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The Ukraine crisis:
An analysis in terms of energy security in the Black Sea Basin

1. Introduction

The analysis of the Russian-Ukrainian conflict calls for a comprehensive approach which cannot rule out the energy equation. In line with the trends set forth by the petroleum crises that have marked the second half of the previous century, ever since the petroleum crisis in 1973, the beginning of the XXI century distinguishes itself by new coordinates assigned to energy matters, such as a more structured and coordinated feedback of energy–consuming, developed countries to the geopolitical challenges promoted by exporting-countries.

At global level it becomes clear that highly industrialized countries affected by the consequences of the world crisis are on the verge of an „" and energy independence and energy security crusade, focusing on the identification and exploitation of domestic resources and on the consolidation of several profitable and secure supply routes. By the shale gas „revolution", the United States have managed to take a huge step forward in this regard. On the other hand, as China is emerging as a major energy consumer, the plot thickens at geopolitical level. China's distrust on the capacity of the international markets to ensure its energy security, chooses to be directly involved through its national companies in the extractive industry in Africa.

In European context, over the last decade we have faced a dynamics of the energy security regime in the relationship between the European Union and the Russian Federation. On one hand, we have the EU as Russia's main client which, despite the institutionalization of the energy dialogue, is still confronted with the lack of a common strategic approach and with the risk of the emergence of new „gas wars". On the other hand, the security of energy exports represents for Russia the key component of its external and national security policy, as expressly provided in the Energy Security Strategy of the Russian Federation in 2009.

Over the last decade, the Russian Federation unsuccessfully attempted to work out a alignment between the external energy policy in terms of „zero-sum game" (namely with the EU members individually) and the institutionalization of the energy dialogue with the European Union. The structured dialogue between the EU and Russia was mainly promoted upon the EU's initiative through the Energy Charter (pending Moscow's ratification), the Partnership and Cooperation Agreement in 1994 and the Energy Dialogue launched in 2000, without such to result in any set of legally binding instruments or in any permanent institutional mechanism. It is exactly the absence of an institutional framework for a political-strategic dialogue that reflects the difference in vision, approach and strategy.

The shock generated by the Yukos case was in line with the intention of the Kremlin administration to restore Russia to the forefront of global politics. In 2007, at the Security Conference in Munich, President Putin was inviting its Western partners, *to accept Russia as it is, to adopt an equal treatment and to establish cooperation based on mutual interest.*

The contradiction between geopolitical aspirations, Russia's "national resurgence" under Putin's regime and the way the relationship with the EU was promoted by means of a structured dialogue (which involves long sequences of time) began to take its toll by bringing strong elements of force to the Russian energy policy – remember the former natural gas crisis with the Ukraine in 1990, 2006 and 2009 as well as the damage brought to the reputation of Georgia as transit country by the armed conflict in 2008. Russia has frequently used energy as a geopolitical instrument, especially when it came to its close vicinities (the peripheral and energy transit countries, former USSR members) and the Central and East European area (namely in countries with a high net economic or political vulnerability in the bilateral relationship with Russia). The use of energy as „geopolitical weapon" was to a great extent regarded as the expression of Russia's economic weaknesses.

Energy security began to be perceived by Russia in strategic, political and military, not only economic terms, as its Western partners did. There is only a small step from deeming energy security as a key element of national security to the militarization of economic/energy disputes. Moreover, if energy security is regarded in military terms, the economic factor becomes politicized, further complicating inter-state relationships and arrangements and increasing security risks.

The trend to militarize[1] Russia's foreign policy is highlighted by the manner the events and the change of regime at Kiev were approached. In the context of such events, for the preservation of its strategic interests in the Black Sea area, Russia consistently enforced "by the book" military tactics - when in defensive it resorted to attacks – and immediately covered the South Ukrainian flank. It strangled Ukraine's access to the Black Sea by encouraging secession and annexation of Crimea to the Russian Federation[2] , reinforcing its military presence in the Black Sea area, at the same time playing diversion in East Ukraine with a view to strengthen the *status quo* in Crimea. However, things appear to have gotten out of control in East Ukraine.

Preliminary to the aggravation of political relations with the European partners, Russia took part to the structured dialogue on security with the EU as long as the cost-benefit ratio was in its favor. However, the growing focus of EU efforts towards ensuring alternative energy supply routes along with the attempts to replicate the shale gas „revolution" in certain European states (with the participation of American corporations), the *offshore* hydrocarbon potential in the Black Sea and in the Eastern Mediterranean area, the acceleration of interconnection processes at EU level, the

[1] Reference is made to "militarization" in a broad sense, including subversive, diversionary acts as well as regular troops maneuvers

[2] Onsite reports show that special research-diversion troops were used in this respect; the absence of military signs on uniforms was not particularly due to reasons of diversion but was aimed at justification in terms of international law.

orientation of policies ensuing from by Third Energy Package (market transparency, competitiveness and liberalization, with a direct impact on the activities conducted by Gazprom) have only resulted in adding more to Russia's geopolitical frustrations and exacerbating its security risks.

The pressure on hydrocarbon prices, due to the shale gas revolution in the USA, corroborated with the frailness of energy consumption in the economies affected by the global crisis, led to Russia's acceptance of new conditions in the natural supply agreements, which so far had been rigid and net favourable to Gazprom, providing to European consumers (selectively, according to geopolitical criteria) shorter contracting terms and price *discounts.* At the same time, Russia's social and economic challenges (the GDP decrease, the demographic decline and the deep reconfiguration of the ethnical structure of population, the slowdown of price growth for raw materials, including hydrocarbons, in terms of increasingly higher operation costs, costs related to political and military reassertion as well as to the structural reconfiguration of national economy and to the promotion of innovation, corruption, political autarchy faced with the import of western democratic values), have resulted in a gradual change of the energy security regime in Russia and in its relationship with the EU.

Over the time, the Russian geopolitical game generated on one hand a gradually asymmetric energy interdependence between the EU and Russia within the latter's relationship with the Central and East-European countries and, on the other hand, a symmetric interdependence in relation with Western Europe (in this case with a slightly higher degree of exposure for Russia, which is strictly dependant, for its well-being, on both the hydrocarbon export towards West and on West-European foreign investments)[3] , which is likely to foster power politics applied by Russia in *Mitteleuropa*. Moreover, considering that there are no global but only regional markets in the field of natural gas, in which the energy transit factor is a hard line element, through the nature of transmission routes, the energy security is more likely to be influenced by the political factor as regards Russia's strategy for central and Eastern Europe. As a matter of fact, in its relation with Western Europe, Russia enforced an energy security policy in economic terms, while towards the states in Central and Eastern Europe (members or non EU members) it vacillated between an economic, political and geopolitical and even military approach. It becomes clear that when cost-effective perspectives arise, Russia will not hesitate to use all power tools in the relationship with the states of the European Union.

According to the *Foreign Policy Concept of the Russian Federation (2008)* the central and East-European area is „the area with the broadest geopolitical meaning for the Russian Federation". In its relation with the countries in this area, in terms of an asymmetric interdependence, Russia, as a state

[3] At present, approximately 50% of the natural gas exports to the EU cross the Ukraine, out of which the highest share of end consumers is in Germany, France and Italy. The EU is Russia's most significant business partner. 75% of the direct foreign investments in Russia come from the EU (the trade balance is inclined in favor of Russia). However, while the Russian exports to the EU only consist in natural resources, Russia's range of exports to the EU is diversified, meaning that Russia is more dependent on the EU than vice-versa. Moreover, in the event that the EU's energy demand from Russia decreased, Russia would find it difficult to compensate by redirecting exports to Asia, a long term process with immense financial implications related to the necessary marketing and transport infrastructure.

with a greater geopolitical potential, has no particular interest to cooperate- apart from the circumstances in which the matters of importance for such states are consistent with the agenda of several players in line with Russia's capacity, such as the EU, Germany or the US.

As regards transit states (members of the Commonwealth of Independent States), Russia provided different facilities such as low hydrocarbon prices, bilateral trade, movement of persons and employment, military security, diplomatic cooperation in international forums. The amenities, however, are in line with the retailing to follow in the event such states don't remain in Russia's sphere of influence. With a view to rule out any exposure in the relationship with transit states from the perspective of supplies towards Western Europe, Russia's strategy is to bypass them with transport infrastructure at the same time maintaining them in its the geopolitical sphere of influence.

Despite the world economic crisis, the natural gas prices have remained high. The Western economy shows signs of recovery, therefore demanding access to low-priced natural gas. While the demand for new supply sources was high in times of fierce competition, the economic and the political power went in favour of hydrocarbon exporting states. At present, amid a low consumption trend, in the light of the global economic crisis, the power balance tends to swing towards the consuming states. However, in the long run, the interdependence between the EU and Russia tends to become more complex, sensitive and detrimental to consuming countries.

Whereas Russia is already unacceptably late when it comes to the diversification of its economic development (which would have enabled it to mitigate asymmetries and vulnerabilities in terms of energy security and not only), the only remaining power asset in developing its foreign and energy security policy is to follow the terms of Realpolitik doctrine. Namely, the attempt to establish a new regional and even global energy order (inclusively through institutional forms, such as BRICS, the Shanghai Cooperation Organization and the Gas Exporting Countries Forum, GECF), without jeopardizing, by direct confrontation, the relationships with the leading customers in Europe.

All such accumulation in the dynamics and coexistence of several energy security systems with different vulnerability degrees in a relatively limited geographic space, however in a significant and gradually competitive and integrated market, have begun exercising pressure in a slightly weak security framework as regards the relationship of the Western world with Russia. The Ukraine crisis will inevitably propel increasingly integrated and coherent community policies in terms of energy, on one hand; Russia will find it more and more difficult to practice the "bilateral energy game (*divide et impera*), therefore we might witness, in the best case scenario, strategies to avoid excessive militarization of the energy policy and an endeavour to overcome isolation by promoting and strengthening the regional or global energy power units of producing countries.

The crisis in Ukraine is actually a display of the said process. In a similar context, the energy security vulnerabilities that Romania is faced with must also be analyzed since such may become manifest once with the crisis in Ukraine and with the evolutions related to such processes for the reconfiguration of the energy security regimes.

2. The new status of Crimea in terms of international law

Right after the political regime shift in Kiev, towards the end of February 2014, unidentified military forces, supported by parts of the local population, undertook control over the political and administrative centres and over critical infrastructure elements in Crimea. On February 28th, the Supreme Council of the Autonomous Republic of Crimea voted for the divestiture of the regional government and for organizing a referendum on the extended autonomy of the republic. On March 6th, the Supreme Council and the local council of Sevastopol made public the intention to declare Crimea's independence from Ukraine as united national entity, its potential integration in the Russian Federation, and to organize a public referendum in this respect. On March 11th, the Supreme Council declared the Autonomous Republic of Crimea's independence from the Ukraine. On March 15th, Russia exercised its veto right with regard to a motion on a resolution of the UN Security Council which is alleged to have declared the referendum as invalid. On the same day, the Ukraine voted for the dissolution of the Supreme Council of Crimea (regional parliament). On March 16th, a referendum was organized in which 97% voted for independence and accession to the Russian Federation. On March 17th, the parliament of Crimea declared independence and requested annexation to the Russian Federation. Thus, Russia "gained" two new entities, the Crimea Federal District and the federal city of Sevastopol. On March 17th, Vladimir Putin issues a decree recognizing Crimea as a sovereign and independent state. The Crimea annexation/unification treaty was signed on March 18th. On March 21st, Putin signed the laws that formally acknowledge Crimea and Sevastopol as parts of the Russian Federation. The General Assembly of the UN issued on March 27th a non-binding resolution (No. 68/262) declaring the Crimea referendum as illegal. Only 18 UN member and non-member states (generally recognized or with limited recognition) acknowledged the secession referendum and five states (Russia, Afghanistan, Nicaragua, Syria and Venezuela) actually acknowledged the inclusion of Crimea and Sevastopol in the structure of the Russian Federation.

The sequence of events also includes other acts of political and geopolitical importance but we shall confine our investigation to aspects which are relevant in terms of international law and energy security.

In terms of public international law, the secession of Crimea and its becoming an integral part of the Russian Federation is a topic belonging to an extremely comprehensive and disputed field: the recognition and succession of states. The legal grounds used by Russia in supporting the secession and integration of Crimea were based on the following:

- Historical control exercised over the area;
- The right of peoples to self determination;

• The Kosovo precedent, as interpreted by the International Court of Justice (ICJ) by its consultative decision in July 2010, which ruled upon the lawfulness of Kosovo's declaration of independence[4].

De facto, the issue is very well pictured in the statement delivered to the press by the President of the Republic of Belarus, Alexander Lukashenko on March 23rd, 2014: "Today Crimea is part of the Russian Federation. No matter whether you recognize it or not, the fact remains. Whether Crimea will be recognized as a region of the Russian Federation de-jure does not really matter." Thus, it appears that in the geopolitical area affiliated to Moscow the dilemma on the relation between international law (*ex injuria ius non oritur* – unjust acts cannot create law) and the power politics (*ex factis oritur ius* – the law arises from the facts) were "settled" in favor of the latter.

Further on, let's have a look at the elements in this argumentation.

History of Crimea

Considering that there is no fundamental relevance in terms of international law, this topic is/off the beaten path of the study herein, as it is related to historical research.

Self-determination

Both the doctrine and the normative side of public international law (the Vienna Convention in 1978 regarding the succession of states in respect of treaties, Art. 2(1)(a) deems secession as the transfer of a territory from one state to another existing state or to a newly established state. In general terms, the international law remained neutral in what concerns the right of unilateral declaration of the independence of a territory. In other words, the international law does not prevent a population from organizing a referendum but, at the same time, it doesn't acknowledge a unilateral right to secession and joining/annexation with another state. What international law clearly prohibits is the promotion of secession under contrary *jus cogens* conditions (generally accepted public international law principles, from which no derogation is possible), such as change in territorial sovereignty by „unauthorized use of force" (the consultative opinion of the International Court of Justice in the Kosovo case- paragraph 81[5]).

[4] Please note Russia's contradictory stand, considering it was among the states that did not recognize the independence of Kosovo.

[5] The international law commission of the UN established that if a declaration of independence is issued in breach of the jus cogens principle (generally accepted international law principles), the so declared independence is considered illegal and the international community has the obligation to refrain from recognizing the political independence act. In the same respect, the Vienna Convention on the law of treaties (Art.52), declared as void the treaties concluded as a result of use of force or threat to use force and in contradiction with the international law principles in the Charter of the United Nations.

The modern law and the international practice concur to not accepting the removal of the principle of self-determination of peoples from the historical background of colonialism and the transposition of this principle into the argumentations that justify a right to unilateral secession in case of national independent states.

The Kosovo precedent

The international political case law and the relevant jurisprudence (for instance as regards the secession of Quebec – the Court of Supreme Justice of Canada), however confirms the geopolitical reality of the independence declarations and of unilateral secession acts exercised under the self-determination principle and/or in contradiction with the internal and international law, however ultimately not affecting the *de facto* situation and namely the secession of states.

Therefore, the topic of statehood becomes relevant in connection with two major concepts prevailing in the approach of the international community: *the constitutive theory* which claims that recognition by the international community is the essential criterion of statehood or *the declarative theory* claiming that statehood is a legal status that does not rely on recognition (based on the Montevideo Convention of 1933 on the rights and obligations of states, establishing the criteria defining statehood: 1) a permanent population; 2) a defined territory; 3) a government; and 4) a capacity to enter into relations with other states.

Even in the event of a high level of international recognition of a secession act, this does not confirm the lawfulness of such political act in terms of international law. Moreover, when secession occurs in contradiction with *jus cogens* (as shown above, the change of territorial sovereignty by use of force or threat to use force or by breaching international treaties), the international law firmly imposes the state's obligation not to recognize the statehood thus formed (principle also confirmed by Art. 40 and Art. 41 of the Articles of the International Law Commission of the United Nations regarding the liability of states for illegal international acts).

The promotion by Moscow of several resemblances between the secession of Crimea and the independence of Kosovo with a view to justify the secession in terms of international law is not substantiated. First and foremost, by its consultative opinion in the Kosovo case, the International Court of Justice did not confirm the legality of Kosovo's statehood but claimed that the declaration of independence does not contravene to the international law. Then, the premises of declaring Kosovo's independence were completely different, as the area was under international administration at that time, the motivation being the ethnic pressures that the population of Kosovo had to face, which does not appear to be the case of the Russian speaking population in Crimea. Also, Kosovo was not recognized as state by the entire international community (the absence of UN level recognition is highly relevant). In addition, in Crimea's case, there are clues that the secession occurred in the context of the presence of a military force, other than those of the Ukrainian state, therefore under

threat of force. Last but not least, the power politics acts of Russia conducted for the integration/annexation of Crimea had a true purpose and produced effects that contravened to the international law, in particular, to the 1997 bilateral Treaty on friendship, partnership and cooperation between the Ukraine and Russia (providing at Art. 3 the principle of compliance with territorial integrity) and to the Treaty between the two countries on the status of the Russian fleet at the Black Sea. In relation to the aforementioned aspect, Kremlin's position was made clear by the declarations of President Putin on March 4th, 2014 at a press conference in Novo Ogariovo: should there be a revolution in Ukraine, a new state would arise, with whom Russia deems not to have concluded a treaty. However, according to the Russian President, the change of regime at Kiev would not affect the status of Ukraine's debt to Russia.

In fact, the state of events in Crimea is more resemblant of the case of Cyprus. After the Turk population in the North of Cyprus island declared its independence in 1983, (supported by the Turk military troops present on the territory of the island) and proceeded to the creation of the Turkish Republic of the Northern Cyprus; to this day, the only state that recognized the statehood of the new entity is Turkey. A significant part in guiding the attitude of the international community towards the state of events in Cyprus was also played by the resolutions of the UN Security Council by which the Turkish-Cypriot declaration of independence was declared illegal and the international community was urged not to recognize the new state entity. As regards the Southern area of the island, inhabited by Greek ethnics, it acquired full international recognition (except for Turkey's recognition), becoming a member state of the EU and of the UN.

Despite this de jure issue, the Turkish Republic of Northern Cyprus continued to act de facto, as a sovereign state, bringing its contribution to maintaining a state of tension in the South-Eastern Mediterranean area, mainly with regard to the relations between Turkey, Cyprus and Greece. The way such tensions were manifested in relation to the exploitation of hydrocarbon resources in the Mediterranean Basin is of particular interest in anticipating the energy evolutions in the Black Sea Basin, matters to be subsequently dealt with.

Justification of Crimea's annexation in terms of international law

Back to Crimea, the near future will obviously face us with Russia's attempts to legitimate its sovereignty over Crimea, namely by imposing a *de facto* state in international relations. This will question whether Russia will still be bound, as successor state, by the international obligations of Ukraine resulting from Ukraine's sovereignty over the peninsula. We refer here to aspects related to the continental plateau and to the exclusive economic area in the Black Sea.

In anticipating Russia's stand in the issue of whether to take over or not several international rights and obligations of Ukraine with regard to the territory of Crimea (including the adjacent areas of the

Black Sea), we deem necessary to conduct an investigation in terms of implementation of public international law as regards the succession of states in the given circumstances.

Within the theory, practice and regulatory framework of public international law, there are two main trends as regards the succession of states to international treaties:

• the *theory of universal succession* of the successor state to the international treaties of the predecessor state; and

• the *tabula rasa theory* (arising from the roman law principle *res inter alios act,* i.e. a thing done between others does not harm or benefit others), according to which the successor state can select the treaties of the predecessor to which such intends to become a party.

The aspects related to the succession of states in international rights and obligations are mainly based on the *Vienna Convention of 1978 regarding the succession of states to treaties* and in international practices.

Article 6 of the Convention provides that it will only be applied to the effects of a state succession as per the international law and, in particular, as per the international law principles in the UN Chart. As provided above, the legal nature of the succession and integration of Crimea in the Russian Federation cannot be unequivocally sustained, in consideration of the de facto elements (was there foreign military occupation or not? Was force of threat of force used?)

On the other hand, the Russian Federation is not a signatory of the Convention, although Ukraine is a party thereto. This could mean that such Convention is not applicable to Crimea's case, instead resorting to the general customary rules/principles of public international law. Moreover, such Convention does not make a clear distinction between different cases of transfer of sovereignty over a territory (secession or transfer, absorption or unification, separation or dissolution of state, etc.), which does nothing but enhance complex interpretation.

Applying the Vienna Convention to Crimea's case would mean that, in the event of a secession, the successor state (in our case the Russian Federation) would automatically take over the predecessor state's treaties (Ukraine, in our case) on the territory over which such sovereignty transfer occurs, except if the concerned states agree otherwise or if arising from the treaty subject to succession or otherwise, that its application in respect of the successor state would run counter to the scope and object of the treaty or would radically change the operating terms of the treaty (Articles 31 and 34, applying in the event of a unification and separation of states[6]). Highly important to our analysis is

[6] Most likely that, in the legal battle regarding the new statute of Crimea, if the applicability of the Vienna Convention would be called into question, the Russian Federation would try to invoke the provisions of Article 16 of the Convention, which sets the *tabula rasa* rule for "new independent states," arguing that before becoming part of the Russian Federation, Crimea gained its independence, not bound to take over the relevant obligations under the international treaties signed by Ukraine. International theory and practice are almost unanimous in relating the applicability of the provisions of this Article 16 and customary international law reflecting the same principle, to the decolonization process, *i.e.* to the principle of "state dependence and identity" and not to secession cases.

also the clause in the Convention providing that a succession of states does not affect a border established under a treaty or those regarding the use of certain territories (Articles 11 and 12 of the Convention).

If the question of inapplicability of the Vienna Convention is raised in Crimea's case, then the customary rules of public international law would become applicable. A first clarification required for interpretation of the customary international law in this matter in such a context would be whether the Vienna Convention itself does not reflect customary international law. Most of the doctrine in the matter recognizes the thesis that such Convention (by its innovative substance as regards succession) does not entirely reflect customary international law (except, however, for example, the provisions of Article 12 above, which was declared by the ICJ in the case Gablkovo-Nagymaros, Hungary *vs*. Slovakia in 1997 as being part of the customary rules of public international law).

Customary international rules and state practice as regards state succession traditionally applied the theory of *tabula rasa* in the case of new independent states (the newly created independent state shall start its international life free of any rights and obligations under international treaties of the predecessor state, except for those rights and obligations under treaties regarding the border regime and those treaties in which there is a consensus for their application by the successor state), while in the case of states not representing "dependent territories", customary law establishes the rule of universal succession/continuity[7], based on which the successor state will take over the predecessor state's treaties.

It is worth noting that in terms of both principles, for geopolitical stability reasons, the customary international law excludes any revision or rejection of succession to treaties relating to borders or the use of border territories.

Going through such elements of international law is particularly relevant in terms of the obligations and rights of the Black Sea riparian states – *i.e.* whether Russia and/or Ukraine will continue their international commitments regarding the delimitation of the continental shelf and exclusive economic zones, undertaken so far with other riparian states. In economic terms, such legal matters shall be widely circulated in the near future when, inevitably, exploration and production of the hydrocarbon potential in the Black Sea shall be subject to debate.

Most likely, Russia will be the advocate of the inapplicability of the Vienna Convention, which would place the dispute in the area of generally accepted principles of international law (customary law). In such event, the battle of arguments (obviously alongside the matter concerning the legitimacy of the secession and annexation act itself) shall be fought around the principle of Crimea's "dependence and

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[7]The Kosovo case recorded new tendencies in this matter, regarding the propensity for the application of the *theory of universal succession* (through the mechanism of the so-called devolutive transfer agreements for international instruments and treatises between the predecessor and successor state)

identity," *i.e.* whether separation from Ukraine was an act of self-determination (to justify the application of the *tabula rasa* rule), or if Crimea failed to act as a dependent territory until its secession (which would justify the application of the continuity rule).

3. Offshore Petroleum Activities Conducted in the Black Sea (including the Sea of Azov) in the Context of the new status of Crimea

Before Crimea's secession, Ukraine delimitated offshore petroleum blocks off the coast of the Crimean Peninsula, of which the most important are Skifska, Foros, Prikerchinskaya and Tavriya. Shortly before the fall of Yanukovych, the Ukrainian government was close to signing a production-sharing agreement for Skifska block with Exxon Mobil and Royal Dutch Shell, having as partners OMV-Petrom and the Ukrainian state company Nadra Ukrainy (a tender challenged by the Russian company Lukoil). In 2013, a production sharing agreement was signed for Prikerchinskaya block, by a consortium led by the Italian company ENI (consortium which also includes EDF, Vody Ukrainy and Chornomornaftogaz) for the South, and for the rest, with another Ukrainian-Russian consortium led by Vanco (a company held by oligarch Rinat Akhmetov), together with Lukoil.

Expansion of the petroleum sector in Ukraine determined Mykola Azarov, former Prime Minister of Ukraine, to announce in the summer of 2013 that he expected Ukraine to become self sufficient in terms of natural gas production in the next 10 years, which would probably allow for exports around the year 2020. Currently, two thirds of the natural gas consumed in Ukraine is imported from Russia, Ukraine being the second major customer of Russian natural gas, after Germany.

However, the further growing political tensions determined Exxon Mobil to announce, in March 2014, the suspension of all its activities conducted in the Ukraine Skifska block pending settlement of the situation in Ukraine. Shell announced cessation of any discussions on such project.

From a legal perspective, such petroleum companies are facing the situation of petroleum agreements signed with a partner (the Ukrainian government) which, after losing jurisdiction over the exclusive economic zone in the Black Sea in favor of the Russian Federation, no longer holds *de facto* control over the rights granted to companies, its sovereign rights becoming devoid of object.

In addition, immediately after the declaration of independence of the Crimea region, the local parliament decided to nationalize the subsidiary assets of the national Ukrainian company Naftogaz, Chornomornaftogaz, including its rights over the continental shelf and the exclusive economic zone in the Black Sea. At that time, the local government announced that it would prepare such company for privatization, Gazprom being the only company that had allegedly shown interest. Chornomornaftogaz is providing 7.9% of Ukraine's natural gas production and 2.4% of its crude production. Such company holds licenses for 17 blocks, of which 15 for natural gas and 2 for

petroleum, both onshore and offshore, as well as natural gas storage facilities (Glebovskoye storage facility in Crimea).

Once with the appeasement of military and ethnic tensions in Ukraine, Chornomornaftogaz's nationalization would definitely attract Ukraine's reaction to raise legal claims against Moscow, Crimea's authorities and against any company taking over Chornomornaftogaz assets. Ukraine's reaction would be, however, frail in terms of pressure concerning the country's natural gas supply from Russia and payment of arrears for gas supply. Although Gazprom was considered a favorite in the event that Chornomornaftogaz is privatized, such acquisition will not be an easy decision for Gazprom, given the unclear legal status and the potential of such transactions to affect Gazprom's already damaged relationships with the European market. Moreover, so far, Gazprom has not shown interest in offshore projects developed in the Black Sea Basin[8]. Until present, only Russian Rosneft companies (in joint venture with Lukoil, Exxon and Eni) and Lukoil have shown an interest and have operated in the Black Sea area. Yet, Russia would have to find a solution to ensure natural gas supply to Crimea, given that such region is unable to cover consumption through available resources in its territory, while imports would require Ukrainian transit, which is hardly feasible in the given circumstances.

Possibly, except for Russian companies, offshore activities are not likely to be soon resumed in the area due to the uncertainty of the legal status of the Crimea region. Even in terms of potentially interested Russian companies, it is still unclear how matters of the Russian domestic legislation would be addressed, such as the 2008 amendments to the Law of Subsoil, which stipulates that offshore projects are to be carried out by companies in which the Russian Federation is to hold an interest of at least 50%, with an experience of more than 5 years in the industry. In addition, in the event that Russia further conducts petroleum operations in the offshore blocks adjoining Crimea, it would face another challenge of a technical and logistics nature, *i.e.* the potential transportation of crude oil and natural gas production to the petroleum terminals or mains. In this respect, Russia will seek to develop an energy transport infrastructure over the Kerch Strait. Therefore, its control over Crimea is also a cost generator for Moscow.

The most important tendency for countries in the region is a potential reconsideration of borders of their territorial seas, continental shelves and exclusive economic zones, after the Russian Federation's taking control over Crimea.

From such perspective, Ukraine's situation is dramatic from all perspectives (economic, military, energy). According to the international principles of the sea law and the UN Convention on Law of the Sea (UNCLOS) (both Russia and Ukraine are parties to the Convention), a redefinition of

[8] The most recent proposal of Naftogaz Ukraine for collaboration (2008) has sparked no interest from Gazprom.

territorial borders in the Black Sea and the Sea of Azov between Ukraine and Russia would practically strangle any access way that Ukraine may have to the Black Sea.

Ukraine would be left with a small area throughout the southeastern coast from the north point of Crimea up to the mouth of the Danube and a small part in the Sea of Azov, without access to the Kerch Strait[9]. Obviously, the borders of the territorial sea, the continental shelf and the exclusive economic zone are elements which should be subject to negotiation and agreement by the riparian states, in compliance with UNCLOS requirements under international law. However, in this case, Ukraine would be forced to negotiate under the presence of the Russian Black Sea fleet (which will be felt even stronger during the period to follow) and following an increasing pressure on aspects such as the Russian-speaking population and the dependence in securing natural gas supply from Russia. In addition, in order to gain access to the open sea, Ukraine would not be able to do it other than through waters under the jurisdiction of Romania or Russia. As concerns access to the trans-border waters of the Sea of Azov, Russia holds full control, through the Kerch Strait.

Without regard to the validity of Crimea's belonging to the Russian Federation (which should invalidate any Russian claims in terms of international law), a redefinition of the borders in the Black Sea could directly and theoretically affect only Ukraine, enhancing its security risks.

For Romania, it is important to know whether the exercise of Russian sovereignty over Crimea could justify, under the treaties, the principles of international law and the UNCLOS, a reconsideration of the maritime borders between Russia and Romania, as an adjoining riparian state.

4. Implications for Romania

Romania has concluded with Ukraine *the basic Treaty on good neighborliness and friendly cooperation*, in force as of October 22nd, 1997. The Treaty binds bilateral relationships to the principles established by the UN Charter, the Helsinki Final Act, and the Charter of Paris for a New Europe, as well as other OSCE documents. Laying down the principle of inviolability of borders, the bilateral treaty states that the parties would separately and subsequently agree upon the border regime (under the Treaty) and the delimitation of the continental shelf and the exclusive economic zone. The Treaty makes no specific reference to the production of subsoil resources in the Black Sea Basin.

In compliance with the terms of the bilateral treaty, Romania and Ukraine subsequently concluded the *Treaty between Romania and Ukraine on the state border regime, cooperation and mutual assistance in border issues,* in force as of May 27th, 2004. Article 1 of such Treaty provides several principles to

[9] In the context of Moscow's efforts to strengthen an onshore link between the Crimea and the Russian Federation's mainland - a belt about 10 km wide along the coast of the Sea of Azov - it is remarkable the involvement, in mid-May, of iron workers in Mariupol in taking over control of the breakaway pro-Russian forces in the name of civil order and economic stability. In fact, it is obvious that Ukrainian oligarchs are further playing an active role, proving a striking sense of opportunity.

be applied by the parties in delimitating the continental shelf and the exclusive economic zone. The only clause making reference to the production of subsoil resources is Article 18, providing that prospecting and production operations may be conducted up to a maximum 20 meters from the state border, if parties do not agree otherwise.

Stalling negotiations between the two countries on the delimitation of the continental shelf and of the exclusive economic zone in the Black Sea (including the status of the Snakes Island) has determined Romania to set the action (with Ukraine's consent) under the jurisdiction of the International Court of Justice. On February 3rd, 2009, the ICJ rendered its judgment, setting the border lines.

After the judgment rendered by ICJ, Romania concluded various petroleum concession agreements for exploration and production activities up to the limit of its continental shelf and the exclusive economic zone (Pelican, Muridava, Cobalcescu, Rapsodia, Trident, Neptun blocks). Operations in these petroleum blocks are now ongoing.

Following the secession and annexation of Crimea to the Russian Federation, Romania is facing the *de facto* situation of having a common border with the Russian Federation in the Black Sea. In this respect, the main question is to know whether Romania's production of subsoil resources in the Black Sea is somehow jeopardized *de jure* or *de facto*.

As part of the geopolitical game played in the Black Sea and perhaps from a broader geopolitical perspective, Russia could argue that international documents signed by the Ukrainian authorities in the past, and especially those concerning Crimea's belonging to Ukraine (such as those regarding borders or its territorial sea) are not binding on it, forcing their re-discussion, not necessarily as part of its desire to obtain a favorable solution, but especially to induce a state of geopolitical uncertainty in the area.

Russia could argue, for example, that it does no longer recognize and it is not considering itself as a successor of the bilateral Treaty of Friendship, *i.e.* the *Treaty on the state border regime between Romania and Ukraine,* or that it does not consider enforceable the ICJ decision rendered in Romania *vs.* Ukraine case, as regards the elements of territory related to Crimea. In such case, the question of state succession to treaties would be raised, more specifically the legal nature (the source of law) and the effects of the ICJ decision in such Ukraine *vs.* Romania case.

This case is, however, unlikely to be considered in the light of Russia's traditional practice in international relationships to rely on treaties and not to denounce them. Indeed, as provided in the treaty for the Crimean Peninsula's incorporation in the Russian Federation, of March 18th, 2014,

Moscow undertakes to apply international law regarding maritime borders in the Black Sea and the Sea of Azov (Art. 4, paragraph 3).[10]

However, it is true that neither Romania nor Russia are parties to the Vienna Convention of 1978 on states succession to treaties, which means that, as regards the succession of Ukraine's rights and obligations in relation to Romania (on matters concerning the territorial sea law), the customary international law will become applicable. Therefore, the dispute will focus on the application of the principle *tabula rasa* in succession (likely to be supported by the Russian Federation) or the principle of continuity (supported by Romania). However, as already stated, the principles of international law do not allow for extension of the effects of succession as regards treaties delimitating borders or use of certain territories, which would theoretically mean that the border regime established under Romania's treaties concluded with Ukraine would remain unaffected.

In the unlikely event of a conflicting Russian-Romanian relationship as concerns territorial borders in the Black Sea also likely to be considered are the obligations under the bilateral treaty concluded between Romania and the Russian Federation on July 4th, 2003 and enforced on August 27th, 2004, referring to the Charter of the UN, the Helsinki Final Act, the Charter of Paris for a New Europe and other OSCE documents, re asserting the inadmissibility of using force or threat of force against territorial integrity. Yet both the *basic Bilateral Treaty* which, due to the concurrence of historical events following its conclusion, does not contain provisions thoroughly related to matters of integrity and territorial borders (at that time Romania had no common border with the Russian Federation), as well as due to the exclusive mechanism to ensure its observance (such as with any other treaty) through the UN Security Council (in which Russia holds veto powers), and given also Russia's predilection, especially in extreme cases, to political and geopolitical approaches under legalistic cover, at the expense of the spirit of law, make us consider that such Treaty will not count in a potential Romanian-Russian dispute.

Moscow could also claim that the ICJ decision of 2009 with regard to the delimitation between Romania and Ukraine of the continental shelf and of the exclusive economic zone in the Black Sea is not binding on it. Indeed, the International Court's decisions are binding only on those parties who consent to settle such dispute before such court. Debates can be extremely complex in this respect, since international law does not benefit from a clear codification. The settlement to be reached and accepted by Romania and Ukraine following such Court decision should be acknowledged as part of customary international rules and thus become part of international law. In other words, the Court's decision should be considered a source of international law. The problem is that such matters are still subject to doctrinal debate.

[10] http://kremlin.ru/news/20605

As already mentioned above, the Vienna Convention of 1978 on State Succession to Treaties provides that a succession of states will not affect treaties that delimitate the border regime or those relating to the use of certain territories (Articles 11 and 12 of the Convention). In compliance with the Convention, "treaty" means “an international agreement concluded between states in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments, and whatever its particular designation."

Generally, an ICJ decision can obviously not be included in the above definition of "treaty". However, in this particular case of the ICJ decision in the Ukraine *vs.* Romania case, this decision resulted from and it was rendered by virtue of the bilateral agreements concluded between the two countries, in particular in compliance with the basic bilateral treaty. From such perspective, the ICJ decision, not appealed by the parties and applied as such, can be considered as part of the set of "several interrelated instruments" to form a treaty for the purposes of the Vienna Convention of 1978 and the 1969 Vienna Convention on the Law of Treaties. According to such interpretation, Russia and Romania should be bound to comply with the territorial borders in the Black Sea agreed between Ukraine and Romania, by virtue of *jus cogens* and in compliance with, if not to the letter of Articles 31, 34 and, respectively, Articles 11 and 12 of the Vienna Convention (Romania and Russia is not a party to such treaty), a delimitation which is part of the family of "treaties that lay down the regime of borders or those that relate to the use of certain territories."

However, we once again reiterate that both Russia and Romania are not signatories to the above Conventions, which does not render efficient the definitions provided by such treaties as concerns the Court decision regarding borders between Romania and Ukraine, unless the two treaties, respectively, the Court decision, can be considered as part of international customary law – definitely experts unanimously agree that the Convention on the Law of Treaties is reflecting international customary law.

If, however, one cannot claim that the interpretation of the ICJ decision may be considered as part of the set of Ukrainian-Romanian treaties concerning the border regime (and neither as part of the customary international law), Russia might consider a re-examination of the decision of such Court (decisions cannot be appealed) under the provisions Article 61 of the ICJ By-laws (even though the By-laws of the Court establish the principle of authority of *res judicata* in Article 60, Article 61 provides for a re-examination of a decision, in certain conditions, provided that “any decisive factors unfamiliar to the Court while issuing such decision are identified"). However, we believe that secession and annexation of Crimea to the Russian Federation could not represent, in a reasonable interpretation, an "identification of facts".

Therefore, if Russia decides not to observe the ICJ decision in the Ukraine *vs.* Russia case, the question of ensuring compliance with/enforcement of the decision is to be raised, which, in this case, involves the enforceability of the UN Security Council, in which Russia holds veto powers.

Another plan of possible Russian challenges to the exercise of sovereignty and to any economic activities conducted by Romania in its continental shelf and the exclusive economic zone (starting from the idea that integration of Crimea to the Russian Federation is a *fait accompli*, placing the legal status of such political act under question), may concern the raising of economic and environmental claims related to any activities for the production of natural gas and petroleum in the Romanian blocks.

The *Treaty on friendly relationships and cooperation between Romania and the Russian Federation* of July 4th, 2003, enforced on 27 August 2004, provides under Article 8 that the parties shall cooperate in the field of environmental protection in the Black Sea area, and for the rational use of resources in the Black Sea. By virtue of such a provision and through potentially controversial discussions, Russia could claim that the Romanian petroleum activities are affecting the marine environment. To the extent that such matter becomes critical, once with military presence in the Black Sea, Russia could *de facto* "impose" even suspension of petroleum activities, which would seriously affect Romania's energy security plans.

Another element potentially conducive to the "intervention" of the Russian Federation in Romania's petroleum activities in its exclusive economic zone would be the absence of any intergovernmental unitization[11] agreements between Romania and Ukraine (starting from the idea that they would be taken over by Russia by virtue of the principles of law relating to state succession). Basically, if *offshore* companies, holding concession licenses granted by the Romanian state, make discoveries and start production of petroleum reservoirs extending beyond the limits of the continental shelf and the exclusive economic zone in the maritime zone of Crimea, it is expected that Russia would determine the start of negotiations on pooling and joint petroleum development and operating agreements, supported by the multilateral international agreements (UNCLOS, the Charter of Economic Rights and Obligations of the States of 1974). As concerns the geopolitical context, such negotiations may be time-consuming and complex (international law does not impose any obligation to conclude an agreement for joint development of natural resources, but only to cooperate in this regard), with a direct impact on the Romanian energy security aspirations. Of course, it is also relevant that, unlike Ukraine, where the offshore of the Black Sea represents a crucial element for improving energy security, Russia is by no means pressed by such considerations. On the contrary, it would rather be

[11] The best example to be followed is the treaty between the UK and Norway, which regulates an intergovernmental framework for promoting institutional cooperation in the joint development of blocks in the North Sea.

interested in starting commercial projects of other riparian states in order to maintain the status of regional monopoly.

Under such circumstances, in the event that Russia chooses the path of raw power politics in the border area of the EU and NATO, and challenges the application of the ICJ decision in the Romania *vs.* Ukraine case, Russia would have two options:

- a geopolitical approach, involving Romania in complex situations, under the *power play* system (soft or hard, depending on the relevance and power of Romania as a NATO member and, secondarily, of the EU);
- a legal and judicial approach taking advantage of its place in the UN Security Council.

A combination of the above two options would be more likely to occur.

In terms of a geopolitical approach, it should be noted that such a "game" would be played in volatile conditions. The state of affairs in Ukraine will continue to be an arc of crisis for long. In an attempt to tail away from Ukraine as a transit state, Russia will focus on any alternative, such as, for example, the South Stream and the strengthening of bilateral relationships with European states that are deeply involved in the energy area of the Pontic Basin - alongside riparian states, such as Bulgaria and Turkey, states such as Austria, Italy, conducting operations through energy companies in the area).

Currently, the key "disturbing" factor in this process could only be the United States of America. Romania, as a peripheral state, yet a member of the EU and NATO, will benefit from political and territorial security guarantees, but in terms of energy[12], as long as at EU level no serious joint policy[13] is to be outlined, it will have to rely primarily on its own skills as concerns cognition, analysis, implementation and strategic alliance.

[12] We made a comparison between the annexation of Crimea, alongside the effects that it may generate in the Black Sea area, and the situation in Cyprus. For nearly half a century, the situation in Cyprus could not be resolved either by the EU or NATO. The Greek-Turkish confrontation significantly affects the development of offshore projects in the Mediterranean. Turkey refuses to recognize territorial borders drawn by Cyprus and the petroleum concessions granted by Cyprus, and hence offshore exploration petroleum activities in the area (see the case of exploration company Noble Energy in 2011), overlapping their exploration activities in both Cypriot and Greek waters (accompanied by Turkish military ships) and threatening with military intervention. Tensions between the two countries are far from being calmed down. Turkey is not a party to UNCLOS, while the EU is a party thereto, so UNCLOS is part of the *acquis communautaire*.

[13] Relevant to the region's energy security equation would also be the European elections this year. Prevalence of the European right wing in such elections, lately heavily romanced by Russia, could lower the pace of integration processes and could affect operation of any alliances or any joint stances Romania may take in an attempt to manage the situation of energy projects in the Black Sea in its relationship with Russia.