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TO JUSTIFY AGAINST ALL ODDS: THE ANNEXATION OF CRIMEA IN 2014 AND THE RUSSIAN LEGAL SCHOLARSHIP

Abstract:
This article is dedicated to the publications of the Russian legal scholars on the annexation of Crimea in 2014 or, according to the Russian version of the events "Crimea's reunification with Russia." Based on the factual circumstances of the case and the norms of Ukrainian constitutional law and international law, as well as modern approaches in international legal doctrine, the article analyses the key arguments of the Russian authorities and its legal scholarship, namely the following: 1) Russia's use of force against Ukraine was necessary to defend Russian nationals and compatriots; 2) Russia's use of force against Ukraine was a lawful response to the request for assistance by the legitimate leaders of Ukraine (V. Yanukovych) and Crimea (S. Aksyonov); 3) the events in Crimea were a secession, with the subsequent accession of the Republic of Crimea to the Russian Federation as an independent state; 4) Ukraine disregarded the principle of the equality and self-determination of peoples vis-à-vis the residents of Crimea, therefore, Crimeans had the right to secede; 5) Crimea is historically Russian; 6) Ukraine had been exercising peaceful annexation of the peninsula since 1991, and Russia did not object to this (subject to certain conditions, which Ukraine violated in 2014); 7) the transfer of Crimea to Ukraine in 1954 was illegal. This article evaluates whether these claims hold any weight under international law. In addition the general trends in contemporary Russian approaches to international law are outlined and their effects on its foreign policy are examined.

Keywords: aggression, annexation, Crimea, Russian Federation, Ukraine

INTRODUCTION

The annexation of Crimea, committed by the Russian Federation in February – March 2014, became the first such operation in Europe since Hitlerite Germany's

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actions in the 1930s – 1940s. Russia's subsequent actions in the Donetsk and Luhansk regions in the course of 2014 – 2016 amounted to military aggression against Ukraine, illegal occupation of part of its territory, killings of civilian population, and tortures perpetrated on soldiers of the Ukrainian Armed Forces and volunteers.

The recent developments in different parts of the world serve as evidence of the global consequences of the afore-mentioned events, which could lead to the collapse of the international legal order. Thus, should the international community fail to stop the military aggression of the Russian Federation against Ukraine, restore the previous status quo, make Russia pay for the harm it has inflicted, and hold the perpetrators of crimes to accountability, the global community of states may experience grave consequences. At the same time, the efforts of Ukraine and other states, as well as those of the EU and international organisations, can be successful only when the international community comes together, not only to rebut Russia's claims with respect to Crimea and Ukraine, but also to hold Russia accountable for its approaches to legal interactions with other states.

This article critically analyses the legal arguments put forward by the Russian scholarship concerning the annexation of Crimea and attempts to assess their validity. The relevant Russian legal doctrine includes works by N. Abdullayev, Ye. Aleksandrova, N. Baguzova, P. Belov, Yu. Golik, A. Ibragimov, A. Kudryashov, A. Kapustin, O. Khlestov, N. Kopytkova, V. Kryazhkov, V. Lazyer, K. Sazonova, L. Tarasova, V. Tolstykh, V. Tomsinov, and others. During the course of this examination the article naturally examines relevant writings of foreign scholars as well.

1. RUSSIA'S CLAIM THAT THE USE FORCE AGAINST UKRAINE WAS A NECESSARY MEASURE TO DEFEND RUSSIAN NATIONALS AND COMPATRIOTS

The fact that the Russian Armed Forces were used in February – March 2014 has long ceased to be denied. In addition to the clear evidence, it has been confirmed by some Russian officials. On 17 April 2014 V. Putin admitted the use of the Russian troops "to secure the self-determination of the people of Crimea"[1] and – on 24 October 2014 – "to block Ukrainian military units deployed in Crimea".[2] In the interview for the film "Crimea. The Way Home" – which aired on 15 March 2015 – Putin directly admitted the fact that on 22 February 2014 (i.e. long before any "self-determination" and even before the decision of the Crimean parliament to hold a referendum) he

[1] *Путин: наши военные «встали за спиной» самообороны Крыма* [Putin: our military "backed" the self-defense troops of Crimea], Русская служба BBC, 17 April 2014.

[2] Выступление президента России на заседание Международного дискуссионного клуба «Валдай» [Address of the Russian President at the Valdai International Discussion Club], available at: http://kremlin.ru/transcripts/46860 (accessed 20 April 2016).

initiated the military operation and engaged the "work of security agencies to return Crimea to Russia", and that the defence and security organs promptly began executing this command.[3] This announcement finds confirmation in statements of other Russian high-ranked officials and the state media.[4]

The statements of the Russian top leadership (February – March 2014), the contents of President Putin's address, and the resolution of the Council of the Federation dated 1 March 2014 show that Russia's initial military intervention was explained by the necessity to protect their nationals and compatriots abroad.[5] Protection of compatriots abroad is a concept unknown in international law and resonates most, if at all, with the concept of a humanitarian intervention. As for the protection of the nationals abroad as a form of permissible self-defence, there are five main conditions that must be met in order to deploy force in the territory of another state. These conditions have been coined and are advocated by some international and Russian scholars and commentators. They are as follows: (a) nationals are threatened or are victims of systematic and gross violations of human rights and fundamental freedoms; (b) the absence of any practical alternative to the proposed use of force and the exhaustion of other peaceful means, which make the use of force a "last-resort" option; (c) humanitarian aims or the aim to rescue citizens are the only reasons for the military operation; (d) the actions are proportionate and correspond to the purpose of the mission – protecting citizens from genuine threats; and (e) the intervention is for a limited period of time and a limited means are applied.[6]

There was neither *an imminent threat to the lives of any Russian citizens nor any gross violations of their rights and freedoms* in the Crimean Peninsula. This argument,

[3] *Путин: в Крым для разоружения украинских частей были направлены силы ГРУ* [Putin: Special forces of Russia were sent to disarm Ukrainian military bases], ТАСС, 15 March 2015.

[4] С. Птичкин, *Вежливые люди получили свой День* ["Green men" were honored in Russia], Российская газета, 27 February 2015; И. Петров, *У «вежливых людей» появится свой праздничный день* ["Green men" were granted a special holiday], Российская газета, 3 September 2014; *Гиркин: Мы насильно сгоняли депутатов Крыма голосовать за отделение от Украины* [Girkin: We forced the MPs of the Crimean Parliament to vote for the separation from Ukraine], Укринформ, 25 January 2015; *Адмирал Касатонов заявил, что НАТО не успела год назад отследить блокировку украинских частей* [Admiral Kasatonov stated that NATO failed to notice the blocking of Ukrainian military units a year ago], Московский комсомолець, 13 March 2015; *Интервью Игоря Гиркина Стрелкова – Мы насильно сгоняли депутатов Крыма голосовать за отделение от Украины* [Interview of Ihor Girkin Strelkov – we forced the the MPs of the Crimean Parliament to vote for the separation from Ukraine], available at: https://www.youtube.com/watch?v=hPSUUNngoQk (accessed 20 April 2016).

[5] *Владимир Путин внёс обращение в Совет Федерации, сообщение на Официальном сайте Президента России* [Vladimir Putin brought in the proposition to the Federal Council], available at: http://kremlin.ru/events/president/news/20353 (accessed 20 April 2016).

[6] H. Waldock, *General Course at The Hague on 'The Regulation of the Use of Force by Individual States in International Law*, 1952; T. Gazzini, *The Changing Rules on the Use of Force in International Law,* Manchester University Press, Manchester: 2005, p. 174; Л. Тарасова, *Правовые основания использования силы государствами для защиты своих граждан за рубежом* [Legal justification for the use of force to protect state's nationals abroad], 1 Современное право 105 (2013), p. 109.

therefore, suffers from factual problems. This is well exemplified by the official Russian publication entitled "White Book on violations of human rights and the rule of law in Ukraine (November 2013 – March 2014)".[7] The document simply reproduces the alleged threats of the nationalists against the Crimeans without naming a single source of such threats; moreover the document contains only three references to local "events",[8] without any specifics or factual background.

At the same time, the Council of Europe, the OSCE and the EU have consistently argued that the Russian allegations are false. It was actually the Russian "green men", the Russian-controlled "self-defence" forces, and the self-proclaimed Crimean government that committed gross violations of human rights and fundamental freedoms in the peninsula, namely the right to life, security, liberty, inviolability of person and property, etc. These and many other violations in this field have been reported by the Office of the UN High Commissioner for Human Rights[9] and the Council of Europe Commissioner for Human Rights.[10]

It is also impossible to assert *the absence (or exhaustion) of other peaceful means to resolve the conflict* in order to claim the necessity to employ the last-resort option, which is self-defence. There had been no civil strife in the Crimean Peninsula triggering the necessity for Russia to use force. Russia had not made any attempts to "find a solution" while diplomacy was still available as an effective and practicable tool to resolve the crisis. In fact, Russia did not even admit the existence of the conflict. Moreover, the Russian Federation was implementing the military occupation of the Crimean Peninsula and preparing its annexation simultaneously with the civil protests in Kyiv and other cities of Ukraine. It had been an undercover operation (Russians constantly talked about the "self-defence forces of Crimea") until V. Putin acknowledged the use of force *post factum* in mid-April 2014. These circumstances confirm that Russia's second argument is, based on the facts, legally and factually deficient.

Another necessary condition to justify the legal use of force is that an operation be of a *humanitarian nature with the aim of rescuing citizens as the only purpose and goal of a military operation*. The inconsistency between Russia's actions and the nature and goals of such a "humanitarian operation", as proclaimed by Russia, is self-evident. The

[7] Министерство иностранных дел Российской Федерации, Белая книга нарушений прав человека и принципа верховенства права на Украине (ноябрь 2013 – март 2014) [White Book on violations of human rights and the rule of law in Ukraine], 2014, p. 81.

[8] *Ibidem*, pp. 16, 17, 19.

[9] Office of the United Nations High Commissioner for Human Rights, *Report on the Human Rights Situation in Ukraine*, 16 September 2014, p. 37; Office of the United Nations High Commissioner for Human Rights, *Report on the Human Rights Situation in Ukraine*, 15 July 2014, p. 57; Office of the United Nations High Commissioner for Human Rights, *Report on the human rights situation in Ukraine*, 16 November 2014), pp. 44, 49.

[10] Council of Europe, *Report on the Human Rights Situation in Ukraine*, Council of Europe High Commissioner for Human Rights following his Mission in Kiev, Moscow and Crimea, 27 October 2014, p. 16; Council of Europe, Resolution 2028 (2015) on the humanitarian situation of Ukrainian refugees and displaced persons, 2015, p. 5.

annexation of the peninsula cannot be justified by any humanitarian aim or the protection of its citizens. International law does not recognize the concept of "humanitarian annexation".

Nor can Russia's occupation and annexation of the Crimean part of Ukrainian territory in 2014 be regarded as a *proportional or adequate* measure. In the first place, as has been pointed out, it did not involve the protection of citizens' rights. As far as the time limit is concerned, the occupation of the peninsula continued right up until Russia's annexation of Crimea, which is permanent. In addition such methods as the seizure of Ukrainian military premises, warships and infrastructure, the persecution of pro-Ukrainian and Crimean Tatar activists etc., can hardly be labelled a proportional and adequate measure.

While international law requires that all the above-mentioned conditions be met in order to justify the use of force in a situation such as the one at hand, Russia's actions did not meet a single one of them. This opinion is widely shared by international law scholars, such as, e.g., T.D. Grant,[11] K. Marxen,[12] E. Murray,[13] P.M. Olson,[14] M. Weller,[15] and D. Wisehart.[16]

International law knows no such concept as the armed protection of compatriots, Russia includes the entire multi-ethnic population of Crimea ("Krymchane" (Crimeans)) as "compatriots"; while under international law one can only refer to nationals of a state. One might draw parallels between this concept and the doctrine of humanitarian intervention or the Responsibility to Protect (R2P). The use of force in the course of a humanitarian intervention might be legally justified under the contemporary approaches of international law in the event mass murders or tortures are committed in the territory of a state, and unbearable conditions for living exist, i.e. gross violations of human rights; in addition there must be no possibility to solve the crisis by peaceful means; and finally the goal of such military intervention must be the termination of mass violations of human rights and the safeguarding of the minimum level of human rights, using appropriate means proportionate to the goal.[17]

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[11] T.D. Grant, *The Yanukovych Letter: Intervention and Authority to Invite in International Law*, 2(2) Indonesian Journal of International and Comparative Law 281 (2015).

[12] C. Marxsen, *The Crimea Crisis: An International Law Perspective*, 74 Zeitschrift für ausländisches öffentliches Recht und Völkerrecht 367 (2014).

[13] E. Murray, *Russia's annexation of Crimea and International Law Governing the Use of Force*, 2014, unpublished paper, available at: http://bit.ly/1T17qzG (accessed 20 April 2016).

[14] P. Olson, *The Lawfulness of Russian Use of Force in Crimea*, 53 Military Law & Law of War Review 17 (2014).

[15] M. Weller, *Analysis: Why Russia's Crimea Move Fails Legal Test*, BBC, 7 March 2014.

[16] D. Wisehart, *The Crisis in Ukraine and the Prohibition of the Use of Force: A Legal Basis for Russia's Intervention,* EJIL Talk!, 4 March 2014, available at: http://bit.ly/1K8vgFr (accessed 20 April 2016).

[17] И. Синякин, *Правомерность гуманитарной интервенции: современные международно-правовые аспекты* [The lawfulness of the humanitarian intervention: modern international law approach], 10(53) Евразийский юридический журнал 52 (2012); Н. Крылов, *Гуманитарная:*

None of the above-mentioned requirements for the use of force to protect a state's citizens abroad were met in the analyzed case. It should be noted that the requirements are much stricter than the "justification" offered by Russia: a humanitarian intervention can only be regarded as lawful when it is undertaken in response to mass violations of human rights, not when there is only a "perceived" threat of such violations.

The case of Crimea does not create legal grounds to apply R2P – there was no imminent risk of genocide, crimes against humanity, or ethnic cleansing in Crimea. Russia's actions contradict the R2P concept as defined by the UN,[18] as Russia failed to initiate a non-coercive and non-violent response to the alleged violations of human rights, whereby preventive measures consisting of diplomatic, humanitarian and other peaceful means are primarily applied. The Russian response also contradicts the key elements of the R2P concept – the possibility to apply force only when all other options (including sanctions and investigations against the perpetrators) have been exhausted and only following a decision of the UN Security Council in accordance with Chapter VII of the UN Charter. These conclusions are widely supported by scholars.[19]

Hence, analysis of the February – March 2014 events in Crimea confirms that the Russian Federation did not have any legal grounds to rely on any of the above-mentioned concepts concerning protection of citizens abroad. Moreover, "the use of force to protect compatriots" rhetoric employed by the Russian senior officials is not even developed in international law.

2. RUSSIA'S CHARACTERIZATION OF ITS USE OF FORCE AS A LAWFUL RESPONSE TO A REQUEST BY THE LEGITIMATE LEADERS OF UKRAINE (V. YANUKOVYCH) AND CRIMEA (S. AKSYONOV) FOR ASSISTANCE

The Russian Federation has repeatedly claimed that V. Yanukovych and the self-proclaimed leaders of Crimea requested an armed intervention. This claim was voiced for the first time on 3 March 2014 at a session of the UN Security Council, when the representative of the Russian Federation V. Churkin waved V. Yanukovych's letter, which stated:

> [a]s the legally elected President of Ukraine, I hereby make the following statement. The events at Maidan and the illegal change of government in Kyiv have brought Ukraine to

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интервенция: критерии правомерности применения вооруженной силы [Humanitarian intervention: criteria for the use of force], 12(55) Евразийский юридический журнал (2012), pp. 38-39; N. Chomsky, *A New Generation Draws the Line: Kosovo, East Timor, and the Standards of the West,* Verso, New York: 2001, pp. 57-58.

[18] Report of the Secretary-General, *Implementing the responsibility to protect*, United Nations General Assembly, A/63/677, 2009, p. 33.

[19] M. Weller, *supra* note 15; C. Marxsen, *supra* note 12, p. 374; Г. Певзнер, *Интервенции Путина в Крыму нет оправданий в международном праве* [Intervention of Putin in Crimea cannot be justified under international law], RFI, available at: http://rfi.my/1UdVmNh (accessed 20 April 2016).

> the brink of civil war. Chaos and anarchy reign in the country, and people's lives, safety and human rights are under threat, particularly in the south-east and in Crimea. With the influence of Western countries, open acts of terror and violence are being perpetrated and people are being persecuted on political and linguistic grounds. I, therefore, appeal to the President of Russia, V. Putin, to use the armed forces of the Russian Federation to restore law and order, peace and stability and to protect the people of Ukraine.[20]

On 9 March 2014 (a few days before the annexation of Crimea) Putin said, in an interview for the Russian media:

> [i]f I do decide to use the Armed Forces, this will be a legitimate decision in full compliance with both the general norms of international law – since we have the appeal of the legitimate President – and with our commitments, which in this case coincide with our interests to protect the people with whom we have close historical, cultural, and economic ties. Protecting these people is in our national interest. This is a humanitarian mission. We do not intend to subjugate anyone or to dictate to anyone. However, we cannot remain indifferent if we see that they are being persecuted, destroyed and humiliated.[21]

It should be noted that, in his interview for the Russian film "Crimea. The Way Home", Putin acknowledged that he had decided to conduct the military operation to "return Crimea" back to Russia and gave the necessary orders to the military and security forces on 22 February 2014.[22] It is obvious that these orders were being executed from 22 February through 9 March, the date of his interview.

However, in any case such claims would still be legally untenable. Firstly, in accordance with the Constitution of Ukraine, the President of Ukraine has no authority to appeal for the deployment of foreign armed forces (Art. 106 contains an exhaustive list of his powers).[23] Secondly, at the time of his request Yanukovych had already been removed from the office; the Verkhovna Rada (Supreme Council) of Ukraine adopted a decision to hold early presidential elections on 23 February 2014, and O. Turchynov was assigned the duties of the President.[24] Subsequently, Yanukovych was not recognised as President of Ukraine by the state itself nor by foreign states and international organisations. It is important to note that the Russian Federation, by negotiating with a new Ukrainian government and maintaining diplomatic and other relations, itself recognized its legitimacy and, therefore, the legitimacy of the removal of Yanukovych (the initial statements about a "military takeover" were not supported by the

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[20] *Путин получил просьбу Януковича об использовании ВС РФ на Украине* [Putin received Yanukovych's request to use force in Ukraine], РИА Новости, 4 April 2014.

[21] П. Зарубин, *Путин: решение использовать войска в Крыму будет легитимным* [Putin: the decision to use force in Crimea will be legitimate], Вести России, 9 March 2014.

[22] *Путин: в Крым…, supra* note 3.

[23] *Конституція України* [Constitution of Ukraine], (ВВР), 1996, № 30, p. 141.

[24] Постанова Верховної Ради України «Про покладення на Голову Верховної Ради України виконання обов'язків Президента України згідно із статтею 112 Конституції України» [Resolution of the Verkhovna Rada (Supreme Council) of Ukraine "On assigning duties of the President in accordance with Art. 112 of the Constitution of Ukraine"] (ВВР), 2014, № 11, p. 163.

subsequent practice of Russia). Moreover, later Russia recognized newly-elected President P. Poroshenko.

It is equally untenable to refer to the statement of S. Aksyonov, namely: "I am requesting Russian President V. Putin to help in ensuring peace and calm on the territory of Crimea."[25] In the first place, this request does not directly mention the use of force, but even if it can be assumed as part of the request, the situation still would remain the same: S. Aksyonov had no legal grounds to hold the post of the head of the Crimean government. In accordance with Art. 7(1) of the Law of Ukraine "On the Council of Ministers of the ARC" of 2011, the Verkhovna Rada of the ARC appoints the head of government in Crimea upon the consent of the President of Ukraine. Neither the Council of Ministers nor any other organ of Crimea had the authority to appeal to foreign states with a request to use force in the peninsula.[26] Thirdly, there was no legal basis for the use of foreign military forces on the territory of Ukraine.

As rightly noted by T.D. Grant, it is useful to look into the content of the invitation to intervene. In the case at hand, a foreign state was invited to oust the military and law enforcement agencies of Ukraine, with the temporal or geographical scope of its action being unidentified. Yanukovych did not specifically mention Russian troops. Moreover, the two states did not have any previously established cooperation mechanisms providing for such actions.[27] Other foreign commentators are also convinced that neither Yanukovych nor Aksyonov had the right to invite Russia to use force in Ukraine.[28]

Russia's use of force in the peninsula to carry out the military operation to "return Crimea", which was acknowledged by the Russian senior officials and illustrated by many facts on the ground, is in contradiction with fundamental principles of international law. The actual actions by the Russian Federation can only be qualified as an armed attack and aggression against Ukraine in light of Art. 51 of the UN Charter, other provisions of the Charter, and the provisions of the General Assembly Resolution 3314 (XXIX), with its attached Definition of Aggression. Art. 1 of the resolution defines aggression as "the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations, as set out in the Resolution."[29]

In fact, Russia committed all types of aggression listed in Art. 3 of the resolution and in Art. 8bis of the Statute of the International Criminal Court (ICC). Most impor-

[25] *Прем'єр Криму переіднорядкував собі силові структури і попросив допомоги у Путіна* [PM of Crimea subordinated military to himself and requested Putin for assistance], Лівий берег, 1 March 2014.

[26] Закон України «Про Раду міністрів Автономної Республіки Крим» [Law of Ukraine on the Council of the Autonomous Republic of Crimea] (ВВР), 2012, № 2-3, p. 3.

[27] Grant, *supra* note 11, pp. 326-327.

[28] Marxsen, *supra* note 12, pp. 367-391; Певзнер, *supra* note 19; G. Vaypan, *(Un)Invited Guests: The Validity of Russia's Argument of Intervention by Invitation*, post available at: http://bit.ly/1WA8fi4 (accessed 20 April 2016); Murray, *supra* note 13.

[29] UN General Assembly Resolution (adopted without a vote on a Report from the Sixth Committee), 3314 (XXIX), *Definition of Aggression*, A/RES/29/3314.

tantly, the international community qualifies these events as Russian aggression. This is reflected in numerous acts of international organisations adopted throughout the course of 2014–2015.[30] In addition, international law scholars arrive at the same conclusion as well (e.g. R.J. Delahunty,[31] T.D. Grant,[32] P.M. Olson,[33] M. Weller,[34] D. Wisehart[35]).

Other Russian arguments are also worth mentioning: the most striking of them is the absence of direct hostilities in Crimea ("not a single shot was fired"), which according to Russia does not therefore amount to an act of aggression.[36] Nevertheless the firing of weapons is only one of the acts of aggression under international law, indicated in particular in the UNGA resolution (and its Annex) as well as the Rome Statute. Among other acts of aggression one finds: "the invasion or attack by the armed forces of a State of the territory of another State, or any military occupation, however temporary, resulting from such invasion or attack, or any annexation by the use of force in the territory of another State or part thereof" (Art. 3(a) of the Annex); "an attack by the armed forces of a State on the land, sea or air forces, or marine and air fleets of another State" (Art. 3(d) of the Annex); "the use of armed forces of one State which are within the territory of another State with the agreement of the receiving State, in contravention of the conditions provided for in the agreement or any extension of their presence in such territory beyond the termination of the agreement" (Art. 3(e) of the Annex). It is difficult to decide which, among a multitude of acts and actions, to choose to demonstrate that Russia engaged in the abovementioned acts of aggression, not to mention that in fact the use of firepower did take place.[37] These contentions are widely supported.[38]

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[30] OSCE, *Resolution on Clear, Gross and Uncorrected Violations of Helsinki Principles by the Russian Federation*, Baku Declaration and Resolutions, 2014; Council of Europe Parliamentary Assembly Resolution 2067 (2015), *Missing persons during the conflict in Ukraine*, 25 June 2015; OSCE, *Resolution on the Continuation of Clear, Gross and Uncorrected Violations of OSCE Commitments and International Norms by the Russian Federation*, 2015.

[31] R. Delahunty, *The Crimean Crisis*, University of St. Thomas Legal Studies Research Paper, 39/2014, pp. 27-28.

[32] T.D. Grant, *Aggression against Ukraine. Territory, Responsibility, and International Law*, Palgrave, New York: 2015, p. 320.

[33] Olson, *supra* note 14.

[34] Weller, *supra* note 15.

[35] Wisehart, *supra* note 16.

[36] *В МИД РФ заявили, что аннексия Крыма и конфликт в Донбассе – это не нарушение Будапештского меморандума* [Russia MFA stated that the annexation of Crimea and the conflict in Donbas is not a violation of the Budapest Memorandum], *Сегодня*, 13 March 2014; *Путин заявил, что Россия не нападала на Крым: Где вы видели интервенцию без единого выстрела?* [Putin stated that Russia did not attack Crimea. Where have you seen an intervention without a single shot fired?], ТСН, 18 March 2014.

[37] М. Василь, *Когда прозвучал первый выстрел в воздух, украинские военнослужащие, не сговариваясь, запели национальный гимн* [When the first shot was fired, Ukrainian military sang the national anthem without conspiracy], Факты, 7 March 2014; *Ukraine: Russian troops fire 'warning shots' at Crimea airbase*, The Telegraph, 4 March 2014; *Crimea: Shots fired at military base in Simferopol*, BBC News, 18 March 2014.

[38] Olson, *supra* note 14, p. 65; Delahunty, *supra* note 31, pp. 14-39; Weller, *supra* note 15.

To sum up, the above analysis corroborates the conclusion that Russia's use of force against Ukraine upon the dual requests for assistance issued by V. Yanukovych and S. Aksyonov fails to provide any legal basis for intervention and is not in line with international law. The invitations as such are at odds with the constitutional law of Ukraine and the relevant concepts of international law. In fact, the Russian Federation has committed an armed attack, which is an act of aggression against Ukraine.

3. RUSSIA'S INTERPRETATION OF THE CRIMEAN EVENTS AS SECESSION, FOLLOWED BY A SUBSEQUENT ACCESSION OF THE PENINSULA TO THE RUSSIAN FEDERATION

The Treaty on the Accession of the Republic of Crimea to Russia of 18 March 2014, the Statement by the Russian Ministry of Foreign Affairs in response to accusations of Russia's violation of its obligations under the Memorandum on Security Assurances in connection with Ukraine's accession to the Treaty on the Non-Proliferation of Nuclear Weapons of 1968 (the so-called Budapest Memorandum of 5 December 1994), the "Legal justification of the position of the Russian Federation in respect of Ukraine and Crimea", and Russian legal scholarship all share the same position.[39]

So what does international law say about secession? The majority of scholars deny a general right to secede,[40] which is borne out by the practice.[41, 42] V. Nanda emphasises "the uncertainty of the status of secession, which is neither permitted nor prohibited in international law", noting that the International Court of Justice (ICJ) has not shed light on the issue. In the *Kosovo* case it simply pronounced that the declaration of independence did not violate international law because there was no prohibition

[39] Договор между Российской Федерацией и Республикой Крым о принятии в Российскую Федерацию Республики Крым и образовании в составе Российской Федерации новых субъектов [Treaty between the Russian Federation and the Republic of Crimea on the acceptance of the Republic of Crimea into the Russian Federation and education of new subjects of the Russian Federation], available at: http://kremlin.ru/events/president/news/20605 (accessed 20 April 2016); Statement by the Russian Ministry of Foreign Affairs regarding accusations of Russia's violation of its obligations under the Budapest Memorandum of 5 December 1994, available at: http://archive.mid.ru//brp_4.nsf/0/B173CC77483EDEB944257CAF004E64C1 (accessed 20 April 2016); И. Антонова, *Международное признание Республики Косово: трансформация позиции России* [International recognition of the Republic of Kosovo: the transformation of Russia's position], 1 Terra Humana 46 (2014); А. Наумов, *События в Украине: международное право и международное правосудие* [Events in Ukraine: international law and international justice], 4(50) Общество и право 274 (2014).

[40] J. Crawford, *The Creation of States in International Law,* Oxford University Press, Oxford: 2007, pp. 388-391.

[41] Reference re secession of Quebec 2 S.C.R. 217, 1998, para. 131.

[42] UN Committee on the Elimination of Racial Discrimination, *General Recommendation XXI on self-determination*, UN Doc A/51/18, 1996, Annex VIII, para. 6.

against issuing such acts.[43] In general, secession is regarded as an exception which can be recognised as lawful only under extraordinary circumstances. Therefore, the list of conditions justifying secession is very short: the liberation from the colonial domination and foreign occupation;[44] or the existence of an undemocratic, authoritarian regime in a state, which is oppressing the people and gravely and systematically violating human rights.[45]

In this context, Russia, in its turn, has been consistent in advocating the sanctity of the principle of the territorial integrity of states. This consistency is evidenced by official statements, Russia's support of certain acts of international organisations, judgments of the Constitutional Court of Russia, and the Russian scholarship concerning international law. In the written statement by the Russian Federation to the ICJ in the *Kosovo* case, dated 16 April 2009 (and it is noteworthy that Russia was adamant in adhering to this position), it stated as follows: "Self-determination in the form of secession is only possible when there is a threat to the very existence of people"; "the right to self-determination shall not be construed as authorizing or encouraging any action which would dismember or impair, in whole or in part, the territorial integrity or political unity of sovereign and independent States ..." (paras. 78, 85, 87 etc.).[46] This stance is commonly taken by the representatives of the Russian doctrine of international law.[47]

In order to properly examine the Crimean events in the context of the international legal principle of equality and the right of people to self-determination, all the core criteria and conditions permitting secession should be analysed, namely: 1) the existence of a holder of the right to self-determination, i.e. a people entitled to secession; 2) the exhaustion of the possibilities of internal self-determination (within the existing state); 3) the existence of extraordinary circumstances; and 4) the non-engagement of a foreign state in the process of self-determination.

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[43] ICJ, *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*, (Advisory Opinion), ICJ Rep. 2010, p. 403.

[44] M.-H. Boccara, *A Right to Self-determination and a Privilege to Independence: A legal assessment of the prospects for peace & security in the Middle East*, doctoral thesis, Uppsala Universitet: 2007, pp. 128-132.

[45] B. Cop, D. Eymirlioglu, *The Right of Self-Determination in International Law towards the 40th Anniversary of the Adoption of ICCPR and ICESCR*, Perception 115 (2005); H. Steiner, P. Alston, *International Human Rights in Context*, Oxford University Press, New York: 2000, pp. 1252-1253; Н. Явкин, *Проблема обеспечения единства и территориальной целостности государства в условиях борьбы народов за самоопределение*, автореф. дисс. к. ю. н. [The problem of ensuring unity and territorial integrity of states under the conditions of self-determination of peoples], МГУ им. Н. Огарева, 2004.

[46] ICJ, *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*, (Advisory Opinion), Written Statement of the Russian Federation to the International Court of Justice, available at: http://www.icj-cij.org/docket/files/141/15628.pdf (accessed 20 April 2016).

[47] Е. Александрова, *О необходимости разработки Конвенции о праве на сецессию в современном международном праве* [On the necessity to work out the convention on the right to secession in modern international law], Закон и право 3 (2015), pp. 130-133; В. Романов, *Принцип самоопределения и территориальная целостность государств* [The right to self-determination and the territorial integrity of states], Дипломатический вестник, 2000.

As far as the *holder of the right to self-determination* is concerned, an analysis of international instruments relating to this issue confirms that the right to self-determination may be exercised by a people and nation – i.e., by a sufficiently large and coherent community. An international meeting of experts on further study of the concept of the right of peoples, hosted by UNESCO in 1989, declared that a people "is a group of individual human beings who enjoy some or all of the following common features: (a) a common historical tradition; (b) racial or ethnic identity; (c) cultural homogeneity; (d) linguistic unity; (e) religious or ideological affinity; (f) territorial connection; (g) common economic life." It was also noted that "the group must be of a certain number which need not be large… but which must be more than a mere association of individuals within a State"; "the group as a whole must have the will to be identified as a people or the consciousness of being a people"; and it "must have institutions or other means of expressing its common characteristics and the will for identity."[48]

It is submitted herein that the above statements presuppose self-identification, numerical superiority, and a dominant position in the existing state to which the group belongs.[49] It should be noted that there is a difference between "people" as an entity on one hand, and "indigenous people" or a "minority" as entities on the other hand. The difference lies in the fact of the dominant position in the existing state and numerical superiority as characteristics of a "people", which characteristics are not required for an "indigenous people" or "minority".[50] Consequently, a "people" is entitled to both internal and external self-determination, whereas an indigenous people and/or minority – only to internal self-determination, that is self-determination within an existing state. This position is reflected, for instance, in Opinion No. 2 of the Arbitration Commission of the Conference on Yugoslavia regarding the Serbian population of Bosnia and Herzegovina of 1992.[51] The same approach is incorporated in the UN Declaration on the Rights of Indigenous Peoples of 2007,[52] the Framework Convention for the Protection of National Minorities of 1995,[53] the PACE Resolution 832 (2011) of 4 October 2011,[54] and other international legal instruments.

[48] UNESCO, International Meeting of Experts on further study of the concept of the rights of peoples, 27-30 November 1989, *Final Report and Recommendations*, available at: http://bit.ly/1T3Sktp (accessed 20 April 2016).

[49] C. Ijezie, *Right of Peoples to Self-Determination in the Present International Law*, unpublished paper, available at: http://bit.ly/1UdTLqx (accessed 20 April 2016).

[50] *Ibidem*.

[51] D. J. Harris, *Cases and Materials on International Law*, Sweet & Maxwell, London: 1998, p. 120.

[52] United Nations Declaration on the Rights of Indigenous Peoples, available at: http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf (accessed 20 April 2016).

[53] Framework Convention for the Protection of National Minorities and Explanatory Report, available at: http://bit.ly/1RcPPQR (accessed 20 April 2016).

[54] Council of Europe, Parliamentary Assembly Resolution 1832 (2011), *National Sovereignty and Statehood in Contemporary International Law: The Need for Clarification*, 2011.

In addition to Ukrainians, Ukraine is home to three indigenous peoples, the descent of which is connected with the territory of Ukraine – Crimean Tatars, Karaites, and Krymchaks.[55] Russians, including those in Crimea, are a national minority in Ukraine. Under international law, an ethnic group is not entitled to self-determination in the form of secession (the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities was unambiguous on this), and the existing state practice on this issue is also straightforward.[56]

The same approach applies to the representatives of other ethnic groups (e.g. Romanians, Hungarians, Bulgarians) who reside in Ukraine. It is argued that the official position of Moscow, as supported by the Russian scholarly publications, is marked by certain terminological confusion: a number of documents refer to the "people of Crimea", in particular, the Legal justification of the position of the Russian Federation with respect to Ukraine and Crimea,[57] the Declaration of independence of the Autonomous Republic of the Crimea of 11 March 2014,[58] and the address of the Russian Association of International Law.[59] One may also come across the term "population of Crimea".[60] The above facts give ground to assume that the Russian side suffers from the absence of a clear-cut legal stance and it is not agreed upon which community has a genuine right to secession in the Crimean case. On the other hand, foreign scholars rest on the position that there is no "people of Crimea" who are entitled to secession.[61]

The criterion of *the exhaustion of all possible remedies for internal self-determination* is becoming more important in the decolonisation era. Internal self-determination is

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[55] *МИД: Русские в Украине – не коренной народ, поэтому не имеют права на самоопределение* [MFA: Russians in Ukraine are not an indigenous people and thus not entitled to self-determination], День, 17 March 2014.

[56] А. Мережко, *Кто имеет право на самоопределение в Крыму?* [Who is entitled to self-determination in Crimea], Forum Daily, 2014, available at: http://www.forumdaily.com/kto-imeet-pravo-na-samoopredelenie-v-krymu/ (accessed 20 April 2016).

[57] Министерство иностранных дел Российской Федерации, *Правовые обоснования позиции России по Крыму и Украине* [Legal justification of the position of the Russian Federation in respect of Ukraine and Crimea], 27 October 2014, available at: http://www.rusembdprk.ru/images/documents/Crimea_-_the_legal_basis.pdf (accessed 20 April 2016).

[58] Пресс-центр Верховного Совета АРК, Декларация о независимости Автономной Республики Крым и г. Севастополя [Declaration of independence of the Autonomous Republic of the Crimea], 11 March 2014, available at: http://www.crimea.gov.ru/news/11_03_2014_1 (accessed 20 April 2016).

[59] Российская ассоциация международного права, Открытое письмо в Исполнительный совет Ассоциации международного права [Open letter to the Executive Council of the Association of International Law], 5 June 2014, available at: http://www.ilarb.ru/html/news/2014/5062014.pdf (accessed 20 April 2016).

[60] В. Толстых, *Воссоединение Крыма с Россией: правовые квалификации* [Reunification of Crimea with Russia: legal qualifications], 5(72) Евразийский юридический журнал 40 (2014).

[61] A. Peters, *The Crimean Vote of March 2014 as an Abuse of the Institution of the Territorial Referendum*, in: Ch. Calliess (ed.), *Herausforderungen an Staat und Verfassung. Völkerrecht – Europarecht – Menschenrechte. Liber Amicorum für Torsten Stein zum 70. Geburtstag*, Nomos, Baden-Baden: 2015, pp. 255-280; W.R. Slomanson, *Crimean Secession in International Law*, Thomas Jefferson School of Law Research Paper No. 2634634, p. 14.

exercised within an existing state; secession may be legitimate only if internal self-determination cannot be exercised. There is an undisputed exception found in the rules of international law (coined in the Declaration of Principles of International Law Concerning Friendly Relations and Cooperation Among States in Accordance with the Charter of the United Nations of 1970 and the Vienna Declaration and Programme of Action of 1993) and in the established practice; namely that a people who suffers under colonial rule or is subject to alien subjugation, domination or exploitation, may exercise external self-determination. Other "people" in principle realize their right to self-determination within an existing state.

In 1996 the UN Committee on the Elimination of Racial Discrimination endorsed a recommendation drawing a clear distinction between internal and external self-determination, determining the former as "the right of each citizen to participate in the conduct of public affairs at any level."[62] In 1998 in the Quebec reference case, the Supreme Court of Canada defined "internal self-determination" as "a people's pursuit of its political, economic, social and cultural development within the framework of an existing state."[63] Internal self-determination can take the form of participatory democracy, federalism, confederalism, unitarianism, regionalism, local government, and/or self-government within an existing state or any other arrangement that accords with the wishes of the people, but is also compatible with the sovereignty and territorial integrity of the existing state.[64]

Crimea is known for having a special status, under the Ukrainian Constitution and laws, among the other administrative and territorial units of Ukraine. It is an autonomous republic with specific issues being under its authority.[65] The Russian language and culture totally dominate in public and private spheres in the peninsula,[66] and this reality could not possibly have changed within the period of the change of government in Ukraine on 22-23 February 2014, and the "decision on Crimea's sovereignty" on 11 March 2014. In general, the broad autonomy of the Autonomous Republic of Crimea within Ukraine is completely in line with the international legal approach of internal self-determination. Therefore any statements that internal possibilities for self-determination had been exhausted can only be groundless.[67]

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[62] M. Shaw, *International Law* (5th ed.), Cambridge University Press, Cambridge: 2003, p. 273.

[63] M. Kohen, *Secession: International Law Perspectives*, Cambridge University Press, Cambridge: 2006, p. 434.

[64] Ijezie, *supra* note 49, p. 3.

[65] Constitution of Ukraine, Art. 137, Art. 138.

[66] *Крымская политика РФ – политика ад хок* [Crimean policy of the Russian Federation is the ad hoc policy], Council for Foreign and Security Policy, January 2010, p. 9.

[67] М. Чауш, *Полуостров безнадеги: Крым через год после аннексии* [Crimean peninsula in despair: a year after annexation], *Крым: реалии, проект Радио Свобода*, 18 March 2015; К. Симоненко, *Аннексия Крыма – эксперимент с непредсказуемыми последствиями* [Annexation of Crimea – the experiment with unpredictable consequences], Крым: реалии, проект Радио Свобода, 5 September 2015.

Even proponents of the right to secession link its legality to a number of *extreme circumstances*.[68] In fact Russia itself, while justifying its actions with respect to Crimea, notes nevertheless that "the right to self-determination may be exercised in three cases: within the colonial context, under foreign occupation, and in the most extreme situations."[69] The Russian Federation's understanding of such situations was clearly explained in its written statement to the ICJ in the *Kosovo* case, where it acknowledged only "truly extreme circumstances, such as an outright armed attack by the parent State, threatening the very existence of the people in question. Otherwise, all efforts should be taken in order to settle the tension between the parent State and the ethnic community concerned within the framework of the existing State."[70] The circumstances referred to by the Russian Federation in the Crimean situation, even were they not false, are drastically different from the above-mentioned conditions.

The secession cannot be justified by the circumstances of the change of government in Ukraine, which according to Russia allegedly "violat[ed] the equality and self-determination of peoples with regard to the Crimeans",[71] for the simple reason that the rules laid out in Ukraine's Constitution, providing for the broad autonomy of Crimea, were neither abrogated nor violated, and the population of the peninsula has been represented by its respective members of the Parliament of Ukraine (MPs), elected in Crimean precincts applying the proportional system.

Even if the broadest criteria were applied, one would fail to find any satisfactory requirement to establish a right to secession in the case of Crimea under modern international law,[72] i.e. the existence of a separate, defined, independent group in the country that overwhelmingly supported the separation; the legitimate demands of a group in the area concerned; systematic discrimination or exploitation in relation to this group; refusal of the central government to compromise; an available and distinct prospective viability of a future separate state; and a positive impact from the grant of independence on regional and international peace or the implementation of democratic procedures for separation, with respect for human rights. Quite the opposite, the Crimea's population had no legal grounds for secession: there had been no discrimination or exploitation in relation to any ethnic group of Crimea on the part of Ukraine, nor any cases of the central government's refusal to compromise; on the contrary it was the self-proclaimed and Russian-controlled authorities of the peninsula who avoided any contacts. Thus the distinct prospective viability of the "Republic of Crimea" as an independent state was never available at all, as reflected in the fact that this "state" was

[68] Steiner et al., *supra* note 45, pp. 1252-1253; J.P. Harris, *Kosovo: An Application of the Principle of Self-Determination*, 6(3) Human Rights Brief 28 (1999); Boccara, *supra* note 44, pp. 128-132.

[69] *Правовые обоснования позиции России*…, *supra* note 57, p. 1.

[70] Written Statement of the Russian Federation to the International Court of Justice, *supra* note 46, pp. 31-32.

[71] Толстых, *supra* note 60, p. 43.

[72] Cop & Eymirlioglu, *supra* note 45, p. 130; Crawford, *supra* note 40, pp. 388–391; Harris, *supra* note 51.

annexed by Russia immediately after its "independence" was proclaimed. In addition, the events in the peninsula had an extremely negative impact on international peace and security, and no general procedural requirements nor human rights were observed during the referendum.

The role of Russia in the Crimean events deserves special attention. Although secession is not *per se* prohibited by international law, the general standpoint is that a *foreign state's interference* with this process is illegal in any event, because it is not in compliance with two fundamental principles of international law – the principle of territorial integrity and the inviolability of borders. This opinion is expressed, for example, in the works by T. Franck,[73] G. Abi-Saab,[74] C. Walter,[75] and J. Crawford.[76] It is also confirmed by state practice. According to the EU Declaration of Guidelines on the Recognition of New States in Eastern Europe and in the Former Soviet Union of 1991, a common position on the process of recognition requires, *inter alia,* respect for the provisions of the Charter of the United Nations and the commitments subscribed to in the Final Act of Helsinki and in the Charter of Paris; and respect for the inviolability of all frontiers, which can only be changed by peaceful means and by common agreement.[77]

In the Crimean peninsula in February – March 2014 not only was there foreign interference with the process of self-determination, but effective and overall control over the events on the part of Russia. Even Russian scholars and a handful of foreign researchers who support them recognise the role of the Russian armed forces in the case of the "self-determination" at hand.[78]

The participation of the Russian Federation in the process of the "self-determination of the people of the Crimea" under international law excludes the self-determination

[73] T. Franck, *Opinion Directed at Question 2 of the Reference,* in: A. Bayefsky (ed.), *Self-Determination in International Law: Quebec and Lessons Learned*, Kluwer Law International, The Hague – London – Boston: 2000, p. 83.

[74] G. Abi-Saab, *Conclusion,* in: M. Kohen (ed.), *Secession: International Law Perspectives*, Cambridge University Press, Cambridge: 2006.

[75] C. Walter, *Postcript: Self-Determination, Secession, and the Crimean Crisis*, in: C. Walter, A. von Ungern-Sternberg, K. Abushov (eds.), *Self-Determination and Secession in International Law*, Oxford University Press, Oxford: 2014, p. 303.

[76] J. Crawford, *State Practice and International Law in Relation to Unilateral Secession*, in: Bayefsky, *supra* note 73, p. 60.

[77] *Declaration on the Guidelines on the Recognition of New States in Eastern Europe and in the Soviet Union* (16 December 1991), text published in 4 European Journal of International Law 72 (1993).

[78] Е. Бородинов, *Анализ крымской внешнеполитической операции* [The analysis of Crimea's foreign policy operation], 1 NB: Международные отношения 81 (2015); *Русские солдаты в Керчи дали интервью!* [Russian soldiers in Kerch gave an interview!], available at http://www.youtube.com/watch?v=b0Z8ymyhx8A (accessed 20 April 2016); Д. Окрест, *Откуда ружьишки?* [Where did the guns come from?], The New Times, 8 March 2014; В. Кряжков, *Крымский прецедент: конституционно-правовое осмысление* [Crimean precedent: constitutional and legal reflection], 5(102) Сравнительное конституционное обозрение 82 (2014), p. 84.

as such, not only its legality. The Russian senior officials and legal scholarship argue that the events in Crimea consisted of two stages – the first was the secession and the proclamation of the Republic of Crimea, and the second was the accession of this new state to the Russian Federation. This position lacks both legal and factual grounds: there was a military occupation and annexation of Crimea, and the "referendum" was the only method to legitimise them.[79]

It must be noted that prior to its occupation of Crimea, Russia had consistently maintained the opposite position,[80] not only in respect of Kosovo in 2009-2010 but also following the collapse of the USSR, in particular in the context of the Chechen Republic, Tatarstan, and the Republic of Altai. The events associated with the Chechen Republic have been straightforwardly regarded by the Russians as separatism,[81] even though under international law the Chechen people have the right to external self-determination – their rights have been consistently violated by Russia; by signing the Khasavyurt Accord in 1996 Russia actually recognized the independence of the Chechen Republic; and the gross and mass violations of human rights by Russia in Chechnya were acknowledged by competent organisations[82] (in connection with which Russia was even suspended from the Council of Europe). The Russian Constitution prohibits secession of the federal constituents, which was subsequently clarified by the Russian Constitutional Court.[83] Hence Russia denies the right to secession to the constituents

[79] *Cf. e.g.* Walter, *supra* note 75, p. 306; T. Christakis, *Self-Determination, Territorial Integrity and Fait Accompli in the Case of Crimea*, 75(1) Zeitschrift für ausländisches öffentliches Recht und Völkerrecht 75 (2015), p. 92; Delahunty, *supra* note 31.

[80] *Правовые обоснования позиции России*…, *supra* note 57, pp. 5, 7.

[81] Явкин, *supra* note 45, p. 2; Л. Лазутин, Г. Игнатенко, *Равноправие и самоопределение народов* [Equality and self-determination of peoples], Инфра-М, Москва: 2002, p. 123; А. Кузьмин, *Принцип территориальной целостности государства: проблемы правовосстановления* [The principle of territorial integrity of a state: the problems of reinstatement of law], 2(33) Евразийский юридический журнал (2011).

[82] Council of Europe, *Resolution 1201 (1999), Conflict in Chechnya*, Official Gazette of the Council of Europe, November 1999; Council of Europe, *Recommendation 1444 (2000) The conflict in Chechnya*, Official Gazette of the Council of Europe, January 2000.

[83] Постановление Конституционного Суда Российской Федерации от 7 июня 2000 г. № 10-П по делу о проверке конституционности отдельных положений Конституции Республики Алтай и Федерального закона «Об общих принципах организации законодательных (представительных) и исполнительных органов государственной власти субъектов Российской Федерации» [Judgment of the Constitutional Court of the Russian Federation on the legality of certain provisions of the Constitution of the Republic of Altai and the Federal Law on General principles the functioning of certain legislative and executive organs of the constituents of the Russian Federation], Российская газета, 11 June 2000; Постановление Конституционного Суда от 13 марта 1992 года № 3-П по делу о проверке конституционности Декларации о государственном суверенитете Татарской ССР от 30 августа 1990 года и ряда законодательных актов Республики Татарстан о проведении референдума [Judgment of the Constitutional Court of the Russian Federation on the legality of the Declaration on state sovereignty of the Tatarstan SSR dated 30 August 1990], Ведомости Съезда народных депутатов Российской Федерации и Верховного Совета Российской Федерации, 26 March 1992.

of the Russian Federation, while at the same time arguing that the right to secede accrues to the residents of Crimea.

The inconsistency of the external self-determination of Crimea with international law is accepted by the European Union, the G7, the Council of Europe, the OSCE and other intergovernmental organisations and institutions. Most importantly, the international community as a whole takes such a stand (cf. UNGA Resolution 68/262 "The Territorial Integrity of Ukraine" of 2014). The same opinion is shared by the great majority of foreign scholars (J. Vidmar,[84] S. Wheatley,[85] Ch. Walter,[86] T.D. Grant,[87] R.J. Delahunty,[88] N. Krisch,[89] T. Christakis,[90] P.M. Olson,[91] R. McCorquodale,[92] L. Mälksoo,[93] Ch. Marxsen,[94] and A. Peters,[95] among others). M. Bothe notes that most international law scholars agree on the fact that Russia annexed Crimea, and in this respect international law sticks to the maxim *ex iniuria ius non oritur* ("law does not arise from injustice").[96]

Hence, under international law secession is only lawful under specific conditions. The analysis of the compliance of the "self-determination of the people of Crimea" with international law leads to the conclusion that there has been no holder of any right to self-determination (a people entitled to secede from Ukraine in accordance with rules of international law), and that there were possibilities for "internal self-determination", which makes the events in Crimea contrary to international law even if the widest list of criteria for the lawfulness of secession were applied.

The legality of Crimea's "self-determination" is also excluded by the fact of the engagement of Russia's armed forces in support of the organisation of the "referendum" and other unveiled Russian actions directed toward the annexation of Crimea. The "Republic of Crimea" has never for even a single day satisfied the relevant international

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[84] J. Vidmar, *Crimea's Referendum and Secession: Why it Resembles Northern Cyprus More than Kosovo*, EJIL: Talk!, 20 March 2014, available at: http://bit.ly/1yTzOXb (accessed 20 April 2016).

[85] S. Wheatley, *Modelling Democratic Secession in International Law*, in: S. Tierney (ed.), *Nationalism and Globalisation: New Settings, New Challenges*, Hart, Oxford: 2015, p. 32.

[86] Walter, *supra* note 75, pp. 293-313.

[87] Grant, *supra* note 32.

[88] Delahunty, *supra* note 31.

[89] N. Krisch, *Crimea and the Limits of International Law*, EJIL: Talk!, 10 March 2014, available at: http://www.ejiltalk.org/crimea-and-the-limits-of-international-law/ (accessed 20 April 2016).

[90] Christakis, *supra* note 79, pp. 75-100.

[91] Olson, *supra* note 14, p. 31.

[92] R. McCorquodale, *Crimea, Ukraine and Russia: Self-Determination, Intervention and International Law*, Opinio Juris, 10 March 2014, available at: http://bit.ly/1madyXq (accessed 20 April 2016).

[93] L. Mälksoo, *Russian Approaches to International Law,* Oxford University Press, Oxford: 2015, p. 182.

[94] Marxsen, *supra* note 13.

[95] A. Peters, *Sense and Nonsense of Territorial Referendums in Ukraine, and Why the 16 March Referendum in Crimea Does Not Justify Crimea's Alteration of Territorial Status under International Law*, EJIL: Talk!, 16 April 2014, available at: http://bit.ly/1h3Smd8 (accessed 20 April 2016).

[96] M. Bothe, *The Current Status of Crimea: Russian Territory, Occupied Territory or What?,* 53 Military Law & Law of War Review 99 (2014), p. 101.

legal criteria for statehood, and the proclamation of the "independence of the republic" was only a means to legitimise the actions of the Russian Federation.

4. RUSSIA'S ALLEGATIONS THAT THE VIOLATIONS OF EQUAL RIGHTS AND THE RIGHT TO SELF-DETERMINATION *VIS-À-VIS* THE CRIMEAN POPULATION ON THE PART OF UKRAINE GAVE RISE TO THE RIGHT OF CRIMEANS TO SECEDE

The Russian document entitled "Legal justification..." states:

> [f]ollowing the unlawful and violent coup in Ukraine the possibility to exercise the right to self-determination within the Ukrainian state was eliminated. There was a spate of killings, mass violence, abductions, attacks on journalists and human rights activists, politically motivated imprisonments, egregious incidents with racist motives (including anti-Russian and anti-Semite), committed upon instructions or with the tacit approval of the Kyiv authorities. Moreover, a group of people supposedly controlled by the illegal authorities of Kyiv attempted to overthrow the legal government of Crimea.
> The authorities in Kyiv do not represent the Ukrainian people as a whole, especially the population of Crimea; they do not exercise effective control over the territory and do not maintain law and order.
> Under these circumstances on 17 March 2014, the Verkhovna Rada of the Republic of Crimea, guided by the results of the referendum held on 16 March, decided to proclaim the independence of Crimea (the Republic of Crimea). On 18 March the Republic concluded a treaty with Russia and was included in its territory.[97]

V. Tomsinov adds, "[t]he coup d'état that took place in Kyiv on 22 February 2014 brought to power pro-Western radicals. Their first steps and statements as state officials were directed at the Crimeans with a view to eradicating the Russian culture, language, and common history of the Russian and Ukrainian people as their major purpose."[98] The same position (threats to the Crimeans and violations of the principle of equality of peoples) is also taken by other Russian scholars.[99]

Firstly, the above-referred positions are in a direct contradiction with Russia's own position with respect to Kosovo.[100] Secondly, the allegations of violence against the

[97] *Правовые обоснования позиции России*…, *supra* note 57, p. 1.

[98] В. Томсинов, *Крымское право или Юридические основания воссоединения Крыма с Россией* [Crimean law or Legal justification of the reunification of Crimea and Russia], Зерцало-М, 2015, p. 132.

[99] *E.g.* О. Хлестов, *Украина: право на восстание* [Ukraine: the right to revolt], available at: http://inter-legal.ru/ukraina-pravo-na-vosstanie (accessed 20 April 2016); Н. Копыткова, *О праве народов на самоопределение и территориальной целостности государств* [On the right of people to self-determination and territorial integrity of states], available at: http://repo.gsu.by/handle/123456789/981 (accessed 20 April 2016); *С. Дикаев, Право народа на самоопределение и воссоединение как виктимологическая проблема* [The right of people to self-determination as an victimological problem], 3(34) Криминология: вчера, сегодня, завтра 40 (2014).

[100] Written Statement of the Russian Federation to the International Court of Justice, *supra* note 46, p. 43.

Crimeans and of the failure of the Ukrainian government to maintain law and order are not based on factual grounds and are manifestly not supported by the evidence of what took place in the course of 2014-2016. It should be noted that by exercising effective control over the peninsula the Russian Federation had ample opportunities to collect the necessary evidence.[101] In this context it is worth emphasising the findings contained in the PACE Resolution concerning the Crimean issue dated 9 April 2014, finding no imminent threats to the rights of the ethnic Russian minority in the country, including, or especially, in Crimea. The Council of Europe also considered that "given that neither secessionism nor integration with the Russian Federation was prevalent on the political agenda of the Crimean population, or widely supported, prior to Russian military intervention […] the drive for secession and integration into the Russian Federation was instigated and incited by the Russian authorities, under the cover of a military intervention."[102] Indeed, the results of the elections held in Crimea in the course of 2000-2010 and, in particular, of the 2012 elections to the Verkhovna Rada indicate the infinitesimal support of the population of the peninsula for the political forces advocating the idea of secession, or even expansion of Crimea's autonomy.[103]

When in April 2014 President V. Putin finally acknowledged that the "referendum" was conducted with the assistance of Russian troops,[104] it became clear that the purpose had been not to protect human rights but to conduct the "referendum" and make the annexation of the peninsula look like "self-determination".

The Russian scholarship is rather consistent on this issue. For example, Y. Aleksandrova refers to the judgment of the Supreme Court of Canada in the Quebec secession case and draws parallels with the situation in Crimea. She indicates that "the natural right of citizens 'to freely pursue their future' emerges exactly in the moment of forced exclusion by the government and its disregard of the opinion of the majority of the people – the holder of national sovereignty. This approach reflects the principles of social justice and social contract."[105] V. Tolstykh believes the right to secession emerges if a na-

[101] Белая книга нарушений прав человека и принципа верховенства права на Украине, *supra* note 7, pp. 16-17, 19.

[102] Council of Europe, *The illegal annexation of Crimea has no legal effect and is not recognised by the Council of Europe*, available at: http://bit.ly/1k7lQvM (accessed 20 April 2016).

[103] Відомості про підрахунок голосів виборців в загальнодержавному виборчому окрузі в межах ОВО [Data on vote-counting in state electoral district], Центральна виборча комісія, available at: http://www.cvk.gov.ua/pls/vnd2012/wp005?PT001F01=900; Відомості про підрахунок голосів виборців в межах одномандатних виборчих округів [Data on vote-counting in single-seat constituent districts] Центральна виборча комісія http://www.cvk.gov.ua/pls/vnd2012/wp039?PT001F01=900 (both accessed 20 April 2016).

[104] Путин признал «зеленых человечков» в Крыму, но не власти в Киеве [Putin admitted the presence of 'green men' in Crimea but not the authority in Kiev], РИА Новости, available at: http://ria.ru/politics/20140417/1004350739.html; Відомості про підрахунок голосів виборців в межах одномандатних виборчих округів [Data on vote-counting in single-seat constituent districts], Центральна виборча комісія, available at: http://www.cvk.gov.ua/pls/vnd2012/wp039?PT001F01=900 (both accessed 20 April 2016).

[105] Александрова, *supra* note 47, pp. 130-133.

tion has been deprived of opportunities to participate in the conduct of public affairs at all levels, and if its opinion is ignored in political decision-making. In his opinion, there are some facts which prove that following the coup d'état in late February 2014, the Crimean population found itself in such a situation:

> [t]he President, who received support of 78.24 percent of voters in the ARC [Autonomous Republic of Crimea] and 84.35 percent in Sevastopol (48.95 percent throughout Ukraine), was removed from his office in 2010 as the result of a coup d'état. Secondly, the coup gave rise to a campaign directed against two parliamentary parties – the Party of Regions (in 2012 it gained 52.26 percent in the ARC and 46.90 percent in Sevastopol; and 30 percent in Ukraine) and the Communist Party of Ukraine (19.41 percent, 29.41 percent and 13.18 percent respectively). Thirdly, following the coup a transitional government was created represented by only five parliamentary parties, namely Batkivschyna and Svoboda which jointly got 36 percent of votes in 2012 (the Cabinet included 7 members of Batkivschyna, 4 members of Svoboda and 9 non-partisans). Fourthly, almost all branches of the government were cleansed at all levels, resulting in a situation whereby key offices were occupied by the representatives of political forces embroiled in the coup. Fifthly, the new government failed to bring about public consensus (a referendum, early parliamentary elections, convening a national representative assembly).[106]

The "Legal justification..." also contains the assertion that "the government in Kyiv did not represent the Ukrainian people as a whole, including, or especially, the population of Crimea."[107]

These arguments are seemingly based on a misrepresentation of the facts and rules of international law. Firstly, as shown above, there was no "coup d'état" in Ukraine. Secondly, the support of Yanukovych by the majority of Ukrainian citizens living in Crimea and voting in 2010 cannot be regarded as proof that "Crimeans did not have opportunities to participate in the conduct of public affairs at all levels." No MP, elected in Crimea in 2012 or representing either the Party of Regions or the Communist Party, was expelled from the parliament, which continued to represent all Ukrainian citizens, including the population of Crimea, as the legitimate state body. In accordance with Art. 75 of Ukraine's Constitution, the Verkhovna Rada of Ukraine is the sole legislative body and represents the people of Ukraine as a whole. Before the early elections for President on 25 May 2014, the parliament elected the interim president, and the votes of the Party of Regions were instrumental in this regard.[108]

Thirdly, Russian researchers and high-ranking officials have never cited any particular examples of the alleged "campaign" they mention against the cited particular

[106] Толстых, *supra* note 60, p. 43.

[107] The Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations 1970, available at http://untreaty.un.org/cod/avl/ha/dpilfrcscun/dpilfrcscun.html (accessed 20 April 2016).

[108] Поіменне голосування про проект Постанови про Голову Верховної Ради України (Турчинова О.В.) [Individual voting for the draft of the Resolution on the Chairman of the Verkhovna Rada] (№ 4177-1) – в цілому, Верховна Рада України, available at: http://bit.ly/1R8zAaS (accessed 20 April 2016).

political parties. Neither sporadic initiations of criminal prosecutions of random MPs, nor skirmishes in the parliament, nor individual withdrawals from a faction can be interpreted as signifying an absence of "opportunities to participate in the conduct of public affairs at all levels" with respect to the population of this or that region. Using this logic, such "absence of opportunities" takes place with regard to the residents of all regions after every parliamentary election should the majority of the relevant population vote for party members who are suspected of committing offences or involved in similar activities. The fact that the new cabinet included parties which received less support in the Crimean Peninsula cannot be used as an argument indicating a genuine absence of "opportunities to participate in the conduct of public affairs at all levels." Once again, using this logic each new cabinet would bring about the aforementioned "absence of opportunities" of the population of this or that administrative unit of a state. It does not really matter that the new cabinet consisted of representatives of only two parliamentary parties: such composition was supported by the majority of the MPs, whereas the cabinet officials might have belonged to whatever party or, as V. Tolstykh himself noted, to neither party (in fact, such officials outnumbered party members). Fourthly, according to the above-mentioned logic the possibilities of internal self-determination within one state were not exhausted at all, while the autonomous status of Crimea meant that no "steps to bring about a public consensus (a referendum, early parliamentary elections, convening a national representative assembly)" were needed.

The arguments that "the referendum in Crimea was legitimate because of the civil war ongoing in Ukraine" (advocated by, *inter alia*, K. Sazonova[109]) are not truthful: during the Crimean events, there were neither hostilities nor war ongoing in Ukraine.

The right to decide on changes within its territory is within the domain of internal jurisdiction and is an attribute of internal sovereignty – one of the key criteria of statehood. Therefore there are no factual and legal reasons to claim that Crimea's secession accords with either international or national law. Any allegations that Ukraine was disrespecting the principle of equality and/or the self-determination of people *vis-à-vis* the Crimean population have no basis in fact.

5. RUSSIA'S CLAIM THAT CRIMEA IS A HISTORICALLY RUSSIAN REGION, ILLEGALLY TRANSFERRED TO UKRAINE IN 1954

Many Russian authors repeat the assertions of the Russian leadership, above all the "Speech on Crimea" by V. Putin of 18 March 2014:

[109] К. Сазонова, *Международное право и украинский конфликт: что было, что будет, чем сердце успокоится* [International law and the Ukrainian conflict: what has happened, what will happen, and what will be a relief], 1 NB: Международное право 1 (2014), available at: http://e-notabene.ru/wl/article_11666.html (accessed 20 April 2016).

> Crimea is historically Russian land … by agreeing to delimit the border we admitted *de facto* and *de jure* that Crimea was Ukrainian territory, thereby closing the issue … However, we expected Ukraine to remain our good neighbour, we hoped that Russian citizens and Russian-speakers in Ukraine, especially its southeast and Crimea, would live in a friendly, democratic and civilized state that would protect their rights in line with the norms of international law... However, this is not how the situation developed. Time and time again attempts were made to deprive Russians of their historical memory, even of their language and to subject them to forced assimilation.[110]

Russia's actions aimed at incorporating the Crimea based on the claim that the peninsula "is historically Russian land" violate numerous acts of the most respected international organisations (e.g., the OSCE, the Council of Europe), as well as the rules of international law guaranteeing territorial integrity, inviolability of borders, and equality and self-determination of peoples. In its Resolution 68/262 of 27 March 2014 the UNGA noted that Ukraine did not authorize the referendum in Crimea and underscored that the referendum had no validity and could not form the basis for any alteration of the status of the ARC or of the city of Sevastopol.

Any arguments that Russia's recognition of Crimea as a part of Ukraine was subject to specific conditions are legally untenable, and the claims about the "forced assimilation", "direct infringement of rights", and "deprivation of historical memory" are not truthful and are not supported by any evidence. Many of the assertions contained in President Putin's "Speech on Crimea" have been successfully challenged by respected international institutions. The issues mentioned were not raised in the conclusion of any of the key bilateral treaties, including especially the 1991 Agreement Establishing the Commonwealth of Independent States.

International law does not recognize historical or ethnic ties (affinity) as giving grounds to claims over territory simply based on the historical right to title (e.g. that this territory used to be Russian at some point in history) and a shared national background with the inhabitants of the territory. Nonetheless, *a propos* "historical claims" it is advisable to examine the historical background. The earliest mentions of the inhabitation of the Crimean Peninsula are dated in the 12th century BC, while Russia annexed the peninsula in the late 18th century, which manifestly demonstrates that for 3,000 years Crimea was not related to Russia. The peninsula was inhabited by numerous Greek states and the Scythian state, Pontus; it was controlled by Rome, Byzantium, Genoa, the Khazar state, and the Crimean Khanate, which subsequently became a vassal of the Ottoman Empire.

It should also be noted that the Russian Empire that annexed the peninsula in 1783[111] was *de facto* and by definition a multinational state, and Crimea a place where

[110] Обращение Президента Российской Федерации от 18.03.2014 г. [The address of the President of the Russian Federation dated 18 March 2014], Пресс-служба Президента Российской Федерации, 2014.

[111] A. Ward, G. Gooch, *The Cambridge History of British Foreign Policy 1783-1919*, Cambridge University Press, Cambridge: 1970, p. 391.

neither Russia nor Ukraine played a key role. Therefore, while Crimea used to be a part of an empire, it was not a part of Russia. The latter (as the Russian Soviet Federal Socialist Republic) possessed the peninsula during the Soviet period (1921–1954). In 1941–1944 Crimea was occupied by Nazi Germany and Romania.[112]

Tragic events prefaced the 1954 developments. In May 1944, around 200,000 Crimean Tatars and 25,000 Bulgarians, Greeks, Armenians, and other ethnic groups were barbarously deported by the Soviet authorities to the Central Asian regions of the USSR.[113] The deportation was carried out under extremely harsh conditions and resulted in numerous deaths, both due to the killing of those who tried to oppose the deportation and starvation and diseases on the way to the destinations or following the resettlement.[114] The estimated death toll was put at between 15–25 percent according to Soviet authorities, while the activists of the Crimean Tatar National Movement, who collected data about the dead in the 1960s, insist it was 46 per cent.[115]

In addition to the humanitarian consequences of the Soviet crimes, economic chaos prevailed in the region.[116] At a time when the whole Union was celebrating the 300th anniversary of the Pereyaslav Agreement in 1954 the decision was made to transfer Crimea to the Ukrainian SSR as a "symbolic gesture of eternal friendship between the Russian and Ukrainian peoples: which marked the celebrations, and as well constituted an attempt to resolve the economic crisis.[117]

On 25 January 1954, Protocol No. 49 "On the transfer of the Crimean region from the RSFSR to the Ukrainian SSR" was adopted by the Presidium of the Central Committee (CC) of the Communist Party of the USSR. The meeting was attended by such members of the CC Presidium as N. Khrushchev, K. Voroshilov, N. Bulganin, L. Kaganovich, A. Mikoyan, M. Saburov, and P. Pervukhin. On 5 February 1954, the Council of Ministers of the RSFSR adopted a resolution "On the transfer of the Crimean region from the RSFSR to the Ukrainian SSR", whereby the transfer was recognised as desirable, and the Supreme Council of the RSFSR was requested to consider the matter and submit the corresponding application to the USSR's Presidium of the Supreme Council

[112] A. Bebler, *Crimea and the Russian-Ukrainian Conflict*, 15(1) Romanian Journal of European Affairs 35 (2015), p. 38.

[113] Постановление ГКО СССР № ГОКО-5859 от 11 мая 1944 г. за подписью И. В. Сталина [A decree signed by Stalin dated 11 May 1944], Мемориал, available at: http://bit.ly/1LzF5yV (accessed 20 April 2016).

[114] Т. Дагджи, *Сталинский геноцид и этноцид крымскотатарского народа. Документы, факты, комментарии* [The Stalinist genocide and ethnocide of Crimean Tatars: documents, facts and comments], Симферополь, 2008, pp. 25-26.

[115] Г. Бекирова, *Крымские татары. 1941 – 1991 (Опыт политической истории), Том 1* [Crimean Tatars. 1941-1991 (The experience of political history, Volume 1)], *Симферополь* 2008, p. 49.

[116] *Депортація кримських татар: історичні та правові оцінки* [Deportation of Crimean Tatars: historical and legal assessments], *Портал з протидії расизму, ксенофобії та нетерпимості в Україні*, available at: http://www.xenodocuments.org.ua/factitem/1014 (accessed 20 April 2016).

[117] А. Москалець, *Про передачу Кримської області зі складу РРФСР до складу Української РСР: історико-правовий аспект* [On the transfer of the Crimean region from the RSFSR to the Ukrainian SSR], 15 Вісник Дніпропетровського університету. Науковий журнал (2008).

(SC).[118] On 13 February 1954, the Presidium of the SC issued a decree to "request the Presidium of the SC of the Union of SSR to transfer the Crimean region from the Russian SFSR to the Ukrainian SSR."[119]

On 19 February 1954, the Presidium of the SC issued a decree to transfer the Crimean region to the Ukrainian SSR.[120] During the meeting Soviet leaders voiced the following reasons for this decision: (a) the territorial proximity of Ukraine and Crimea; (b) the community of their economies and close economic and cultural ties between them; (c) the symbolism of the transfer of the peninsula to strengthen the relations between Russia and Ukraine;[121] and to some extent (d) the necessity to prove the plausibility of the unification of Ukraine and Russia.[122]

On 25 April 1954, the SC adopted the Law "On the transfer of the Crimean region from the RSFSR to the Ukrainian SSR", which: (a) approved the decree of the Presidium of the Supreme Soviet on 19 February 1954, (b) made amendments to Arts. 22 and 23 of the Constitution of the USSR – the Crimean region was excluded from the list of regions of the Russian Federation (Art. 22) and the list of Ukrainian areas (Art. 23) was supplemented by the Crimean region.[123]

In his "Speech on Crimea" of 18 March 2014 President Putin denied the legality of the 1954 decision to transfer Crimea, putting forth the following arguments:

> [t]his was the personal initiative of the Communist Party head Nikita Khrushchev... this decision was made in clear violation of the constitutional norms that were in place even then. The decision was made behind the scenes. Naturally, in a totalitarian state nobody bothered to ask the citizens of Crimea and Sevastopol. They were faced with the fact. People, of course, wondered why all of a sudden Crimea became part of Ukraine. But on the whole – and we must state this clearly, we all know it – this decision was treated as a formality of sorts because the territory was transferred within the boundaries of a single state.[124]

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[118] Постановление Совета Министров РСФСР «О передаче Крымской области из состава РСФСР в состав УССР', № 156 от 05.02.1954 г. [Resolution of the Council of Ministers of the RSFSR on the transfer of the Crimean region from the RSFSR to the Ukrainian SSR dated 5 May 1954], ГААРК, НСБ, СИФ. – 1954.

[119] Постановление Президиума Верховного Совета РСФСР «О передаче Крымской области из состава РСФСР в состав Украинской ССР» от 13.02.1954 г. [Resolution of the Supreme Council of the RSFSR on the transfer of the Crimean region from the RSFSR to the Ukrainian SSR dated 13 February 1954], ГААРК, НСБ, СИФ, 1954.

[120] Стенограмма заседания Президиума Верховного Совета СССР 19 февраля 1954 года [Stenograph of the session of the Presidium of the Supreme Council of the USSR dated 19 February 1954], Крым, available at: http://kro-krim.narod.ru/ZAKON/sten1954.htm (accessed 20 April 2016).

[121] *Ibidem*.

[122] С. Кульчицький, *Український Крим: до 50-річчя Кримської області в УРСР* [Ukrainian Crimea: 50th anniversary of Crimea's being part of the Ukrainian SSR], Історія області в УРСР; матеріали засідання круглого столу, Київ: 2004, p. 56.

[123] *Transfer of the Crimean region to Ukraine in 1954: Legal aspects*, available at: http://www.smucc.us/uploads/3/3/6/8/3368062/_angl_pravovy_aspekt.pdf (accessed 20 April 2016).

[124] Обращение Президента Российской Федерации, *supra* note 111.

It must first be borne in mind that there were no violations of the Soviet constitutional norms and Khrushchev's decision was not made behind the scenes: the Presidium of the SC of the Communist Party of the USSR agreed on the decision from the very outset, not to mention the central position of the Communist Party of the USSR enshrined in the constitutions of the Soviet Republics and the established practice.

The following oft-repeated statements, namely: "…the Presidium of the Supreme Council voted for this decision with only 13 votes. The Presidium comprised 27 people, therefore, there was no quorum, and the remaining 14 people were simply absent"[125] – are simply untrue. The respective meeting of the Presidium of the Supreme Council of the USSR dated 12 February 1954 was attended by 23 out of 33 members[126] (the allegations about 13 out of 27 are fake and spread by the Russian mass media to misinform foreign audiences).[127] The transfer was approved by the RSFSR. Its Supreme Council was unanimous in excluding the Crimean region from the list of its constituent regions. Pursuant to Art. 22 of the Constitution of the RSFSR, the SC was the highest authority of the Republic at the time. Therefore, any allegations of procedural violations or irregularities are groundless.

Statements about the absence of a referendum are also groundless. Note that until 1991 referendums had not been held in the USSR and their legal framework was not generally described in the 1937 Constitution of the RSFSR, except for a mention in Art. 33 that the Presidium of the SC could hold referendums.

Secondly, *a propos* Sevastopol (Russian authors emphasise that it was not transferred to Ukraine and had a republican subordination), its status was explained by the better supply of goods to inhabitants and the direct administration of enterprises and institutions within the city. Sochi was another example of a city with such a status. In practice, legislation of the Union was supplemented by legislation of the respective Soviet republic. Therefore, the legislation of the Ukrainian SSR was applied in Sevastopol.

Thirdly, the true reasons underlying the 1954 decision should also be pointed out. The 1944 deportation resulted in an acute agricultural and economic crisis in the peninsula and thus contributed to the transfer of Crimea to Ukraine.[128] It was Ukraine that was charged with solving all these problems, covering all losses from its budget.[129]

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[125] В. Лазьер, *Крым: Pro и Contra (обзор политической прессы во Франции)* [Crimea: pro and contra (an overview of political press in France)], 1 Политический вектор-М. Комплексные проблемы современной политики 5 (2014).

[126] Д. Караичев, *Мифы о незаконности передачи Крыма в 1954 году* [Myths on the illegality of the transfer of Crimea in 1954], Зеркало недели, 13 Janaury 2013.

[127] Д. Караичев, *О фальсификации доказательств «незаконности» передачи Крыма в 1954 году из состава РСФСР в состав Украинской ССР* [On falsification of the evidence about the "illegality" of Crimea's transfer from RSFSR to Ukrainian SSR in 1954], 30 August 2015, available at: http://bit.ly/22r5IO5 (accessed 20 April 2016).

[128] М. Касьяненко, *Кримський «Подарунок Хрущова»: документальний аналіз міфу* [Crimean "gift from Khrushchev": a documentary analysis of the myth), День, 19 February 2004.

[129] В. Велігодський, *Суспільно-політичний розвиток Криму: сторінки історії (до 50-річчя входження Криму до складу України)* [Social and political developments in Crimea: historical overview

Following the 1954 decision, the North Crimean Canal, an irrigation canal of utmost importance, was constructed in Crimea, together with a number of chemical factories and plants. This fostering of this economic recovery already in the first decade following the transfer of Crimea to Ukraine constitutes a weighty proof of the Ukrainian people's contribution to the post-war renaissance of the peninsula.[130] This move was aimed at showing the political unity of Ukraine and Russia.

The legislation of the Russian Federation (not to mention international law) does not empower its authorities to determine whether the transfer of the peninsula in 1954 was in accordance with the Constitution and legislation of the Soviet Union, nor to act upon any such determination. The same concerns the arguments on the (un)constitutionality of Soviet authorities' decrees presented by senior officials of the Russian Federation and scholars. It goes without saying that such evaluations have no legal consequences.

Positive obligations on the part of Russia to respect the borders between the two states are stipulated in: the 1990 Agreement between the Ukrainian SSR and Russian FSSR;[131] the preamble and Art. 2 of the 1997 Treaty of Friendship, Cooperation and Partnership between Ukraine and the Russian Federation;[132] and Arts. 1 and 2 of the 2003 Treaty between the Russian Federation and Ukraine on the Russian-Ukrainian State Border.[133] These treaties, together with a number of other instruments (including the treaties on the deployment of the Russian Black Sea Fleet in Ukraine)[134] were based upon the principle of the territorial integrity of Ukraine and the inviolability of its borders, presuming Crimea to be a part of the territory of Ukraine. Russia's obligation

(the 50th anniversary of the integration of Crimea into Ukraine)], Культура народов Причерноморья, 48 (2004), pp. 69-74.

[130] Москалець, *supra* note 117.

[131] Договір між Українською Радянською Соціалістичною Республікою і Російською Радянською Федеративною Соціалістичною Республікою від 19.11.1990 р. [Agreement between the Ukrainian SSR and Russian SSR dated 19 November 1990] (ВВР), 1990, № 49, pp. 637.

[132] Договір про дружбу, співробітництво і партнерство між Україною і Російською Федерацією від 31.05.1997 р. [Treaty on Friendship, Cooperation and Partnership between Ukraine and the Russian Federation dated 31 May 1997], Офіційний вісник України, 1999, № 20, p. 518.

[133] Договір між Україною і Російською Федерацією про українсько-російський державний кордон від 28.01.2003 р. [Treaty between the Russian Federation and Ukraine on the Russian-Ukrainian State Border dated 28 January 2003], Офіційний вісник України, 2004, № 1681-IV.

[134] Угода про статус та умови перебування Чорноморського флоту Російської Федерації на території України [Agreement between the Russian Federation and Ukraine on the status and conditions for the division of the Black Sea Fleet's stay in Ukraine], Дипломатический вестник МИД Российской Федерации, № 8, 1997; Угода між урядами про взаємні розрахунки, пов'язані з поділом Чорноморського флоту та перебуванням Чорноморського флоту Російської Федерації на території України [Agreement between the Russian Federation and Ukraine on clearing operations associated with the division of the Black Sea Fleet], Дипломатический вестник МИД Российской Федерации, № 8, 1997; Угода між Україною і Російською Федерацією про параметри поділу Чорноморського флоту від 28.05.1997 [Agreement between the Russian Federation and Ukraine on the parameters for the division of the Black Sea Fleet dated 28 May 1997], Дипломатический вестник МИД Российской Федерации, № 8, 1997.

to respect the existing borders of Ukraine is also directly envisaged in Art. 1 of the Budapest Memorandum of 1994.[135]

The Russian Federation recognised Ukraine's sovereignty over the peninsula in numerous treaties, during negotiations, at summits, and in meetings of the UN Security Council when a relevant issue was raised in the course of 1991–2014. Russia has never challenged the status of Crimea before any international institution. The texts of Russian-Ukrainian agreements between 1990–2003 clearly refute V. Putin's allegation that Crimea was recognised as Ukrainian territory subject to Russia's consent to the delimitation of borders.

Even some provocative decisions by the Russian State Duma, adopted in 1992–1996,[136] were based on an acknowledgement that Crimea was Ukrainian. The ratification of the Treaty of Friendship by the Russian parliament rendered any claims to the peninsula baseless, and they were recognized as such by even the fiercest nationalists among the members of the Duma.[137] Those who claim that the transfer of Crimea to Ukraine in 1954 had no international legal consequences tend to disregard the provision of Art. 2 of the Russian Law "On the State Border of the Russian Federation" of 5 April 1993, that the state border of the Russian Federation shall be the border of the RSFSR as established by the relevant treaties in force and legislative acts of the former

[135] Меморандум про гарантії безпеки у зв'язку з приєднанням України до Договору про нерозповсюдження ядерної зброї від 5.12.1994 [Memorandum on Security Assurances in connection with Ukraine's accession to the NPT dated 5 December 1994], Офіційний вісник України, 2007, № 13, p. 123.

[136] Постановление Верховного Совета Российской Федерации от 21 мая 1992 года № 2809-1 «О правовой оценке решений высших органов государственной власти РСФСР по изменению статуса Крыма, принятых в 1954 году» [Decree of the Supreme Council of the Russian Federation on the legal qualification of the decision of supreme organs of the RSFSR], available at: http://sevkrimrus.narod.ru/ZAKON/o1954.htm (accessed 20 April 2016); Заявление Верховного Совета Российской Федерации Верховному Совету Украины от 22.05.1992 г. [Address by the Supreme Council of the Russian Federation to the Council of Ukraine dated 22 May 1992], available at: http://sevkrimrus.narod.ru/ZAKON/o1954.htm (accessed 20 April 2016); Постановление Верховного Совета Российской Федерации «О решении Президиума Верховного Совета СССР от 19.02.1954 г. и Верховного Совета УССР от 26.04.1954 г. про выведенне Крымской области из состава РСФСР» [Decree of the Supreme Council the Russian Federation dated 19 February 1954 on the transfer of the Crimean region from the RSFSR to the Ukrainian SSR, and of the Supreme Council of Ukrainian SSR dated 26 April 1954], Ведомости Верховного Совета РФ, 1992, № 6, ст. 242; Постановление Государственной Думы Федерального Собрания Российской Федерации от 23.10.1996 № 721-II ГД О Федеральном законе «О прекращении раздела Черноморского флота» [Resolution of State Duma of the Federal Council of the Russian Federation dated 23 October 1996], Москва, 23.10.1996; Постановление Совета Федерации Федерального Собрания РФ от 5 декабря 1996 г. N 404-СФ «О комиссии Совета Федерации по подготовке вопроса о правовом статусе города Севастополя» [Decision of the Council of Federation of the Federal Assembly on Preparation of the Commission on the legal status of the city of Sevastopol], Система ГАРАНТ, available at: http://base.garant.ru/3936483/#ixzz3mOLTj5RH (accessed 20 April 2016).

[137] К. Затулин, О. Севастьянов. *Два года спустя после обмана в прошлом веке* [Two years after the deception of the last century], Независимая газета, 1 February 2001.

USSR,[138] meaning that such consequences were directly recognised in Russian Federation law itself.

The statement that "Crimea was in essence peacefully annexed by Ukraine", made by A. Kapustin and other Russians, is an oxymoron. According to international law, an annexation means the forced acquisition of territory and it cannot by definition be peaceful. Besides, they disregard the legal meaning of the principles of the territorial integrity of states, inviolability of borders, equality and self-determination of peoples, as well as Russia's explicit recognition of Ukraine's sovereignty over Crimea. The disintegration of the USSR was legally documented in a series of agreements (e.g. the Belovezha Accords of 8 December 1991).[139] The existing borders between the republics were established in accordance with the *uti possidetis* principle laid down in Art. 5 of the Belovezha Accords and in the Alma-Ata Declaration of 21 December 1991.[140] Therefore Ukraine has not annexed Crimea: the peninsula belongs to Ukraine just as it did before the collapse of the Soviet Union.

Hence the claims that the transfer of Crimea to Ukraine in 1954 contradicted the constitutional laws of the USSR, as well as the statements on Russia's historical rights, have no legal basis. The assertions that Russia recognised the Crimean part of Ukraine upon certain conditions are simply not true, neither factually or legally.

CONCLUSIONS

This comprehensive analysis shows that Russian scholarship on international law has had its say about the events in Crimea which unfolded between February – April 2014. Systematic work is being carried out in this field. In addition to shaping favourable public opinion in Russia and trying to do so abroad, their activities may also be focused on preparation for possible litigation and honing future arguments to bring forward in a dispute or a criminal trial before competent international bodies. It should be noted that despite their multitudinous volume, the Russian scholarly arguments suffer from an international law background problem. This general conclusion may be equally applied to any point they may raise.

As far as specific arguments are concerned, we should stress, first of all, that Russia's use of force against Ukraine in Crimea in 2014 meets none of the legal requirements for the lawful use of force contained in international law. It does not amount to either a humanitarian intervention or preventive self-defence; it fails to satisfy the criteria for

[138] Закон о государственной границе Российской Федерации от 5 апреля 1993 г. [Law on the state border of the Russian Federation], Российская газета, № 84, 04.05.1993.

[139] Угода про створення Співдружності Незалежних Держав 8.12.1991 р. [Agreement on the establishment of the Commonwealth of Independent States], Офіційний сайт Верховної Ради України, available at: http://zakon2.rada.gov.ua/laws/show/997_077 (accessed 20 March 2016).

[140] Алма-Атинська декларація [Alma-Ata Declaration], 21 December 1991, Зібрання чинних міжнародних договорів України, 1992, № 1, с. 312.

the "protection of citizens abroad" concept. The references to the requests by V. Yanukovych and S. Aksyonov are equally flawed. In light of the UN Charter, the UNGA resolution on "Definition of Aggression" and the Rome Statute of the ICC, Russia's actions can only be qualified as an armed attack and act of aggression against Ukraine.

The events in Crimea between February – April 2014 do not fulfil any conditions for lawful self-determination in the form of secession. With the assistance of the Crimean authorities, controlled by the Russian military and security forces, the Russian Federation committed an act of aggression against Ukraine, and in accordance with the qualification of such actions in international law, illegally occupied and annexed the territory of a another sovereign state.

The statements that Ukraine has repeatedly disregarded the principle of the equality and self-determination of peoples vis-à-vis the Crimean population, thus giving them the right to secede, is at odds with the facts, the rules of international law, and the record of Ukrainian legislation.

The assertions that Ukraine had been exercising "peaceful annexation" of the Crimea since 1991 are groundless from the standpoint of international law because annexation cannot, by definition, be peaceful. The allegations that Russia recognised Crimea as a part of Ukraine *subject to certain conditions* are also false: none of the numerous international agreements between the two states mention any such conditions. In addition, such a practice would be contrary to international law principles on territorial integrity and the inviolability of borders.

There are also no legal justifications for the contention that the transfer of Crimea to Ukraine in 1954 contradicted the constitutional law of the USSR. In addition, no authority of the Russian Federation is competent to make any legally-binding decisions on this under Russian legislation (not to mention international law). Russia is obliged to respect the status of Crimea as an integral part of Ukraine. This obligation is enshrined in a number of international treaties.

The contributions of Russian international law scholars reflect the political character of their publications. This can be partly explained by their research objective – to prove the legality of Russia's seizure of Crimea by any means, against all odds. This explains why the representatives of the Russian doctrine have failed to conduct an in-depth study of the February-April 2014 events in light of relevant international legal principles and rules. They also misinterpret, misrepresent or distort legal norms, and resort to subsidiary sources for the determination of rules even though there are relevant primary sources of international law. Russia has consistently disregarded the fundamental principles of international law governing the relations between the two states during the entire post-Soviet period.

It should be mentioned that prior to the annexation, the Russian scholarship never raised the issue of Russia's right to carry out any operation "to return Crimea to Russia". While there were a few articles arguing the illegality of the 1954 decisions authorizing the transfer of the Crimean peninsula to Ukraine, nevertheless the authors acknowledged that Crimea was a part of Ukraine under international law and Russia was

committed to respecting this status. Russian senior officials have consistently advocated this position, even during the course of the annexation in February 2014. This is why the entire situation serves as an example of an *ex-post facto* justification.

The undercover nature of the military operation aimed at the annexation of the peninsula helps to explain this characteristic of the arguments. Indeed, evidence of Russian claims on Crimea could put the operation at risk, eliminating the argument that it was a spontaneous "people's choice". The Russian doctrine substantiates the statements of the authorities and replicates them. Another peculiarity of the Russian doctrine is the absence of any critical analysis of the politicians' statements.

Thus, the Russian official and doctrinal stance throughout the course of 2014–2016 reflects an international legal nihilism. Not only does it undermine Russia's international standing (a nihilist state is necessarily perceived as unpredictable and dangerous), but it also creates new and major threats and challenges for international law and the international order. Among the major risks associated with such a situation, I would posit the following: the danger of replacing an "international law of cooperation" by the "law of the strongest"; the probability of similar actions undertaken by other authoritarian regimes; and the threat to the nuclear disarmament process arising out of the gross violations of the 1994 Budapest Memorandum, which could encourage some states to implement nuclear programs and others to start developing such programs. Such threats have become even more acute in connection with Russia's use of force in Syria, which was partially caused by the weak international community response to its aggression against Ukraine.