Donbas is a lawless war zone.

Population movements dramatize the contrast between the two occupations. Crimea has a population of 2 million, as it did in 2013. Twenty thousand people, mainly Crimean Tatars and youth, have left for Ukraine proper, and about as many Russians have moved in, most of them presumably military pensioners.

But people are fleeing the Donbas in droves. Reliable population estimates are hard to come by, but a substantial June 2015 article from Russia's RBC Media—a respected source of independent news and investigations before it came under Kremlin pressure and was bought last year by an ally of Russian President Vladimir Putin—reports that the regions' total population has dropped from between 6 million and 6.5 million before the war to about 3 million.[5] (Only about half of the Donetsk and Luhansk regions is occupied, but that territory contains both regional capitals and most of the inhabitants.) Of that number, RBC estimated, 2 million to 2.5 million are in rebel-held territory, and about 1 million of those are pensioners. A December 2015 *Bild* report also pegged the pensioner population in the occupied are at 1,079,000.[6]

4 David Saha, Vitaliy Kravchuk, and Veronika Movchan, "The Impact of the New Kerch Strait Bridge on Ukraine's Trade," German Advisory Group, Policy Briefing Series, February 2018.

The Ukrainian Ministry of Social Policy reported in August 2016 that 1,714,388 individuals were registered as IDPs in Ukraine;[7] according to the RBC account, 500,000 to 1 million people have gone to Russia and another 100,000 have fled to other countries. Thus, occupied Donbas is a hellhole, where few but the poor, the old, and the criminal remain.

Within Donbas, Luhansk is far worse than Donetsk. It has seen many assassinations of rebel battalion commanders. The skill with which these killings have been carried out suggests they were inside jobs by Russian special forces. Nothing seems to function or be produced in Luhansk, while Donetsk has restored some order as well as elementary local food supplies and public services.

There is no comparison with the peaceful and relatively well-organized Crimea, which is ruled from Moscow according to Russian law and in an orderly fashion, even if it is strictly authoritarian. The complaints in Crimea concerns discrimination against Crimean Tartars and Ukrainians, human-rights violations, and property crimes, not outright warfare or lawless gangs as in occupied Donbas. Russia's economic treatment of the two occupied territories has also been very different.

RUSSIAN POLICY ON CRIMEA

When Russia annexed Crimea on March 18, 2014, it incorporated the region fully, imposing Russian state institutions and laws but also offering federal Russian financing. The ruble was introduced, as were Russian pensions and state salaries. The bulk of private and state Ukrainian enterprises were confiscated while private Ukrainian enterprises were forced to register as Russian entities.

The United States and the European Union (EU) responded with severe sanctions against Russian officials, individuals, and enterprises held responsible for the annexation and anybody pursuing business dealings with the region. The economic impact has been severe. Crimea's foreign trade has fallen by nine-tenths. Housing prices slumped, while the prices of goods and services rose because of supply problems. Annual tourism has dropped from 6 million visitors, two-thirds of them from Ukraine, to 4 million to 5 million, almost entirely from Russia.

The Crimean economy has become completely dependent on the Russian state and is likely to remain so...

Moscow poured about $4 billion into the civilian economy of Crimea in 2014, and it is continuing to subsidize the region to the tune of $2 billion a year. The Russian government is building a major bridge over the Kerch Strait from mainland Russia to Crimea's eastern tip to be completed at the end of 2018, at a cost of $3.5 billion. The project is overseen by Arkady Rotenberg, a construction magnate and longtime friend of Putin who is under sanctions,[8] as are many of his companies involved in building the bridge.[9]

The Crimean economy has become completely dependent on the Russian state and is likely to remain so; the annual cost of $2 billion, merely 0.14 percent of Russia's current GDP of $1.4 trillion, is significant yet bearable for the Kremlin. This does not include military expenditures for Crimea.

5 Ivan Golunov and Alexander Artemyev, "RBC Investigation: On Whose Money Does the Donbas Live?," RBC, June 15, 2015, https://www.rbc.ru/investigation/politics/15/06/2015/5579b4b99a7947b063440210.

6 Julian Röpcke, "How Russia Finances the Ukrainian Rebel Territories," *Bild*, January 16, 2016.

7 *Report on the human rights situation in Ukraine, 16 May to 15 August 2016*, Office of the United Nations High Commissioner for Human Rights (UNHCR), http://www.ohchr.org/Documents/Countries/UA/Ukraine15thReport.pdf.

8 "Treasury Sanctions Russian Officials, Members Of The Russian Leadership's Inner Circle, And An Entity For Involvement In The Situation In Ukraine," US Department of the Treasury, March 20, 2014, https://www.treasury.gov/press-center/press-releases/Pages/jl23331.aspx.

9 "Treasury Sanctions Individuals and Entities for Sanctions Evasion and Activities Related to the Conflict in Ukraine," US Department of the Treasury, September 1, 2016, https://www.treasury.gov/press-center/press-releases/Pages/jl5048.aspx.

MATERIAL LOSSES IN CRIMEA

Ukraine's main material losses in Crimea are land, energy assets, banks with assets, enterprises, and housing. With the Russian annexation, Ukraine immediately lost all state property, which included Naftogaz holdings, infrastructure, buildings, land, and military assets.

The biggest losses pertained to gas assets. Of Ukraine's natural-gas production of 20 billion cubic meters (bcm) per year, 1.6 bcm came from state-owned Chornomornaftogaz in Crimea, which operated eighteen gas fields on the Black Sea shelf and onshore.[10] The company was "nationalized" by Crimean regional authorities in March 2014 and is now effectively under Russian control. Maksym Bugriy, a Ukrainian economics and security analyst, noted shortly after the annexation that Chornomornaftogaz had intended to double production in 2015, on which basis he estimated the company's value at $1 billion,[11] a figure that seems low.

Since the annexation, Russia has carried out extensive confiscation of public and private property, which it has referred to as "nationalization" under Russian Federation legislation.

Ukraine has large but unexplored resources of gas on its shelf in the Black Sea and Azov Sea shelves. With Russia's annexation, it seized these assets.[12] In April 2014, Ukrainian Energy Minister Yuriy Prodan declared that losing access to the Black Sea fields would cost the country $40 billion, but at the time the oil and gas prices were still sky-high.

The most important of these offshore projects involved a consortium led by ExxonMobil and including Royal Dutch Shell and Romania's OMV Petrom, which was moving forward on product-sharing agreements (PSAs) for offshore blocks outside of Crimea. These plans were shelved because of the annexation and the ensuing Western sanctions against Russia and Crimea. Bugriy assessed the value of the reserves in this field alone at $30 billion, when the gas prices remained high.[13] Ukraine adopted a law on PSAs in 1999, but apart from one failed agreement none have taken off.

Since the annexation, Russia has carried out extensive confiscation of public and private property, which it has referred to as "nationalization" under Russian Federation legislation. As of May 12, 2017, 4,575 public and private real-estate assets had been nationalized. In addition, Russian authorities have permitted the demolition of buildings constructed without necessary permits. "According to case law of the European Court of Human Rights, any person risking the loss of his/her home should be able to have the proportionality of the measure determined by an independent tribunal in light of the relevant principles under Article 8 of the ECHR."[14] The Russian authorities have taken steps to compensate owners of confiscated property, but it excludes individuals accused of "extremism." Moreover, compensation payments can be postponed for ten years.[15] During three months in the summer of 2017, approximately 600 private properties were acquired in Sevastopol with a risk of no compensation. Several property owners saw courts cancel purchase contracts that had been concluded before the Russian occupation, judgments that amount to confiscation of property without reparation.[16]

The Ukrainian government also owned 1.4 million hectares of agricultural land in Crimea.[17] The current

10 Naja Bentzen, *Ukraine's economic challenges: From ailing to failing?*, European Parliamentary Research Service, June 2015, http://www.europarl.europa.eu/RegData/etudes/IDAN/2015/559497/EPRS_IDA(2015)559497_EN.pdf.

11 Maksym Bugriy, "The Cost to Ukraine of Crimea's Annexation," *Eurasia Daily Monitor*, April 14, 2014, https://jamestown.org/program/the-cost-to-ukraine-of-crimeas-annexation/.

12 *BP Statistical Review for Energy*, June 2014, https://www.bp.com/content/dam/bp-country/de_de/PDFs/brochures/BP-statistical-review-of-world-energy-2014-full-report.pdf.

13 Bugriy.

14 *Report on the Human Rights Situation in Ukraine, 16 February to 15 May 2017*, UNHCR, p. 38. http://www.ohchr.org/Documents/Countries/UA/UAReport18th_EN.pdf.

15 *Report on the Human Rights Situation in Ukraine, 16 February to 15 May 2017*, UNHCR, http://www.ohchr.org/Documents/Countries/UA/UAReport18th_EN.pdf.

16 *Report on the Human Rights Situation in Ukraine, 16 May to 15 August 2017,* UNHCR, http://www.ohchr.org/Documents/Countries/UA/UAReport19th_EN.pdf.

17 Bugriy.

average price of agricultural land in Ukraine is $1,300 per hectare, which would mean a value of $1.8 billion. If the land market were let free, the price would probably rise to $4,000/hectare, judging from the land price in neighboring EU countries. Then this land bank would be worth $5.6 billion.

As Russia persistently denies its very presence in the Donbas, it has not taken any formal responsibility for governance or the economy there.

Private enterprises in Crimea faced the choice of re-registration as Russian enterprises or confiscation. If they chose the former, they would fall under the severe Western sanctions against Crimea imposed in March 2014. Many Ukrainian owners have tried to sell their property in Crimea but are stymied by the depressed market and low prices.[18]

Crimea had a large banking sector. In February 2014, more than twenty Ukrainian banks with 1,022 branch offices operated in the region. The National Bank of Ukraine assessed the value of the regional banking sector at $1.7 billion to $1.9 billion.[19] By the end of April 2014, all Ukrainian-registered banks had closed their branches and left Crimea. The biggest Russian state banks, Sberbank and VTB, have stayed away to avoid the US and EU sanctions. Instead, the already-sanctioned Bank Rossiya, owned by friends of Putin from St. Petersburg, and a few minor Russian state banks, notably the Russian National Commercial Bank (RNCB), moved in.[20] RNCB has been established as the Russian state bank for frozen-conflict regions.

All told, more than 400 Ukrainian companies were confiscated.[21] The two biggest companies in Crimea, Crimea Soda and Crimea Titan, belonging to Ukrainian oligarch Dmytro Firtash, have apparently been re-registered as Russian companies.[22]

An alternative and more comprehensive method of assessment would be to base the loss amount on post-conflict GDP and use a standard international ratio of assets to GDP. As noted above, Piketty sets that ratio as a multiplier of slightly more than four, based on European economic averages over the last 140 years. According to Ukraine's statistics, Crimea accounted for 3.7 percent of its GDP in 2013, when the IMF set its national GDP at $179.6 billion. The resulting equation—0.037 x $179.6 billion x 4— yields a loss of $26.6 billion.

RUSSIAN POLICY ON DONBAS

While Moscow followed a clear-cut path of annexation and nationalization in Crimea, its policy in the Donbas has been neither clear nor stable. As Russia persistently denies its very presence in the Donbas, it has not taken any formal responsibility for governance or the economy there. Actual Russian policy has evolved in steps, with increasing Kremlin involvement, but it has not prevented the territory from devolving into a lawless mess.

"In the second half of 2014, the occupied Donbas went through terrible destruction. Russian engineering troops blew up bridges and factories were subject to extensive artillery fire. All banks and ATM machines were looted and banking ceased. Most shops closed, leaving little but grocery stores. Rebels plundered or seized small, medium-sized and state enterprises, while big private enterprises, largely owned by Rinat Akhmetov's DTEK and Metinvest," were allowed to continue working.[23] They continue to operate as on Ukrainian territory, and their workers have to go to

18 Conversations with three property owners in Crimea.

19 Steve Stecklow, Elizabeth Piper, Oleksandr Akymenko, "Special Report: Crimean savers ask: Where's our money?," Reuters, November 20, 2014, https://www.reuters.com/article/us-ukraine-crisis-banks-specialreport/special-report-crimean-savers-ask-wheres-our-money-idUSKCN0J40FJ20141120?irpc=932 "Ukrainian Banks Quit Crimea," RT, April 15, 2014, https://www.rt.com/business/ukraine-banks-close-crimea-572/.

20 Alissa de Carbonnel and Elizabeth Piper, "Sanctions Trump Patriotism for Russian Banks in Crimea," Reuters, April 9, 2014, https://www.reuters.com/article/ukraine-crisis-crimea-banks/sanctions-trump-patriotism-for-russian-banks-in-crimea-idUSL6N0N01X620140409.

21 Bentzen.

22 "History," Crim Soda, http://www.sodaplant.ru/en/about/history/.

23 *Bild.*; Anders Åslund, "New Russian Management of the Donbas Signifies Putin May Be Ready to Negotiate," Atlantic Council, January 4, 2016.

A destroyed office of PrivatBank, Ukraine's largest commercial bank, which was set on fire in May 2014 in Mariupol, Ukraine. *Photo credit: Carl Ridderstråle*

automated teller machines in free Ukraine to collect their wages.[24]

The first signs of any stabilization came in August 2014, when Aleksandr Zakharchenko became prime minister of the DNR and Igor Plotnitsky became head of the LNR. Zakharchenko remains the nominal head of the DNR; in November 2017, Plotnitsky was ousted in a coup and replaced by Leonid Pasechnik. These leaders are considered mediocre and they lack political appeal, but they are obedient to Moscow.

Kyiv maintained responsibility for paying pensions in the Donbas until November 2014, when President Petro Poroshenko signed a decree that cut off all Ukrainian state funding of the occupied territories. Ukraine could not afford large public outlays to territory it did not control and from which it could not collect taxes.

During the Minsk negotiations in February 2015, Russia insisted that the Ukrainian government continued to provide public financing to the occupied Donbas, but the Ukrainian government only paid pensions in non-occupied Ukraine to people registered as living there.[25] In April 2015, Russia hesitantly started paying pensions sporadically in the Donbas and covering some other basic public expenses, in rubles. In September 2015, the LNR declared the ruble to be its official currency, and the DNR followed suit in October.[26] By November 2015, the misery seems to have become so great that Moscow feared starvation and started regular but minimal payments of pensions and state wages. A report by the International Crisis Group assessed the cost to Russia of these payments at $1 billion a year.[27] The Ukrainian government credibly estimated that Moscow spent $2 billion in non-military expenditures on the rebel-held territories in 2016.[28]

24 Pavel Kanygin, "The Donbass War. Assessing the Aftermath: How the 'Russian Spring' Came to an End in Eastern Ukraine," *Meduza*, November 13, 2015, https://meduza.io/en/feature/2015/11/13/the-donbass-war-assessing-the-aftermath; Anders Åslund, "New Russian Management of the Donbas Signifies Putin May Be Ready to Negotiate," Atlantic Council, January 4, 2016..

25 Anders Åslund, "New Russian Management of the Donbas Signifies Putin May Be Ready to Negotiate," Atlantic Council, January 4, 2016. http://www.atlanticcouncil.org/blogs/ukrainealert/new-russian-management-of-the-donbas-signifies-putin-may-be-ready-to-negotiate

26 RBC Media and *Bild*.

In October 2015, the Kremlin changed its management of the occupied Donbas.[29] Dmitri Kozak, the deputy prime minister in charge of regional affairs, including frozen conflicts, took over from Vladislav Surkov of Russia's presidential administration. The appointment of Kozak, a lawyer from St. Petersburg, indicated a transition from war to long-term management.[30]

Sergey Nazarov, Russia's deputy minister of economic development for regional development, took over the management of the occupied zone's economy. He commanded a plethora of Russian state agencies, while private Russian enterprises hardly entered.[31]

Until March 2017, many large Ukrainian enterprises still operated in the occupied territories and they did so in accordance with Ukrainian law. But on February 18, 2017, Putin issued a decree through which Russia recognized passport and other documents issued by DNR and LNR authorities. Previously, neither Russia nor Ukraine had recognized high-school or university exams from these regions. Students had to leave for either Russia or Ukraine before completing their exams.

The Russian government has tried to restore the banking system. According to a December 2015 entry in "The Donbass Paradox," a Journalismfund.eu investigative project on the economic and business situation in the rebel-held areas, "Nearly all foreign companies have fled from the occupied zone. Most of their assets have since been destroyed, looted or occupied. All the banks—Russian, French, Austrian, Italian and Ukrainian—closed in mid-2014. The rebels have raided many of the outlets and blown up ATMs, looking for cash. The only bank open is the rebel-run Republican Central Bank, which has opened mainly in the former premises of Ukrainian banks PrivatBank and Oschadbank."[32] The Russian state bank for frozen-conflict territories, RCNB, has entered this territory, as in Crimea.

Militarily, Russia has integrated the Donbas rebel forces under regular Russian command.

MATERIAL LOSSES IN DONBAS

The economic and humanitarian situation in Donbas is awful and stands in sharp contrast to the situation in Crimea. First, the war in the Donbas wrought substantial destruction from May to August 2014. Economic output declined by roughly two-thirds.

In the wake of both Minsk agreements, the Russian-led forces took hundreds of square kilometers of additional Ukrainian territory. The line dividing Ukraine- and rebel-held territory has somewhat stabilized since, but shooting has continued along this line. The daily shelling has caused significant material destruction and disrupted supply chains. Some production recovered, but not much. By March 2017, the rebel governments in Donetsk and Luhansk had confiscated almost all still-functioning companies in their territories.

What these reports reflect, more than three years after the occupation started, is that unruly armed gangs seize whatever assets they desire.

The quarterly reports of the United Nations High Commissioner for Human Rights (UNHCR) routinely detail looting and harassment of small enterprises and property owners, such as this from the summer of 2017: "Parallel procedures that 'regulate' inheriting, selling and buying of property put in place by armed groups continued to create unnecessary hardship for the population … all real estate transactions executed

27 "Russia and the Separatists in Eastern Ukraine," International Crisis Group, February 5, 2016, https://www.crisisgroup.org/europe-central-asia/eastern-europe/ukraine/russia-and-separatists-eastern-ukraine.

28 "Moscow spent $2 billion on the Terrorists in Donbas in 2016," Liga.Novosti, May 11, 2017, http://news.liga.net/news/politics/14748204-moskva_potratila_2_mlrd_na_terroristov_v_donbasse_v_2016_m_godu.htm.

29 Anders Åslund, "New Russian Management of the Donbas Signifies Putin May Be Ready to Negotiate," Atlantic Council, January 4, 2016.

30 Interview with a former senior regional official in Donetsk oblast. November 2015.

31 Ibid.; Anders Åslund, "New Russian Management of the Donbas Signifies Putin May Be Ready to Negotiate," Atlantic Council, January 4, 2016.

32 Michael Bird, Lina Vdovii, and Yana Tkachenko, "The Great Looting of Donbass," *EUObserver*, December 10, 2015, https://euobserver.com/investigations/131428.

An apartment building struck by artillery fire in Lysychansk, Ukraine in August 2014. *Photo credit: Wikimedia*

after 11 May 2014 must be registered with the 'Donetsk people's republic.'" The report continues: "Armed groups further restricted the right to unimpeded use of privately owned commercial premises or other business-related property. On 5 July 2017, a member of the 'people's council' of the 'Donetsk people's republic' reported that 109 private markets had passed to 'state ownership' since April 2017."[33] What these reports reflect, more than three years after the occupation started, is that unruly armed gangs seize whatever assets they desire.

The Donbas economy has collapsed. In the summer of 2014 its GDP plunged by 70 percent, according to Ukraine government statistics, and it has not recovered much since. The fighters plundered small shops and all banks; a shortage of goods developed, and the regional banking system stopped working. A 2016 International Crisis Group report describes destitution and lawlessness as a dozen competing bands control the territory.[34] In October 2014, the occupied territories accounted for 2.6 percent of Ukraine's area, 10 percent of GDP, and 15 percent of industrial output.[35]

In March 2015, the World Bank assessed total physical damage in the Donbas from the war at $463 million, seemingly a very low estimate given the extent of the destruction. Of that, $352 million pertained to transportation and $53 million to the energy sector.[36] The damages to transportation were specified as 1,100 kilometers of state roads, including ten bridges.[37] These numbers are rarely cited because they were too early and too small.

In September 2014, Volodymyr Groisman, then the minister of regional development, housing, and utility sector, made the first substantial statement

33 UNHCR, 16 May-15 August 2017.
34 International Crisis Group.
35 Dragon Capital.
36 *Ukraine: Recovery and Peacebuilding Assessment*, The World Bank, March 2015, http://documents.worldbank.org/curated/en/879011468188335375/pdf/96487-REPLACEMENT-FILE-WP-v1-Box391453B-PUBLIC-RPA-A4-Vol1-Eng-Web.pdf .
37 Ibid..

on material losses in the Donbas.[38] He stated that 11,325 infrastructure facilities with a collective value of UAH 11.9 billion (at the time, $903 million) had been destroyed in the Luhansk and Donetsk regions. Among them were 4,700 were power facilities, 4,500 residential buildings, 217 educational institutions, 132 industrial facilities, and 45 medical institutions. In December 2014, UNHCR reported that about 12,000 public and private facilities had been destroyed in occupied Donbas.[39] There has been no compensation for this extensive material destruction.

Key Ukrainian enterprises are concentrated in the Donbas, producing general machinery, mining equipment, machinery, equipment for metallurgy and the chemical industry, transport equipment, locomotives and rail cars. These major machine-building companies were taken partly or entirely out of service: Donetskhormash PJSC and Donetsk PJSC, Horlivka Machine Builder PJSC, Novohorlivsk Machine Works PJSC, Yasynuvata Machine Works LLC, Azovmash PJSC, Stakhanov Wagon Works PJSC, and the Kirov Forging Plant "Tsentrokuz" PJSC.[40] Stirol fertilizer plant stopped working. The occupied territories are home to 115 of Ukraine's 150 coal mines; production decreased by 30 percent in 2014 and by 50 percent in the first eight months of 2015.[41]

Among Ukraine's many steelworks, only Alchevsk Iron and Steel Works was fully modernized. It belonging to the Industrial Union of Donbas and was taken off line early in the war. Russian forces bombed bridges and power stations in areas under their control.[42] There have been reports of many other factories more being looted and transferred to Russia, but it is hard to get firm evidence.

In April 2015, the Vienna Institute for International Economic Studies reported that war-related damages in the Donbas amounted to some 8 percent of Ukraine's GDP, or $10 billion.[43] At a conference in Kyiv on September 13, 2015, then-Prime Minister Arseniy Yatsenyuk assessed the war damages to physical infrastructure at $9 billion,[44] and much destruction has ensued.

Within the DNR and LNR people have moved from small towns close to the battle line to the two main cities, Donetsk and Luhansk. The border between the DNR and Ukraine proper is relatively open, with four crossings, but traffic from the LNR is squeezed through a single border post.[45] The traffic is substantial, with 25,000 border crossings every day, mainly by elderly people aspiring to collect their Ukrainian pensions.[46] Some residents of the occupied zones also cross to buy food—prices are much lower and selection much better in free Ukraine.

Until March 2017, the backbone of what remained of the economy was forty companies owned by Rinat Akhmetov that employed some 57,000 people. At that time, the Kremlin decided to take them over, under an as-yet-unclear legal form. They are the confiscated enterprises listed in Appendix 1.

Some local businessmen close to former President Viktor Yanukovych continue to operate enterprises under the protection of local warlords...

Some local businessmen close to former President Viktor Yanukovych continue to operate enterprises

38 *Report on the Human Rights Situation in Ukraine*, UNHCR, 15 December 2014, p. 11.
39 "Damages Caused by the War in Ukraine," Euromaidan Press, September 21, 2014. http://euromaidanpress.com/2014/09/21/damages-caused-by-the-war-in-east-ukraine/.
40 *Kremlin's Black Book: Russian War Against Ukraine*, Ministry for Foreign Affairs of Ukraine, October 2015, http://mfa.gov.ua/mediafiles/sites/cuba/files/Kremlin_Black_Book_English_Oct_2015_ENG.pdf.
41 Ibid.
42 Anders Åslund, *Ukraine: What Went Wrong and How to Fix It,* Washington, DC: Peterson Institute for International Economics, 2015, p. 21.
43 Amit Adarov et al., *How to Stabilise the Economy of Ukraine*, Vienna Institute for International Economic Studies, April 2015, https://wiiw.ac.at/how-to-stabilise-the-economy-of-ukraine-dlp-3562.pdf.
44 Statement at the Yalta European Strategy Conference in Kyiv, September 2014.
45 Office of the United Nations High Commissioner for Human Rights, "Report on the Human Rights Situation in Ukraine, 16 August to 15 November 2017.
46 Daily numbers provided by the State Border Guard Service, available at http://dpsu.gov.ua/ua/news/1490249414-situaciya-v-kontrolnih-punktah-vizdu-viizdu-na-linii-rozmezhuvannya/.

under the protection of local warlords, notably Sergei Kurchenko.[47] Illegally extracted coal in Donbas has been exported to Russia, Turkey, and Poland. In January 2018, the US Treasury sanctioned some of these coal traders.[48]

On March 15, 2017, Ukrainian authorities decided to suspend trade with the non-government-controlled area (NGCA) after various war-veteran and opposition groups blocked rail lines connecting it with the rest of the country, contending that trade financially sustained the rebels and prolonged the conflict. The blockade halted the transport of coal from mines in the NGCA, which were critical for steel factories, other metalworks, and power plants in Ukraine. The rebels took control of all Ukrainian assets located in the NGCA, including 40 medium-sized and large companies. In response, Kyiv banned all commercial transport of goods between the NGCA and the rest of Ukraine. The National Bank of Ukraine estimated that the result would be a 1.3 percent loss in national GDP in 2017—0.7 percent of GDP because the seized companies are no longer part of Ukraine's economy, and 0.6 percent of GDP because of trade suspension.[49]

The economic indicator that most clearly reflects the damage to Ukraine's economy from Russia's aggression is foreign trade.

Before it was ousted, the Yanukovych government concluded PSAs with Chevron in Western Ukraine and Royal Dutch Shell in the Donbas on shale-gas exploration and production. Shell declared *force majeure* for its fields located in the war zone.[50] (It should be added that other factors contributed to this declaration, notably the sharp fall in the oil price in the summer of 2014 and the poor Ukrainian conditions for foreign energy investments.) Previously, Shell had talked about investing $5 billion to 10 billion in this field.[51]

In November 2017, UNHCR reported that the "lack of restitution and rehabilitation of, or compensation for, destroyed or damaged property remained among the most pressing unaddressed socio-economic issues." The commission said there has been "no progress in development of a unified registry of damaged and/or destroyed property."[52]

Returning to Piketty's standard European multiple of assets to GDP: The occupied territory of Donbas accounted for 10 percent of its GDP in 2013, when the IMF set its GDP at $179.6 billion; 0.1 x $179.6 billion x 4 = $71.8 billion.

TRADE SANCTIONS AND THEIR COSTS

The economic indicator that most clearly reflects the damage to Ukraine's economy from Russia's aggression is foreign trade. The blows were many. To begin with, in July and August 2013, Russia started multiple trade sanctions against Ukraine, especially against imports of agricultural goods and steel. Initially, these sanctions were directed against pro-European Ukrainian businessmen but gradually they spread to the whole of Ukraine in the course of 2014.

Gazprom is Russia's favorite geopolitical tool, toying with both prices and supplies for political aims. In the first quarter of 2014, Gazprom charged Ukraine $268.50 per 1,000 cubic meters (mcm) in accordance with an agreement between Presidents Putin and Yanukovych on December 17, 2013. On April 1, however, Gazprom hiked the price to $385 per mcm, announcing that it would no longer give any special Yanukovych discount. Two days later, Gazprom raised the price again, by another $100 per mcm to $485 per mcm, arguing that since Russia had annexed Crimea, it was no longer obligated to offer any discount for Russia's lease of the Sevastopol naval base, as Putin had agreed with Yanukovych in Kharkiv in April 2010.[53] Kyiv responded by not paying, and on June 16, 2014, Gazprom stopped supplying gas to Ukraine.[54]

That very day, both companies filed multibillion-dollar claims against one another with the Arbitration Institute of the Stockholm Chamber of Commerce, the agreed venue for possible business disputes between them. In November 2015, Naftogaz ceased importing gas from Gazprom. In May 2017, Naftogaz won its Stockholm case against Gazprom; the Russian giant appealed, leading to a December 2017 decision both sides claimed as a victory, but in fact Naftogaz's victory was confirmed.[55]

With the Russian annexation of Crimea in March 2014, Ukraine lost much of its export capacity, and by that summer the Donbas was stalemated by war. The considerable production of steel, coal, iron ore, and related products in the Donbas was stopped almost completely, as were as the exports of steel and other products from the region. The war also disrupted transportation. In September 2014, Ukraine responded with extensive sanctions. In particular, Ukraine cut its exports of armaments to Russia.

In January 2016, the EU and Ukraine provisionally applied their Deep and Comprehensive Free Trade Agreement (DCFTA). Russia responded by suspending the existing, multilateral free-trade agreement among the members of the Commonwealth of Independent States with regard to Ukraine, thus imposing import tariffs on Ukraine.[56] To add insult to injury, Russia also imposed transit restrictions on Ukrainian exports to Kazakhstan and Kyrgyzstan, which eliminated 0.4 percent of Ukraine's total exports.[57] The two countries have gradually escalated their many trade sanctions.

Table: Ukraine's Exports and Imports in 2012 and 2016, Billions of US Dollars

	2012	2016	Decline
Total Exports	**68.7**	**36.3**	**-47%**
To Russia	17.6	3.6	-80%
Total Imports	**84.7**	**39.2**	**-54%**
From Russia	27.4	5.1	-81%

Source: IMF, Direction of Trade Statistics, 2017.

The table above shows a truly shocking collapse in Ukraine's overall trade. The last normal year was 2012, before Russian trade sanctions and military aggression. Russia's share of Ukraine's trade fell from 29 percent in 2012 to 11.5 percent in 2016. These trade disruptions have caused great damage to Ukraine's economy. 2016 marked the nadir; Ukraine's trade expanded sharply in 2017, although the Russian sanctions did not ease.

Within the former Soviet Union, Russia has frequently imposed severe trade sanctions with little or no notice. In the early 1990s, it hit the Central and Eastern European countries, notably the Baltic states. Each of them reacted by shifting their trade from Russia to the EU.[58] In 2006, Russia imposed harsh trade sanctions on Moldova and Georgia. The share of Moldovan exports going to Russia plunged from 40 percent in 2005 to 16 percent in 2007, but its total exports increased and its exports to Europe expanded fast. Georgia saw a similar if less precipitous decline in Russian trade, from 18 percent of exports to 4 percent, but its total exports actually surged by 42 percent.[59]

47 Kanygin.
48 "Treasury Sanctions Additional Individuals and Entities in Connection with the Conflict in Ukraine and Russia's Occupation of Crimea," US Department of the Treasury, January 26, 2018, https://home.treasury.gov/news/press-releases/sm0266.
49 David Saha, "The effect of company seizures and trade suspension in donbas," German Advisory Group Ukraine Newsletter, August 2017, https://www.beratergruppe-ukraine.de/wordpress/wp-content/uploads/2017/08/Newsletter_106_2017_German-Advisory-Group.pdf.
50 Anders Åslund, *Ukraine: What Went Wrong and How to Fix It,* Washington, DC: Peterson Institute for International Economics, 2015, p. 202.
51 Conversations with the Ukraine manager for Shell in September 2014.
52 *Report on the Human Rights Situation in Ukraine, 16 August to 15 November 2017*, UNHCR, http://www.ohchr.org/Documents/Countries/UA/UAReport20th_EN.pdf.
53 Anders Åslund, *Ukraine: What Went Wrong and How to Fix It,* Washington, DC: Peterson Institute for International Economics, 2015, p. 205.
54 Vladimir Socor, "Russia Suspends Natural Gas Supplies to Ukraine," Eurasia Daily Monitor, June 19, 2014, https://jamestown.org/program/russia-suspends-natural-gas-supplies-to-ukraine/.
55 "Naftogaz wins gas sales arbitration case against Gazprom on all issues in dispute," UNIAN, December 22, 2017, https://economics.unian.info/2313624-naftogaz-wins-gas-sales-arbitration-case-against-gazprom-on-all-issues-in-dispute.html.
56 "Russia suspends free-trade deal with Ukraine from 2016," Agence France-Presse, December 16, 2015, https://www.yahoo.com/news/russia-suspends-free-trade-deal-ukraine-2016-154025521.html.
57 Veronika Movchan, David Saha, and Robert Kirchner, "The Impact of Russia's Transit Restrictions on Ukraine's Exports to Kazakhstan and Kyrgyzstan," German Advisory Group, Policy Briefing Series, February 2018.
58 Anders Åslund and Andrew Warner, "The EU Enlargement: Consequences for the CIS Countries," in *Beyond Transition: Development Perspectives and Dilemmas*, eds. Marek Dabrowski, Ben Slay and Jaroslaw Neneman (Aldershot: Ashgate, 2004)
59 Anders Åslund, *Ukraine: What Went Wrong and How to Fix It,* Washington, DC: Peterson Institute for International Economics, 2015, p. 48.

While several Ukrainian companies have initiated legal action over assets seized in Crimea, Russian authorities have proceeded with the construction of the Kerch Strait Bridge. *Photo credit: The Presidential Administration of Russia*

Within the former Soviet Union, Russia has frequently imposed severe trade sanctions with little or no notice.

As Ukraine's exports have switched from Russia to the EU, the structure of its exports has changed as well, as previously happened in Central and Eastern Europe. Ukraine's exports have been dominated by four goods—steel, machinery, agricultural products, and chemicals. The share of steel is likely to continue to fall, and chemicals might be almost eliminated, since their production was based on cheap gas from Russia that will not reappear. Meanwhile Ukraine's exports of agricultural goods are set to continue rising, and the hope is that Ukraine will become integrated into the European supply chain of manufacturing and services.[60]

UKRAINIAN CLAIMS

Ukraine and Russia are also battling in the legal arena, with cases before the Stockholm Arbitration Institute, the International Court of Arbitration in The Hague, the High Court of London, the ECHR in Strasbourg, the International Court of Justice (ICJ), and the International Criminal Court (ICC).

The most important cases have been the suits between Naftogaz and Gazprom at the Stockholm institute. On May 31, 2017, the arbitrators ruled for Naftogaz in the main case, concerning payments and deliveries under a ten-year bilateral gas agreement signed in 2009. Assessments of the values of the potential claims vary,

60 Anders Åslund, "What Will Happen to Russian-Ukrainian Trade after the War in Donbass," Peterson Institute for International Economics, October 3, 2014. https://piie.com/commentary/op-eds/what-will-happen-russian-ukrainian-trade-after-war-donbass

but Naftogaz said it escaped Russian claims of $75 billion.[61]

The London court ruled for Russia in its bid to collect on a defaulted $3 billion bond dating from December 2013, near the end of the Yanukovych era.[62] Following the aggressions in Crimea and the Donbas, Russia refused to restructure Ukraine's debt relief, as had other international creditors. Kyiv claimed Russia's decision was political, but the court threw those arguments out in a March 2017 ruling. As of this writing Ukraine's appeal is pending.

In January 2016, the Antimonopoly Committee of Ukraine fined Gazprom $3 billion for abuse of monopoly in the transit market. Subsequent court rulings raised the fine to $6 billion, which Kyiv is seeking to collect from Gazprom assets in Ukraine.[63]

A number of Crimea-related cases have been initiated by Ukrainian companies, often acting in groups. The legal basis for these cases is the bilateral investment treaty (BIT) between Ukraine and Russia of November 27, 1998. Its Article 5 deals with expropriation:

1. The investments of investors of either Contracting Party, carried out on the territory of the other Contracting Party, shall not be subject to expropriation, nationalization or other measures, equated by its consequences to expropriation (hereinafter referred to as expropriation), with the exception of cases, when such measures are not of a discriminatory nature and entail prompt, adequate and effective compensation.

2. The compensation shall correspond to the market value of the expropriated investments, prevailing immediately before the date of expropriation or when the fact of expropriation has become officially known. The compensation shall be paid without delay with due regard for the interest, to be charged as of the date of expropriation till the date of payment, at the interest rate for three months' deposits in US Dollars prevailing at the London interbank market (LIBOR) plus 1% and shall be efficiently realizable and freely transferable.[64]

Article 9 of the BIT offers alternative venues of arbitration. It can be "a competent court or an arbitration court of the Contracting Party, on whose territory the investments were carried out," "the Arbitration Institute of the Chamber of Commerce in Stockholm," or "an 'ad hoc' arbitration tribunal, in conformity with the Arbitration Regulations of the United Nations Commission for International Trade Law (UNCITRAL)."[65] So far all Ukrainian companies appear to have turned to the International Court of Arbitration in The Hague.

The number of Ukrainian cases is large and is likely to grow if the plaintiffs prove successful. The biggest case has been raised by Naftogaz and six of its subsidiaries (Chernomornaftogaz, Ukrtransgaz, Likvo, Ukrgazdobuvanya, Ukrtransnafta, and Gaz of Ukraine). The companies seek $5 billion for damages caused by the seizure of its assets in Crimea plus $2 billion in interest. The Russian Federation did not recognize the jurisdiction of the International Court of Arbitration, but in July 2017 the Permanent Court of Arbitration (PCA) at The Hague ruled that the cases could go forward.[66]

At least seven other lawsuits have been filed against the Russian Federation over confiscation of assets in occupied Crimea, by companies including Ukrnafta, Oschadbank, and Privatbank. State-owned Oschadbank is seeking a $1 billion award.[67] Privatbank is likely to seek compensation of a similar amount, as is Ukrnafta. Ukraine's largest private power and coal producer, DTEK, has declared that it will seek compensation of $500 million from Russia for the loss of its assets in Crimea.[68] The pending claims by Ukrainain enterprises, listed in Appendix 2, could fetch damages exceeding $10 billion.

61 Polityuk.

62 Jeremy Hodges, "Russia Wins Early Verdict in $3 Billion Ukrainian Bond Case," Bloomberg, March 29, 2017, https://www.bloomberg.com/news/articles/2017-03-29/russia-wins-early-verdict-in-case-over-3-billion-ukrainian-bond.

63 "Ukraine to hire foreign advisers to recover US$6 bln from Russia's Gazprom in anti-trust case," Unian, January 23, 2017, https://www.magglr.com/news/ukraine-to-hire-foreign-advisers-to-recover-us6-bln-from-russias-gazprom-in-anti-trust-case/.

64 "Agreement Between the Government of the Russian Federation and the Cabinet of Ministers of the Ukraine on the Encouragement and Mutual Protection of Investments (Moscow, November 27, 1998)," Investment Policy Hub, http://investmentpolicyhub.unctad.org/Download/TreatyFile/2233.

65 Investment Policy Hub.

66 "Demands of Ukraine's Naftogaz against Russia Reach $7 Billion," Russian Legal Information Agency, September 21, 2017, http://www.rapsinews.com/judicial_news/20170921/280188520.html.

67 Jack Newsham, "Ukrainian Bank Says $1B Crimea Arbitration Fast-Tracked," Law 360, August 26, 2016, https://www.law360.com/articles/833151/ukrainian-bank-says-1b-crimea-arbitration-fast-tracked.

68 "Ukraine's DTEK to Seek $500 mln from Russia for Crimea Losses," Reuters, April 11, 2017, https://uk.reuters.com/article/ukraine-dtek-crimea-russia/ukraines-dtek-to-seek-500-mln-from-russia-for-crimea-losses-idUKL8N1HJ33G.

The Ukrainian corporate claims in Crimea appear to be on firm legal ground. Russia officially annexed Crimea, and the BIT was clearly valid at the time. The companies have found a desirable venue; Moscow refuses to accept the Hague arbitration court's jurisdiction, but it has not been able to put up any credible resistance. If a Ukrainian entity wins in an international arbitration court, it can raise claims against the Russian Federation in other jurisdictions than Russia where Russian assets are present, utilizing the New York Convention on the Recognition and Enforcement of Foreign Arbitral Award of 1958.[69]

The number of Ukrainian cases is large and is likely to grow if the plaintiffs prove successful.

The situation in the Donbas is legally much more tenuous. Although it is obvious that the Russian government controls the territory, it does not admit doing so. As Moscow refuses to take official responsibility for the occupied territories, it is unclear whether the Ukraine-Russia BIT is applicable. Nor is it clear in what jurisdiction claims would be presented. Any Russia-Ukrainian settlement over the Donbas would have to contain some clarification over legal responsibility.

System Capital Management (SCM), a Donetsk-based industrial and financial holding company that has the largest Donbas-related claims, has started going to courts in third countries, such as Turkey, pursuing entities that have bought coal from SCM mines in the occupied territories from thieves.[70]

Governments have other jurisdictional options for suing one another. The most prominent institution in this case is the ICJ in The Hague. It is the most authoritative judicial body for sovereign interests of states. Ukraine filed claims against Russia there in January 2017, alleging Russian violations of UN conventions.[71]

With regard to the Donbas, Kyiv accuses Russia of violating the Convention for the Suppression of the Financing of Terrorism, including in its charges Russia's alleged role in the downing of Malaysia Airlines Flight 17 over the occupied territory on July 17, 2014.[72] Ukraine demands that the ICJ order the Russian Federation to "immediately and unconditionally cease and desist from all support, including the provision of money, weapons, and training, to illegal armed groups that engage in acts of terrorism in Ukraine," including the DNR and LNR forces.[73]

Citing the Convention for the Suppression of the Financing of Terrorism, Ukraine has also demanded full reparations from Russia for the Flight 17 shoot-down; the shelling of civilians in Volnovakha, Mariupol, and Kramatorsk; the bombing of civilians in Kharkiv; and "all other acts of terrorism the Russian Federation has caused, facilitated, or supported through its financing of terrorism, and failure to prevent and investigate the financing of terrorism."[74]

The Ukrainian government's two main accusations with regard to Crimea have been based on the Convention on the Elimination of All Forms of Racial Discrimination (primarily pertaining to Crimean Tartars but also ethnic Ukrainians in Crimea) and the United Nations Convention on the Law of the Sea, "concerning Russian exploitation of Ukrainian fishery stocks, prevention of free navigation to Ukrainian vessels in and around Crimean waters, as well as Russia building infrastructure to which Ukraine has not given its consent."[75]

Moscow has replied that it has done nothing that violates international law and thus refuses to "legitimize" its action in the Donbas by defending itself before the ICJ.[76] It has limited its formal response to brief statements such as, "[T] he Russian Federation requests the Court to reject the request for the

69 Sergejs Dilevka and Mena Chambers, "Arbitration Claims by Ukrainian Investors under the Russian-Ukraine BIT," CIS Arbitration Forum, February 17, 2016, http://www.cisarbitration.com/2016/02/17/arbitration-claims-by-ukrainian-investors-under-the-russia-ukraine-bit-between-crimea-and-a-hard-place/.

70 Personal information from Jock Mendoza-Wilson of SCM, February 2018.

71 Gregorio Baggiani, "Ukraine's Legal Cases Against Russia in International Courts," *Eurasia Daily Monitor*, March 1, 2017, https://jamestown.org/program/ukraines-legal-cases-russia-international-courts/.

72 Roman Goncharenko, "Ukraine v. Russia: A Potential Game-Changing Lawsuit Comes before the ICJ," Deutsche Welle, March 5, 2017, http://www.dw.com/en/ukraine-v-russia-a-potential-game-changing-lawsuit-comes-before-the-icj/a-37806132.

73 "Ukraine institutes proceedings against the Russian Federation and requests the Court to indicate provisional measures," International Court of Justice (ICJ) press release, January 17, 2017, http://www.icj-cij.org/files/case-related/166/19310.pdf.

74 Ibid.

75 Baggiani.

76 Baggiani.

indication of provisional measures submitted by Ukraine."[77]

An alternative international tribunal is the ECHR, which is attached to the Council of Europe. The Ukrainian Ministry of Justice has repeatedly stated that it would go to the ECHR to seek compensation from Russia for its economic losses in Crimea. In December 2015, however, the Russian State Duma promulgated a law allowing Russia to overrule verdicts by the ECHR,[78] so the Kremlin is not likely to recognize any verdict by the European court. Still, the New York convention allows successful claimants to collect Russian property outside of Russia.

The ECHR is flooded with Ukrainian cases. In January 2018, the court's registry contained about 3,800 of them, most concerning Russian aggression and five intergovernmental cases that Ukraine has raised against Russia.[79]

The shooting down of the Malaysia Airlines flight is a special case. The Netherlands has claimed jurisdiction because the plane departed from Amsterdam and most of its passengers were Dutch citizens. However, the Dutch investigation has been very slow, and Ukrainians authorities have considered raising the case in the ICC.[80] As a preventive step, in November 2016 Russia pulled out of the ICC.[81]

The amorphous situation in the Donbas has impeded legal cases. In Crimea, Russia took legal responsibility through its annexation; it has not done so in Donetsk and Luhansk. Nobody recognizes the LNR and DNR and they are not part of any international legal institutions, which makes it difficult to bring claims against them. Similarly, in Crimea confiscations were carried out under Russian law, while the confiscations by DNR and LNR forces are of a less formal nature.

On January 18, 2018, the Ukrainian parliament promulgated a new law "on the reintegration of Donbas." It changes the legal position of the Donbas substantially. Previously, Ukrainian authorities called the military activities in Donbas "terrorism" and thus accused Russia of providing terrorist financing. Now, Kyiv calls Russia an aggressor country and the non-government controlled territories "temporarily occupied." This changes the international legal framework and offers new options for Ukrainian claimants.

The ECHR is flooded with Ukrainian cases. In January 2018, the court's registry contained about 3,800 of them, most concerning Russian aggression...

POLICY RECOMMENDATIONS

The Ukrainian state, Ukrainian enterprises, and Ukrainian individuals have lost vast assets in Crimea and the Donbas because of Russian aggression. Many court cases are already under way, and their number will surely rise substantially over several years. This will be an important part of Ukraine's foreign and economic policy. Therefore, these matters need to be given wide policy consideration.

Ukraine's government should:

- establish full and detailed inventories of all assets Ukrainian entities have lost in Crimea and the Donbas and realistically assess their value.
- investigate all legal options to recover these losses from the Russian Federation, fully researching available alternative jurisdictions.
- pursue all legal opportunities that have been established.

77 "Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation)," ICJ press release, March 9, 2017, http://www.icj-cij.org/files/case-related/166/19372.pdf.

78 Gregorio Baggiani., "Ukraine's Legal Cases Against Russia in International Courts," *Eurasia Daily Monitor*, March 1, 2017 https://jamestown.org/program/ukraines-legal-cases-russia-international-courts/

79 "ECHR is considering 3,800 complaints against Ukraine due to the consequences of Russian aggression," Evropeiska Pravda, January 25, 2018, https://www.eurointegration.com.ua/rus/news/2018/01/25/7076603/.

80 Aaron Matta, "MH17 Downing Suspects to be Prosecuted Before Dutch Domestic Courts—An Obstacle or an Advantage for International Justice?," *Opinio Juris*, July 17, 2017, http://opiniojuris.org/2017/07/17/33212/.

81 Baggiani.

- seek the best legal advice available, as Naftogaz did in taking Gazprom to arbitration. With legal claims of this size, government financial constraints must not stop Ukraine from hiring the best lawyers available.
- find a suitable legal forum for entering both private and government claims against Russia for losses Ukrainian entities have suffered in the Donbas.
- include economic compensation as part of any eventual agreement with Russia over the Donbas and Crimea.

The United States and the EU should:

- work with Ukraine and Russia to reach an agreement over the Donbas in which Moscow takes full financial responsibility for the destruction.
- ensure the issue of Russian reparations is part of any agreement for the return of Crimea and the Donbas to Ukraine.
- offer peacekeeping and humanitarian support to Ukraine to entice the Russian government to take responsibility for material compensation for Ukrainian losses in the Donbas.
- maintain sanctions on Russia for its annexation of Crimea and military aggression in the Donbas until Russia has returned these territories to Ukraine and provided adequate compensation for Ukrainian entities' material losses.

APPENDIX 1

Ukrainian-Owned Enterprises in the Occupied Territories confiscated on or before March 1, 2017

SEIZED BY LUHANSK PEOPLE'S REPUBLIC

Coal mines and processing plants:

- Krasnodon Coal
- DTEK Rovenkyantratsyt
- DTEK Sverdlovantratsyt

SEIZED BY DONETSK PEOPLE'S REPUBLIC

Coal mines and processing plants:

- DTEK Komsomolets Donbasu
- DTEK Mospyne Coal Treatment Plant
- Zasyadko Mine
- Kolosnykove central concentrating factory

Metallurgy:

- Donetsk Metallurgical Plant
- Metallurgical Complex branch, Donetsksteel Metallurgical Plant
- Yenakieve Iron and Steel Works
- Makiivka Metallurgical Plant
- Air Liquide Yenakieve

Coke plants:

- Donetskkoks JSC
- Makiivkoks Coking Plant
- Yasynivka Cokery Plant PJSC
- PrJSC Yenakieve Coke and Chemicals Plant (Koksokhimprom)

Energy companies:

- Donetskiy Electrical Engineering Plant PJSC
- DTEK Power Grid
- DTEK Zuivska Thermal Power Plant
- Elektronaladka Ltd
- DTEK Donetskoblenergo PJSC
- DTEK Energovuhillia ENE

Other industrial and extracting companies:

- Khartsyzk Pipe Plant
- Komsomolske Ore Mine Management Board PJSC
- Dokuchaevsk Flux and Dolomite Complex
- PJSC Concern Stirol

Holding and financial-services companies:

- Metinvest
- DTEK
- Interregional Industrial Union Corporation
- ASKA Insurance Company, Donetsk branch
- First Ukrainian International Bank

Agriculture:

- HarvEast Holding

Transport:

- JSC Invest-Trans
- RosUkrTrans

Telecommunications:

- TriMob LLC
- Ukrtelecom JSC, Donetsk branch
- Astelit Mobile Communcations

Athletic facilities:

- Donbas Arena
- Kirsha Training Center

Hotels and real-estate companies:

- Donbass Palace
- Park Inn by Radisson Donetsk
- Pushkinsky Business Center
- Lux LLC
- JSC Sioma Liniia

Publishing:

- Donetskiye Novosti

Education:

- Grigorivska International School

Sources:

"SCM Group Reports about Losing Control over Its Assets Based in the Non-Government Controlled Areas of Donetsk and Luhansk Oblasts," SCM press release, March 15, 2017, http://rebuild.scm.com.ua/en/2017/03/15/scm-group-reports-about-losing-control-over-its-assets-based-in-the-non-government-controlled-areas-of-donetsk-and-luhansk-oblasts/.

Yuri Zoria, "What Assets Did Russia's Puppet Republics Seize from Ukraine? Full List," Euromaidan Press, March 5, 2017, http://euromaidanpress.com/2017/03/04/stolen-ukrainian-assets-in-donbas/.

APPENDIX 2

Crimean Cases Brought by Ukrainian Parties in the Permanent Court of Arbitration in The Hague against the Russian Federation

All listed cases have been filed under the UNCITRAL Arbitration Rules (1976) pursuant to the Agreement between the Government of the Russian Federation and the Cabinet of Ministers of Ukraine on the Encouragement and Mutual Protection of Investments dated November 27, 1998.

STABIL LLC ET AL. V. THE RUSSIAN FEDERATION

Description of the Case: The PCA acts as registry in this arbitration, which is being conducted under the UNCITRAL Arbitration Rules 1976 pursuant to the Agreement between the Government of the Russian Federation and the Cabinet of Ministers of Ukraine on the Encouragement and Mutual Protection of Investments dated 27 November 1998.

Claimants:

Stabil LLC
Rubenor LLC
Rustel LLC
Novel-Estate LLC
PII Kirovograd-Nafta LLC
Crimea-Petrol LLC
Pirsan LLC
Trade-Trust LLC
Elefteria LLC
VKF Satek LLC
Stemv Group LLC

LUGZOR LLC ET AL. V. THE RUSSIAN FEDERATION

Description of the Case: The PCA acts as registry in this arbitration, which is being conducted under the UNCITRAL Arbitration Rules 1976 pursuant to the Agreement between the Government of the Russian Federation and the Cabinet of Ministers of Ukraine on the Encouragement and Mutual Protection of Investments dated 27 November 1998.

Claimants:

Lugzor LLC
Libset LLC
Ukrinterinvest LLC
PJSC DniproAzot
Aberon Ltd LLC

PRIVATBANK AND FINANCE COMPANY FINILION LLC V. THE RUSSIAN FEDERATION

Description of the Case: Claims arising from the alleged expropriation of the claimants' investments in Crimea as well as its subsidiary Moskomprivatbankin following the 2014 Russian annexation of that territory including alleged confiscation of various cash holdings and real estate assets owned by the claimants, totaling nearly $200 million.

Claimants:

Privatbank
Finance Company Finilion LLC

EVEREST ESTATE LLC ET AL. V. THE RUSSIAN FEDERATION

Description of the Case: Claims arising out of alleged expropriation of a large number of properties in Crimea, including offices, apartment buildings, and villas, following the 2014 Russian annexation of Crimea.

Claimants:

Everest Estate LLC
Edelveis-2000 PE
Fortuna CJSC
bk-Invest CJSC
Niva-Tour LLC
IMME LLC
Planeta PE
Krim Development LLC
Aerobud PJSC
Privatoffice LLC
Dayris LLC
Diline Ltd LLC
Broadcasting Company Zhisa LLC
Privatland LLC
Dan-Panorama LLC
Sanatorium Energetic LLC
AMC Finansovyy Kapital LLC
AMC Financial Vector LLC
Alexander Valerievich Dubilet

AEROPORT BELBEK LLC AND IGOR VALERIEVICH KOLOMOISKY V. THE RUSSIAN FEDERATION

Case Description: The PCA acts as registry in this arbitration, which is being conducted under the UNCITRAL Arbitration Rules 1976 pursuant to the Agreement between the Government of the Russian Federation and the Cabinet of Ministers of Ukraine on the Encouragement and Mutual Protection of Investments, dated 27 November 1998.

Claimants:

Aeroport Belbek LLC
Igor Valerievich Kolomoisky

PJSC UKRNAFTA V. THE RUSSIAN FEDERATION

Case Description: The PCA acts as registry in this arbitration, which is being conducted under the UNCITRAL Arbitration Rules 1976 pursuant to the Agreement between the Government of the Russian Federation and the Cabinet of Ministers of Ukraine on the Encouragement and Mutual Protection of Investments dated 27 November 1998.

Claimant:

PJSC Ukrnafta

JSC OSCHADBANK V. THE RUSSIAN FEDERATION

Claimant:

JSC Oschadbank

Source: Sergejs Dilevka and Mena Chambers, "Arbitration Claims by Ukrainian Investors under the Russian-Ukraine BIT," CIS Arbitration Forum, February 17, 2016, http://www.cisarbitration.com/2016/02/17/arbitration-claims-by-ukrainian-investors-under-the-russia-ukraine-bit-between-crimea-and-a-hard-place/.

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Anders Åslund is a senior fellow in the Eurasia Center at the Atlantic Council. He also teaches at Georgetown University. He is a leading specialist on economic policy in Russia, Ukraine, and Eastern Europe. Dr. Åslund has served as an economic adviser to several governments, notably the governments of Russia (1991-94) and Ukraine (1994-97). He is chairman of the Advisory Council of the Center for Social and Economic Research, Warsaw, and of the Scientific Council of the Bank of Finland Institute for Economies in Transition. He has published widely and is the author of fourteen books, most recently with Simeon Djankov, *Europe's Growth Challenge* (OUP, 2017) and *Ukraine: What Went Wrong and How to Fix It* (2015). Other books of his are How Capitalism Was Built (CUP, 2013) and Russia's Capitalist Revolution (2007). He has also edited sixteen books. Previously, Dr. Åslund worked at the Peterson Institute for International Economics, the Carnegie Endowment for International Peace, the Brookings Institution, and the Kennan Institute for Advanced Russian Studies at the Woodrow Wilson International Center for Scholars. He was a professor at the Stockholm School of Economics and the founding director of the Stockholm Institute of East European Economics. He served as a Swedish diplomat in Kuwait, Poland, Geneva, and Moscow. He earned his PhD from Oxford University.

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