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## Crimea's Annexation in the Light of International Law. A Critique of Russia's Legal Argumentation

*Author(s):* Oleksandr Merezhko

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# Crimea's Annexation in the Light of International Law. A Critique of Russia's Legal Argumentation<sup>1</sup>

Oleksandr Merezhko

Kyiv National Linguistic University,  
Department of Law

## Abstract

Crimea's annexation by Russia violated a whole range of the fundamental principles of international law and international treaties guaranteeing Ukraine's territorial integrity, the inviolability of its borders, and security. By annexing Crimea, Russia also violated the *estoppel* principle of law and international morality. In light of the principles of contemporary international law, as well as in light of the Russian doctrine of international law, the arguments put forward by Russia's President Putin, Russian officials, and international lawyers are untenable and in contradiction of the previous Russian doctrine's approach towards the relationship between the principles of self-determination and territorial integrity.

**Key Words:** International law, Crimea's annexation, aggression, use of force in international law, principles of international law.



It is at least the third time in the history of international relations and international law that Crimea has played an important and symbolic role. The first time was the Crimean war of 1853–1856, which ended in 1856 in Russia's defeat and an international treaty establishing a new balance of power in Europe. The second time was in 1945, when the so-called Yalta system of international relations was created, which paved the way for the emergence of contemporary international law and the UN. Symbolically also, the Yalta Conference of the anti-Hitler coalition's leaders was preceded by the genocide of the Crimean Tatars in 1944, half of whom died as a result of forcible deportation and now again find themselves under threat on the territories occupied by Russia. Against this background, Crimea's annexation by Russia in 2014, the year of the centennial of the First World War, marked a serious crisis of contemporary international law and the world system of security as a whole, the beginnings of which can be traced to the Yalta Conference. It can be said that contemporary international law has stumbled upon Crimea. To put it differently, Crimea's annexation by Russia challenged the system of contemporary international law and now we have to choose between the rule-of-law and the rule-of-force

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in international relations. It is a crucial moment in the history of mankind, and the history of international law upon which the future depends.

The purpose of the present article is to shed some light on Crimea's annexation by Russia in the context of the fundamental principles of international law, and taking into consideration of those arguments, which were put forward by Russia in an attempt to justify this annexation. But first, in order to comprehend what really happened with respect to Crimea in the light of international law, we need to consider Crimea's legal status in the USSR. We will then consider those international documents, which guaranteed Ukraine's territorial integrity, security, and political independence, and which were violated by Russia in the most cynical and brutal of ways.

## I. The Status of Crimea in the USSR

The prevailing view in Russian doctrine of international law on the eve of Russia's aggression against Ukraine and Crimea's annexation was that:

[T]he disintegration of the USSR has led to the emergence on its territory of the fifteen newly independent states, the former Soviet Republics, which undertook an obligation to recognize and respect the territorial integrity of each other and the inviolability of borders existing between them, which at the moment of the termination of the USSR's existence were administrative borders of the Soviet Republics.<sup>2</sup>

This generally correct statement nevertheless needs some explanation and corrections.

From the outset it should be noted that the USSR by its legal nature was a subject of international law, a federation, however, a rather specific kind of federation, as it was referred to in Soviet legal literature, a "soft federation." This meant that not only the USSR was a sovereign state and a subject of international law, but also that its component — Soviet republics were also sovereign states and subjects of international law, as recognized in the fundamental Soviet "Course of International Law": "In the Soviet Union both the federation as a whole (the Union of SSR) and its component union republics are sovereign."<sup>3</sup> For example, the Ukrainian Soviet Socialist Republic (hereinafter — the Ukrainian SSR) and the Belorussian Soviet Socialist

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2 N. V. Ostroukhov, "Territorialnaia tselostnost gosudarstv v sovremennom mezhdunarodnom prave i ee obespechenie v Rossiiskoi Federatsii i na postsovetskom prostranstve [The State's Territorial Intergity in Contemporary International Law and its Assurance in the Russian Federation and Post-Soviet Countries]," (avtoreferat dissertatsii na soiskanie uchenoi stepeni doktora iuridicheskikh nauk, Moscow, 2010), 9.

3 Y. A. Baskin et al., eds., *Kurs mezhdunarodnogo prava: V 7 tomakh* [Course in International Law: In 7 Volumes], vol. 1 (Moscow: Nauka, 1989), 168.

Republic were member states, and even founding members, of the UN, in accordance with the Charter by which only sovereign states can be its members.<sup>4</sup>

Under article 72 of the USSR's Constitution of 1977, each Soviet republic retained the right to freely withdraw from the USSR. Article 76 of the USSR's Constitution provided that "a Union republic is a sovereign Soviet socialist state." Article 80 of this Constitution envisaged the right of Soviet republics to enter into relations with foreign states, to conclude with them international treaties and exchange with them diplomatic and consular representatives, and to participate in the activities of international organizations.

The USSR was created by the Union Treaty of 1922, and was terminated (dissolved) in 1991 by the Belavezha Accords (December 8, 1991), according to which the USSR ceased to exist as "a subject of international law" and as a "geopolitical reality." It is worth stressing at this juncture that the twelve former Soviet republics (with the exception of the three Baltic States, which were forcibly annexed by the USSR) are successor-states with respect to the USSR, and the Russian Federation, as one of these successor-states, cannot be considered to be the "continuator of the USSR."<sup>5</sup>

Thus, Ukraine was a sovereign state before the USSR was created, was a state during its existence, and continued its existence as a sovereign state after the dissolution of the USSR. Ukraine's status as a sovereign state was enshrined in the Constitution of the USSR, as well as in the Constitution of the Ukrainian SSR, which was a party to a number of international treaties and a member of some international organizations. Under Art. 69 of the Ukrainian SSR's Constitution, Ukraine retained the right to freely withdraw from the USSR. The territory of the Ukrainian SSR could not be changed without its consent, and the borders between the Ukrainian SSR and other Union republics could be changed only through the mutual agreement of the correspondent Soviet republics, which was subject to confirmation by the USSR.

Some might argue that Ukraine's status as a sovereign state in the USSR, as well as its constitutional right to withdraw from the USSR, had a formal, rather than a real character. Nevertheless, but for this status and constitutional right, Ukraine would not be legally able to withdraw from the USSR in 1991 and gain actual political independence. Additionally, it should be kept in mind that the USSR was created by means of an international treaty (the Union Treaty of 1922), and according to the law of international treaties Ukraine had the right to withdraw from this treaty.

Therefore, Ukraine created the USSR as a sovereign state, with state, not administrative, borders, which remained state borders in the USSR. The argument that the borders between Soviet republics were administrative, rather than state, appears dubious, because if it was so, then there would be no difference between, say, borders between the Ukrainian SSR and the Russian Soviet Federative Socialist Republic (hereinafter — the RSFSR), on the one hand, and

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4 It can be argued, of course, that the Ukrainian SSR was admitted to the UN "for political reasons," but this doesn't have impact upon its official legal status as a subject of international law and sovereign state.

5 Logically and legally there is no continuity and identity between Russia, previously the RSFSR, and the USSR. Russia existed before the USSR as a state and a subject of international law, continuing its existence during the USSR, as well as after its dissolution.

borders within the RSFSR, on the other hand. In other words, borders between Soviet republics were legally state borders, whereas borders within these republics were administrative. It should be noted that in the USSR, its legislation, and in its legal scholarship, borders between Soviet republics were never officially regarded to be “administrative.”

One of the myths promoted by Russian propaganda with respect to Crimea’s transfer to Ukraine and expressed by Russia’s president in one of his addresses is about “Khrushchev’s gift to Ukraine,” as if it was a unilateral ungrounded move, sort of a whim of the Soviet leader. In this connection it is also argued that Russia and the Crimean population allegedly had not expressed its consent to transfer Crimea to Ukraine.

In actuality, Crimea was transferred to Ukraine in accordance with Soviet constitutional law. On 19 February 1954, the Presidium of the Supreme Council of the USSR, taking into consideration economic, cultural and geographical factors, as well as the official positions of the Russian SFSR and the Ukrainian SSR, adopted an edict on the transfer of the Crimean oblast from the Russian SFSR to the Ukrainian SSR. On 26 April 1954, the Supreme Council of the USSR, in accordance with the Soviet legislation, adopted the law “On the Transfer of the Crimean Oblast from the RSFSR to the Ukrainian SSR.”

Russia’s argument that at that time the Russian SFSR did not give its consent to Crimea’s transfer to Ukraine is not correct, as on 2 June 1954, at the fifth session of the Supreme Council of the RSFSR delegates unanimously voted in favor of bringing the Constitution of the RSFSR in line with the Constitution of the USSR, which in effect affirmed Russia’s consent to Crimea becoming part of Ukraine. In other words, from a legal point of view the change in Art. 14 of the Constitution of the RSFSR, and the removal from it of the Crimean oblast is evidence of Russia’s consent to Crimea’s transfer to Ukraine. From the perspective of the law of international treaties, the consent of Russia to transfer Crimea to Ukraine and the consent of Ukraine to accept it can be considered to be an international agreement.

The legal status of Crimea as an integral part of Ukraine’s territory was enshrined in the Constitution of the Ukrainian SSR of 1978. Article 77 of this Constitution enumerates the Crimean oblast among other oblasts of the Ukrainian SSR. Sevastopol is also mentioned in this article as a “city of republican subordination” in the Ukrainian SSR.

Was Crimea transferred to Ukraine in violation of Soviet law? In this context a question inevitably arises: of why Russia, during the existence of the USSR, and for 23 years following its disintegration, including 14 years of President Putin’s rule as Russia’s president and prime-minister, never officially raised this issue? Moreover, Russia has always officially supported Ukraine’s territorial integrity.

It is also important to note that in the December referendum of 1991, held on the issue of Ukraine’s proclamation of independence, 54 per cent of the Crimean population voted for Ukraine’s independence.

## **II. International Documents Guaranteeing Ukraine’s Territorial Integrity in Russian-Ukrainian Relations**

The first international treaty concluded between Ukraine and Russia, guaranteeing the territorial integrity of Ukraine and the inviolability of its borders, was concluded in Kyiv on 19 November

1990. Article 6 of this Treaty stipulated: "The High Contracting Parties recognize and respect the territorial integrity of the Russian Soviet Federal Socialist Republic and the Ukrainian Soviet Socialist Republic within the existing framework of USSR borders."

After the dissolution of the USSR one of the first international documents which fixed the territorial integrity of former Soviet republics and the inviolability of their borders became the Almaty Declaration of 21 December 1991, which stated the following in its preamble:

The following Independent States: the Azerbaijani Republic, the Republic of Armenia, the Republic of Belarus, the Republic of Kazakhstan, the Republic of Kyrgyzstan, the Republic of Moldova, The Russian Federation (RSFSR), The Republic of Tajikistan, Turkmenistan, The Republic of Uzbekistan, and Ukraine,

- aiming to construct democratic constitutional states, relations between which will develop on the basis of mutual recognition and respect of state sovereignty and sovereign equality, the inherent right to self-determination, principles of equality and non-interference in internal affairs, the refusal of the use of force and threat by force, economic and any other methods of pressure, the peaceful settlement of disputes, respect of human rights and freedoms, including the rights of ethnic minorities, the fair accomplishment of obligations and other conventional principles and regulations of international law;
- recognizing and respecting the territorial integrity of one another and the inviolability of existing borders.

The Almaty Declaration also stated:

With the formation of the Commonwealth of Independent States the USSR ceases to exist. Member states of the Commonwealth guarantee, in accordance with their constitutional procedures, the fulfillment of international obligations, stemming from the treaties and agreements of the former USSR.

The principles of territorial integrity and the inviolability of borders also found their expression in the Agreement of the Councils of Heads of State and Government (30 December 1991), Art. 1 of which envisaged:

The activities of the Council of Heads of State and of the Council of Heads of Government are pursued on the basis of mutual recognition of and respect for state sovereignty and sovereign equality of the member-states of the Agreement, their inalienable right to self-determination, the principles of equality and non-interference in internal affairs, the renunciation of the use of force and the threat of force, territorial integrity

and the inviolability of existing borders, the peaceful settlement of disputes, respect for human rights and liberties, including the rights of national minorities, the conscientious fulfillment of obligations and other commonly accepted principles and norms of international law.

It is worth noting that the right to self-determination in this Agreement figures as an inalienable right of the CIS member states, rather than of peoples as such.

On 15 April 1994, the members of the Commonwealth of Independent States issued “The Declaration on the Observance of the Sovereignty, Territorial Integrity and Immunity of Borders of State — Members of the Commonwealth of Independent States,” which contained the following:

respecting sovereignty, and also confirming territorial integrity, the inviolability of borders of one another, the refusal of illegal territorial acquisitions and of any actions directed at the partition of another’s territory, proceeding from the principles of non-interference with the internal affairs of one another, equality and self-determination of the people, rejecting and condemning the use of force or threat by force, declared that the member states of the Commonwealth of Independent States:

1. Provide accomplishment in the relations of principles of the sovereignty, territorial integrity, and inviolability of frontiers.
2. Confirm that, building friendly relations, states will abstain from military, political, economic or any other form of pressure, including blockade, and also supporting and using separatism against the territorial integrity and immunity, and also the political independence of any of the member states of the Commonwealth.

It is quite obvious from this Declaration that relations between the former Soviet republics were always supposed to be based on such generally recognized principles as territorial integrity, the inviolability of borders, and non-interference with the internal affairs of one another.

On 9 July 1993, the Russian Supreme Soviet made an attempt to declare Sevastopol a Russian city. In reaction to this declaration, Ukraine immediately turned to the Security Council of the UN, which denounced this declaration, making reference to the Russian-Ukrainian Treaty of November 19, 1990, according to which the parties agreed to respect each other’s territorial integrity within their current borders. In a letter dated 19 July 1993, addressed to the President of the Security Council, the representative of the Russian Federation transmitted the text of a statement, issued on July 11, by its Ministry of Foreign Affairs, in connection with the resolution of the Russian Supreme Council regarding the status of the city of Sevastopol. The statement contended that the resolution diverged from the policy followed by the President and the Government of the Russian Federation in upholding Russian interests as regards matters relating to the Black Sea fleet and in maintaining bases for the navy of the Russian Federation in Ukraine, Crimea, and Sevastopol. It also emphasized that territorial problems could be settled

only through political dialogue and that any settlement should also strictly observe all the treaties and agreements entered into force with the Ukrainian side, as well as the principles of the CSCE and the UN.

The Security Council's Decision stated:

The representative of the Russian Federation emphasized that the decree adopted on 9 July 1993 by the Supreme Soviet concerning the status of Sevastopol diverged from the policy of the President and the Government of the Russian Federation. He contended that his country remained dedicated to the principle of the inviolability of the borders within the Commonwealth of Independent States and would strictly abide by its obligations under international law, the Charter and the principles of the CSCE. Regarding its relations with Ukraine, the Russian Federation would continue to be guided by its bilateral treaties and agreements and in particular those concerning respect for each other's sovereignty and territorial integrity.<sup>6</sup>

It also stated:

The Council reaffirms in this connection its commitment to the territorial integrity of Ukraine, in accordance with the Charter of the United Nations. The Council recalls that in the Treaty between the Russian Federation and Ukraine, signed in Kyiv on 19 November 1990, the High Contracting Parties committed themselves to respect each other's territorial integrity within their currently existing frontiers. The Decree of the Supreme Soviet of the Russian Federation is incompatible with this commitment as well as with the purposes and principles of the Charter, and without effect.<sup>7</sup>

Despite the Security Council's Decision, Ukrainian politicians were concerned that such an attempt to put forward territorial claims on Ukraine's territory on the part of Russia might repeat in the future. That is why they were looking for absolutely reliable legal guarantees aimed at the prevention of any such territorial claims.

Ukraine has also concluded a number of international agreements with Russia on the status of the Black Sea Fleet, which presupposed respect for Ukraine's territorial integrity and non-interference in its internal affairs. One of which was the "Agreement between Ukraine and the Russian Federation on the Principles of the Formation of Ukraine's Navy and Russia's Navy on the Basis of the Black Sea Fleet of the Former USSR" of 3 August 1992. Article 10 of this Agreement envisaged that the use of the Black Sea Fleet Base in Crimea should respect the legislation of Ukraine, without interference in its internal affairs. It also stressed that any

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6 "Decision of the UN Security Council on Sevastopol № S/26118," accessed July 1, 2016, [http://www.un.org/ar/sc/repertoire/93-95/Chapter%208/EUROPE/96-95\\_8-22-UKRAINE.pdf](http://www.un.org/ar/sc/repertoire/93-95/Chapter%208/EUROPE/96-95_8-22-UKRAINE.pdf).

7 "Decision of the UN Security Council on Sevastopol № S/26118."

declaration or action of the officials directed at the interference in the internal affairs of Russia or Ukraine should be followed by “appropriate measures.”

The “Treaty between the Russian Federation and Ukraine on the Black Sea Fleet” of 9 June 1995 in Art. 9 envisaged “the elaboration of the legal status and conditions of the Russian Federation’s Black Sea Fleet’s stationing on the territory of Ukraine,” thereby recognizing that Crimea and Sevastopol are part of Ukraine’s territory.

When the issue of the nuclear arsenal on the territory of Ukraine had arisen, and Ukraine was offered to get rid of this arsenal, at that time the third largest in the world, Ukraine’s leadership asked for reliable guarantees of its territorial integrity, sovereignty, and security.

On 14 January 1994, in Moscow, the presidents of Russia and the USA officially informed then Ukrainian President Leonid Kravchuk that Russia and the USA are ready to provide Ukraine with guarantees of its security. In the Trilateral Declaration of Russia, the USA and Ukraine it was provided that as soon as START-1 enters into force and Ukraine becomes a party to the Treaty on the Non-proliferation of Nuclear Weapons as a non-nuclear state,

Russia and the US will confirm their obligation, in accordance with the principles of the CSCE Final Act, to respect the independence and sovereignty, as well as the existing borders of the participant states of the CSCE, and to recognize that changes to borders can be performed only peacefully and by agreement.

In this Trilateral Declaration its parties also pledged themselves

to refrain from the threat or use of force against the territorial integrity or political independence of any state, and that their weapons will never be used, except for the purposes of defense or in any other way in accordance with the Charter of the United Nations Organization.

Russia and the USA in this Declaration also undertook to refrain from the use of economic pressure on Ukraine and to demand immediate actions on the part of the UN Security Council should Ukraine becomes victim of an act of aggression or object of threat of aggression with the use of nuclear weapons.

During ratification of the START-1 and Lisbon protocol of 18 November 1993, Ukraine’s Verkhovna Rada adopted a Decision (*postanova*) that Ukraine, as the owner of the nuclear arsenal on its territory, will get rid of this arsenal

on condition of receiving for this reliable guarantees on its national security, whereby the nuclear powers will undertake obligations not to use nuclear weapons against Ukraine, not to use ordinary armed forces against it and not to resort to the threat of force, to respect the territorial integrity and inviolability of Ukraine’s borders, to refrain from the use of economic pressure with a view to solving any dispute.

The Trilateral Declaration and the said Decision of the Verkhovna Rada became the basis of the Budapest Memorandum on Security Guarantees of 5 December 1994.<sup>8</sup> In this Memorandum Russia, the USA, and the UK confirmed, in recognition of Ukraine becoming a party to the Treaty on the Non-Proliferation of Nuclear Weapons and its abandoning of its nuclear arsenal to Russia, that they would: respect Ukrainian independence and sovereignty within its existing borders; refrain from the threat or use of force against Ukraine; seek UN Security Council action if nuclear weapons are used against Ukraine; refrain from the use of nuclear arms against Ukraine; consult with one another if questions arise regarding these commitments.

Later on China and France joined this Memorandum as guarantors of Ukraine's security.

According to Ukrainian professor of international law V. A. Vasylenko, in this Memorandum:

[T]he five nuclear states, permanent members of the UN Security Council, did not make any special commitments with respect to Ukraine — they only reaffirmed their commitment, in accordance with the principles of the UN Charter and the CSCE Final Act, to respect the independence, sovereignty and the existing borders of Ukraine, to refrain from the threat or use of force against the territorial integrity or political independence of Ukraine, as well as from economic coercion designed to subordinate to their own interest the exercise by Ukraine of the rights inherent in its sovereignty and thus to secure advantages of any kind.<sup>9</sup>

It still remains a controversial issue whether the Budapest Memorandum is an international treaty, political agreement, or MOU. However, in the light of the Trilateral Declaration and the Verkhovna Rada's Decision it can be argued that the Memorandum is legally binding on the guarantor states of Ukraine's security. On the other hand, even if we assume that the Memorandum has political force only, even then the guarantees given to Ukraine should be carried out by all, political and military, means.

Considering this Memorandum we can ask ourselves: would Ukraine have given up its nuclear weapons to Russia had it known that this Memorandum would not provide reliable guarantees of its security and territorial integrity? The answer seems obvious: Ukraine, by abandoning its nuclear arsenal, had invested a great trust in the guarantor states of Ukraine's security and territorial integrity, and the breach of this trust would mean flagrant violation of the principle of good faith, the fundamentals of international law and international morality.

It is interesting to note that in April of 1997 a round-table discussion, organized by the Moscow Association of International Law, was held, the central topic of which was "The Problem of Sevastopol." Some participants (not the majority!) claimed that the transfer of Crimea did not pertain to the city of Sevastopol, because the city had allegedly obtained the status of "a city of Russian republican subordination," by virtue of a decree issued in 1948. Nevertheless, the

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8 Sometimes this Memorandum is referred to as "The Budapest Memorandum on Security Assurances."

9 Volodymyr Vasylenko, "On Assurances Without Guarantees in a 'Shelved Document,'" *Den*, accessed September 15, 2006, <http://www.day.kiev.ua/en/article/close/assurances-without-guarantees-shelved-document>.

majority of participants agreed with the view of Professor O. N. Khlestov that leasing Sevastopol from Ukraine would signify the final surrender of Russian pretensions in regard to Sevastopol. He said that logically you can only lease something that does not belong to you.<sup>10</sup>

It is worth stressing that this round-table discussion was not about the status of Crimea as such, but about Sevastopol, which means that the Ukrainian status of Crimea was already out of question. Besides, according to the Constitution of Ukraine of 1978 (Art. 77) Sevastopol was a city of “republican subordination,” that is a Ukrainian, not Russian city.

On 31 May 1997 Ukraine and Russia concluded a “Treaty on Friendship, Cooperation and Partnership between the Russian Federation and Ukraine,” the so-called “Big Treaty,” which conclusively put an end to any possible territorial claims by Russia on Ukraine. Some doubts were expressed in the Ukrainian parliament (Verkhovna Rada) regarding this Treaty, and the key argument which managed to put all these doubts and concerns to rest was that the Treaty guarantees that Russia loses any legal opportunity to challenge the territorial integrity of Ukraine.

Article 2 of the Treaty stipulated:

The High Contracting Parties, pursuant to the provisions of the UN Charter and obligations under the Final Act of the Conference on Security and Cooperation in Europe, respect the territorial integrity of each other and confirm the inviolability of the existing borders between them.

Article 3 of the Treaty stated that

The High Contracting Parties shall build relations between each other on the basis of the principle of mutual respect, sovereign equality, territorial integrity, the inviolability of borders, the peaceful settlement of disputes, the non-use of force or threat of force, including economic and other means of pressure, the right of peoples to freely be the masters of their own destinies, non-interference in internal matters, the observance of human rights and fundamental freedoms, cooperation between states, the performance of the taken international obligations in good faith, as well as other generally recognized norms of international law.

According to Art. 6 of the Treaty, each of the High Contracting Parties pledged itself “to refrain from participation or support of any actions directed against the other High Contracting Party,” as well as promised that it will not allow its territory to be used against the security of the other High Contracting Party.

In the Russian doctrine of international law the status of Crimea as an integral part of Ukraine’s territory was firmly established and never caused any doubts. Proof of this thesis is Russian professor P. P. Kremnev’s monograph *The Dissolution of the USSR: International Legal*

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<sup>10</sup> E. S. Krivchikova, “‘Kruglyi stol’ v MGIMO po Sevastopoliiu [MGIMO ‘Round Table’ on Sevastopol],” *Moskovskii zhurnal mezhdunarodnogo prava* 3 (1997): 140.

*Problems* (Moscow, 2005). The monograph was published under the aegis of M. V. Lomonosov Moscow State University (Law Faculty, Chair of International Law) and among its reviewers was Professor A. L. Kolodkin, the then President of the Russian Association of International Law.

In his monograph Professor Kremnev writes:

In his time Ukraine's President L. Kuchma had noted: "There is the country's constitution [Ukraine's], there is the so-called 'Big Treaty' with Russia — and this is it, period. Talk on this topic is possible in a, so to speak, decent society only in one case, in one form only — as an analysis of the myth about the special 'historical rights' of Russia over Crimea. Not to deny this myth, but to research it." Taking into consideration existing international-legal analyses (myths are studied mostly by historians and philologists), one can agree with L. Kuchma in the way that only after the entry into force of the Russian-Ukrainian treaty on the establishment of the interstate borders of 2003, the issue of Russia's legal title to Crimea has been relegated to the field of legends and has acquired a historical character, whereas precisely from 25 April 2004 Ukraine received fully-fledged and already undeniable (*jus contra omnes*) legal rights from the positions of both international and internal state law over this territory.<sup>11</sup>

Regarding Crimea's status under the "Big Treaty" of 1997, Kremnev maintains:

After the fully-fledged introduction into force of the Treaty, on the basis of Article 2 — "The High Contracting Parties respect the territorial integrity of each other" — Ukraine for the first time receives the treaty norm on the right to Crimea (including Sevastopol), and Russia at the same time loses the possibility to present any legally grounded claims to this territory.<sup>12</sup>

Of course, it is difficult to agree with Professor Kremnev's view that Ukraine "for the first time received the treaty norm on the right to Crimea" only due to the conclusion with Russia of the "Treaty on Friendship, Cooperation and Partnership between the Russian Federation and Ukraine" of 1997, because the first Russian-Ukrainian treaty guaranteeing the territorial integrity of Ukraine was concluded in 1990. Besides, on 23 June 1992, i.e. after the USSR's dissolution, the Russian Federation and Ukraine concluded in Dagomys the Agreement "On the Further Development of Inter-State Relations," which stipulated *inter alia* that before the conclusion of a new international treaty of a comprehensive nature they would strictly observe the Treaty between them of 19 November 1990. Nevertheless, what is really important here, is that the Russian doctrine of international law in the person of Professor Kremnev explicitly recognizes two crucial facts: 1) Ukraine has undeniable legal rights (*jus contra omnes*) to Crimea

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11 P. P. Kremnev, *Raspad SSSR: mezhdunarodno-pravovye problemy* [*The Dissolution of the USSR: International Legal Problems*] (Moscow: Zertsalo-M, 2005), 91.

12 Kremnev, *Raspad SSSR*, 77.

from the point of view of both international and national law; 2) Russia has lost once and for all possibility of raising “any legally grounded claims” to Crimea.

To sum up, by annexing Crimea Russia has violated not only generally recognized principles of international law as expressed in the UN Charter, but also a whole range of international treaties and agreements concluded with the participation of Russia and Ukraine, as well as the Security Council's decision.

Against this background the claim of the Russian Association of International Law that in 1991 the “peaceful annexation” of Crimea by Ukraine took place looks absurd.<sup>13</sup> Besides, the term “peaceful annexation” is an oxymoron, because annexation is by definition a kind of aggression under international law.

### III. Russia's Inconsistency in Territorial Issues (Violation of Estoppel)

The principle of estoppel is one of the general principles of international law and widely regarded as an emanation of the principle of good faith (*bona fides*). As such, it belongs to the sources of international law. To put the matter simply, the principle of estoppel means the principle of non-contradiction to itself.<sup>14</sup> This principle, taken from Anglo-Saxon legal culture, is also known in other legal systems (in German law it is known as a principle of trust; in Roman law as *non concedit venire contra factum proprium*, which means: no one may set himself in contradiction to his own previous conduct).<sup>15</sup>

Having annexed Crimea, Russia has violated the principle of estoppel in several respects. First of all, it displayed obvious inconsistency in territorial issues after the USSR's demise. At the time of the USSR there were some territorial transfers, including transfers to Russia of certain historical territories of Ukraine. For example, Ukraine transferred to Russia part of its territories bordering with Smolensk, Kursk, Belgorod, and Voronezh oblasts. In 1924 the large city of Taganrog with a surrounding area inhabited by a predominantly Ukrainian population was transferred to Russia's Rostov oblast. The Shakhtin area in Donbas and Starodubshyna were also transferred to Russia. In sum, Ukrainian historical territories with 1.2 million inhabitants were transferred to Russia. Under the USSR, a part of Ukraine's territory was also transferred to Moldavia. Despite these territorial changes, Ukraine, unlike Russia, has never raised any territorial claims to Russia or to any other post-Soviet state after the USSR's dissolution.

To illustrate Russia's inconsistency and violation of the principle of estoppel, the case of Estonia is instructive.<sup>16</sup> After the incorporation (annexation) of Estonia into the USSR a considerable part of Estonia's territory was transferred to Russia on the basis of the then existing Soviet legislative acts. These territorial changes, according to the official Soviet position, were legitimate because they were unanimously approved by the competent Supreme Soviets.

13 See: <http://www.ilarb.ru/html/news/2014/5062014.pdf> (accessed September 4, 2016).

14 Władysław Czapliński, Anna Wyrozumska, *Prawo międzynarodowe publiczne. Zagadnienia systemowe*, 2 wydanie (Warszawa: Wydawnictwo C. H. Beck, 2004), 102.

15 Czapliński and Wyrozumska, *Prawo międzynarodowe publiczne*, 102.

16 See Tarja Langstrom, *Transformation in Russia and International Law* (Leiden; Boston: Martinus Nijhoff Publishers, 2003), 256.

After regaining its independence, Estonia and its Parliament declared these decisions null and void on the basis of the argument that Estonia was annexed by the USSR in violation of international law. Estonia's position was categorically rejected by Russia. Russia expressed the position that the border should remain as it was on 24 August 1991, when Russia recognized the independence of Estonia, thereby effectively referring to the *uti possidetis* principle. For Russia, Estonia's insistence on the Tartu Treaty frontiers constituted a territorial claim that threatened the stability of the Baltic region and contradicted the principles of the CSCE Final Act.

As we can see from this case, Russia behaves inconsistently. Its position is in breach of the principle of estoppel by insisting that its borders with Estonia should remain as it was on August 24, 1991, on the one hand, and denying that its border with Ukraine, including Crimea, should also remain as of this date, and should not be changed in favor of Russia. In other words, Russia's inconsistency and violation of the principle of estoppel is related to its double-faced position: when it is in the interests of Russia (as the case of Estonia illustrates) it is in favor of the *uti possidetis* principle, whereas in the case of Crimea it does not adhere to this principle.

#### **IV. The Russian Doctrine of International Law on the Right to Self-Determination and the Principle of Territorial Integrity**

Among the decisions of the Russian Constitutional Court we can find several important judgments revealing Russia's international legal position on the issue of its relationship between the right to self-determination and the principle of territorial integrity. Thus, in 1995, in connection with the war in Chechnya, the Russian Constitutional Court issued a Decision in the case concerning the constitutionality of certain edicts of the president and a decree of the federal government issued for the regulation of the conflict in the Republic of Chechnya.<sup>17</sup> This Decision *inter alia* envisages the following points: 1) the Russian Constitution excludes the unilateral withdrawal of a component unit from the federation; 2) state integrity rests on the basis of the constitutional system of the state; 3) state integrity is a significant prerequisite for the equality of all citizens irrespective of where on the territory of the state they reside; and 4) the constitutional aim of preserving the territorial integrity of the Russian state is in accordance with generally recognized international norms appertaining to the right of people to self-determination.

In its Decision the Constitutional Court also made reference to the 1970 Declarations of the Principles of International Law, maintaining that it followed from the Declaration that the right to self-determination should not be interpreted as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent states conducting themselves in compliance with the principle of equal rights and self-determination of peoples.

Another important decision taken by the Russian Constitutional Court is the Decision in the Case Concerning the Sovereignty of Tatarstan (13 March 1992). The question put before the court was the constitutionality of certain legislative acts of the Republic of Tatarstan, such

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<sup>17</sup> For the text of this decree see: [http://lawrussia.ru/texts/legal\\_383/doc383a317x940.htm](http://lawrussia.ru/texts/legal_383/doc383a317x940.htm) (accessed September 4, 2016); see also Langstrom, *Transformation in Russia and International Law*, 416–17.

as a Decree on the referendum concerning the future republic's status. The question put to the referendum was formulated in the following manner: "Do you agree that the Republic of Tatarstan is a sovereign state, a subject of international law that establishes its relations with the Russian Federation and other republics on the basis of equal treaties? Yes or no."<sup>18</sup>

In its Decision in this case the Russian Constitutional Court stressed that the international documents underline the inadmissibility of references to the principle of self-determination for the purpose of breaking the national unity and the unity of a state. To support this contention the Court made reference to CSCE documents from 1975 to 1990 as well as other "international legal acts." As a result, the Tatarstan Decree on the referendum was found to be in contravention with the Russian Constitution and thus ineffective.

Russian specialist on international law, Professor G. B. Starushenko, in connection with these Decisions of the Russian Constitutional Court points out:

The Constitution of the Russian Federation of 1993, while recognizing the right to self-determination, excludes its realization in the form of a withdrawal from the Federation. Incidentally, the right to withdraw from the state is not contained in any of the world's almost two hundred states and nowadays is not supported by the UN. The world proceeds from the possibility and necessity to secure observation of the national and social rights of peoples within borders of the existing states; and to double their number is not only superfluous but also dangerous.<sup>19</sup>

The former judge of the Russian Constitutional Court O. I. Tiunov, referring to the Court's Decision on Tatarstan (March 13, 1992), argues in his textbook on international law that in international law the right to self-determination is limited by the principle of territorial integrity and principle of respect for human rights.<sup>20</sup> He maintains:

It is necessary to distinguish the self-determination of peoples (nations), which don't have any statehood, from the self-determination of peoples (nations) that have already achieved statehood. If in the former case the national sovereignty of a people hasn't been yet guaranteed by state sovereignty, in the latter case the people have already realized the right to self-determination and its national sovereignty finds protection on the part of state — an independent subject of international law.

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18 For the text of this decree see: <http://base.consultant.ru/cons/cgi/online.cgi?req=doc; base=ARB; n=5280> (accessed September 4, 2016); Langstrom, *Transformation in Russia and International Law*, 402-04.

19 G. B. Starushenko, "Samoopredelenie kak pravovaia osnova predotvraschenia konfliktov i zaschity prav cheloveka [Self-Determination as a Legal Ground for the Prevention of Conflicts and Protection of Human-Rights]," accessed May 1, 2016, <http://www.memo.ru/hr/referats/selfdet/Chapter5.htm>.

20 O. I. Tiunov, *Mezhdunarodnoe pravo. Uchebnik dlia VUZov [International Law: A University Manual]* (Moscow: NORMA, 2005), 85-86.

The self-determination of people inside a multinational state doesn't absolutely presuppose the obligation of the secession and creation of an own independent state. First of all, such self-determination relates to an increase in the level of independence, but without a threat to human rights and the territorial integrity of a state.<sup>21</sup>

Apparently, Professor Tiunov belongs to a group of those authors who claim that one nation can't "self-determine twice," which means that if the Russian nation already has its own state (the Russian Federation), then Russian national minorities abroad can't secede from existing states.

According to Russian professor I. P. Blischenko, the self-determination of nations shouldn't take place at the expense of other nations living on the same territory; if it happens it should be qualified as an international crime and the issue of international responsibility should be raised, including criminal responsibility, of those persons involved in such politics irrespective of their official position.<sup>22</sup>

Regarding the right to secession, Russian professor of international law, S. V. Chernichenko, is of opinion that this "right" is not a necessary element of the right to self-determination and its realization depends upon the consent (voluntary or forced) of the state from which secession takes place.<sup>23</sup>

In the opinion of Russian politician S. N. Baburin, expressed in his monograph *The State's Territory. Legal and Geopolitical Issues* (1997), nowhere in the world does the right to self-determination mean the right of a part of the population to undermine the state's integrity.<sup>24</sup> He maintains: "In the 20th century we have already 'given a try' to the idea of self-determination, up to secession, and 'have experienced' what a nation's self-determination leads to after secession; blood, human victims, millions of tragedies."<sup>25</sup>

For the explanation of Russian doctrine's approach to the right to self-determination it is rather interesting to turn to the textbook on international law published under the aegis of the Russian Association of International Law, with a preface by Russian Minister for foreign affairs, S. V. Lavrov. The authors of the textbook indicate:

The principle of self-determination of peoples is a right, but not an obligation, and its realization can have many different variants and can be realized in different forms. But at the same time self-determination

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21 Tiunov, *Mezhdunarodnoe pravo*, 85–86.

22 I. P. Blischenko, "Mezhdunarodno-pravovye problemy gosudarstv, vkhodiaschikh v SNG [International and Legal Problems of CIS Member States]," *Moskovskii zhurnal mezhdunarodnogo prava* 1 (1997): 5.

23 S. V. Chernichenko, *Teoria mezhdunarodnogo prava [Theory of International Law]*, vol. II (Moscow: NIMP, 1999), 186.

24 S. N. Baburin, *Territoria gosudarstva. Pravovye i geopoliticheskie problemy [The Territory of the State: Legal and Geopolitical Problems]* (Moscow: Izdatelstvo Moskovskogo universiteta, 1997), 463.

25 Baburin, *Territoria gosudarstva*, 463.

should not be realized from the separatist stance to the detriment of the territorial integrity and political unity of the state.<sup>26</sup>

According to the authors of this textbook,

the world community doesn't deny the right to self-determination leading to the violation of territorial integrity, but only in those states where principles of equality and self-determination of peoples are not observed, where in the organs of power not the whole people is represented and where certain ethno-territorial parts of the state are subjected to discrimination.<sup>27</sup>

They also note that in the recent years the threat of abuse of this principle has become a reality. As they argue in this connection: "Political, nationalistic, separatist, criminal, and other factors often become a driving force for the use of this principle for selfish goals. That is why the realization of this principle should not lead to the destruction of the existing states."<sup>28</sup>

The authors also pay attention to the fact that "there is no constitution in the world which enshrines the right of peoples of the given states to complete self-determination (up to withdrawal from the state)."<sup>29</sup>

At the end of the day, the authors of the textbook express the opinion that the peoples living on the territory of a given state cannot realize the right to self-determination without a freely expressed will of this state:

The right to self-determination is not absolute. All peoples and states in the contemporary world are mutually intertwined. National interests of one people should not be realized at the expense of the violation and diminishment of the legal rights and interests of the other peoples. That is why realization by the people of its right to self-determination should be realized only in correspondence with the freely expressed will of the state or states in question, taking into consideration the legal rights and interests of the other peoples living in this or neighboring territories, as well as with the due account of the other fundamental principles of international law.<sup>30</sup>

In connection with Crimea's annexation it is also of some interest to us how the authors of the textbook treat some other principles of international law, which are relevant

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26 V. I. Kuznetsov, B. R. Tuzumukhamedov, eds., *Mezhdunarodnoe pravo: Uchebnik [The International Law: A Manual]*, 2nd ed., (Moscow: Norma, 2007), 214.

27 Kuznetsov and Tuzumukhamedov, eds., *Mezhdunarodnoe pravo*, 215.

28 Kuznetsov and Tuzumukhamedov, eds., *Mezhdunarodnoe pravo*, 215.

29 Kuznetsov and Tuzumukhamedov, eds., *Mezhdunarodnoe pravo*, 216.

30 Kuznetsov and Tuzumukhamedov, eds., *Mezhdunarodnoe pravo*, 216.

to this annexation. Thus, the authors of the textbook see the content of the principle of the inviolability of state borders in three major elements: “1) recognition of the existing borders as legally established in accordance with international law; 2) rejection of any territorial claims at the given moment or in the future; and 3) rejection of any other encroachments upon these borders, including threat of force or its use.”<sup>31</sup>

It is quite obvious that the very fact of Crimea's annexation by Russia constitutes a serious violation of the principle of the inviolability of state borders. In this textbook the authors also maintain that any “processes of political-territorial transformation” in the world should take place within a legal framework, i.e. “in accordance with international law, by peaceful means and by agreement.”<sup>32</sup>

Russian scholars, talking about the principle of non-interference in international law, *inter alia*, contend:

Interference can be direct or indirect. Direct interference means obvious and open use of force (through military, economic, financial, political, and other means) by one state (or states) in order to make another state perform certain actions relating to its internal competence. Indirect interference is the use of the abovementioned means of force performed not by the state itself but by the persons or organizations under its control.<sup>33</sup>

The issue of self-determination is dealt with in the doctoral thesis of Russian Professor of international law, N. V. Ostroukhov. In Ostroukhov's view “external self-determination,” i.e. secession, can be legal only when the authorities of a state make “internal self-determination” impossible, i.e. when the state's government, for instance, deprives a part of the country's population of autonomy and discriminates against it.<sup>34</sup> He maintains that “the principle of self-determination shouldn't be interpreted as encouraging partial or complete violation of territorial integrity,” which is why the legality of the newly emerged states' recognition should be assessed from the perspective of the “universally recognized international legal criteria of self-determination.”<sup>35</sup> At the same time this author denounces separatism by stating: “Separatism should be viewed as an illegal phenomenon if it is based upon the contradictory to international law aspiration and corresponding activities of a population of the given territory to secede from a state or to join another state.”<sup>36</sup>

In its struggle against encroachments upon its territorial integrity, on the international plane Russia initiated “The Shanghai Convention on Combating Terrorism, Separatism and Extremism” of 15 June 2001, concluded between the Russian Federation, the Republic of

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31 Kuznetsov and Tuzumukhamedov, eds., *Mezhdunarodnoe pravo*, 207.

32 Kuznetsov and Tuzumukhamedov, eds., *Mezhdunarodnoe pravo*, 207.

33 Kuznetsov and Tuzumukhamedov, eds., *Mezhdunarodnoe pravo*, 200.

34 Ostroukhov, “Territorialnaia tselostnost gosudarstv,” 10–11.

35 Ostroukhov, “Territorialnaia tselostnost gosudarstv,” 11.

36 Ostroukhov, “Territorialnaia tselostnost gosudarstv,” 44.

Kazakhstan, the People's Republic of China, the Kyrgyz Republic, the Republic of Tajikistan, and the Republic of Uzbekistan. Article 1 (2) of this Convention provides:

“[S]eparatism” — any deed aimed at breaching the territorial integrity of a state, including those aimed at the separation of a part of its territory or disintegration of the state, committed by violence, as well as the planning and preparation of such a deed, assistance in its commitment, incitement to it, and that are subject to criminal prosecution in accordance with the national legislation of the Parties.

As we can see, from the perspective of Russia's approach to the principle of territorial integrity, the attempts of some forces in Crimea to secede from Ukraine could have been qualified as illegal separatism and those people who were involved in these actions should have been brought to criminal responsibility.

Diplomatic Academy of Russia Professor A. A. Moiseev has summarized the stance of the Russian doctrine of international law on the relationship between the right to self-determination and the principle of territorial integrity in the following way:

Russian international legal doctrine also proceeds from the statement that “international law does not allow reference to the principle of self-determination with a view to undermining the territorial integrity and unity of a sovereign state and national unity.” From the point of view of contemporary international law most important in the self-determination of peoples is to secure conditions for its free development in any form which the people choose. If territorial self-determination of the people is coupled with serious international contradictions and conflicts, and not with the voluntary peaceful expression of will by the whole people of the state — the achievement of political sovereign independence contradicts international law.<sup>37</sup>

In other words, the Russian doctrine of international law with respect to the content of the right to self-determination is based upon two assumptions: 1) the “people” as a subject of this right is understood as the whole population of the state, instead of national minorities or ethnic groups; 2) this right does not include secession from the existing state.

## V. Russia's Arguments Aimed at the Justification of Crimea's Annexation

In trying to justify Crimea's annexation Russia has put forward a whole range of arguments. First of all, some of these arguments were presented in the addresses, speeches and interviews of Russia's President Vladimir Putin, who is a lawyer by education. Later on these arguments

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37 A. A. Moiseev, *Suverenitet gosudarstva v mezhdunarodnom prave* [*State Sovereignty in International Law*] (Moscow: Vostok-Zapad, 2009), 50.

were used and elaborated by Russian international lawyers, who tend to be apologetic, not critical, with respect to Putin's argumentation. Incidentally, here lies a tangible difference between, say, American and Russian specialists on international law. If American scholars are often critical of the foreign policy of their country, Russian lawyers, especially those belonging to the academic establishment, mostly see their role in the justification of any Russian actions in the international arena, instead of providing objective critical analyses. In this respect the contemporary Russian doctrine of international law continues the infamous tradition of the Soviet doctrine of international law, which was nothing but a part of the state propaganda machine performing an ideological function in society and unscrupulously justifying such international crimes committed by the USSR as the invasions of Hungary in 1956, Czechoslovakia in 1968, Afghanistan in 1979, etc.

It is symptomatic that in Russian law journals, including those devoted to international law, we can hardly find criticism of Russian foreign policy from the perspective of international law, especially regarding Russia's aggression against Georgia in 2008 and Ukraine in 2014.

The peculiar feature of Russian legal argumentation striving to justify Crimea's annexation is that now and then Russian scholars base their conclusions not on real facts but on "facts" made up by the Russian propaganda machine. Another feature is that there is not enough international legal argumentation, and Russian lawyers are inclined to put at the center of their analyses those matters that belong to the domain of the internal matters of Ukraine, to its internal politics.

At the same time, when it comes to Crimea's annexation, Russian scholars in the field of international law have found themselves in a really awkward position, since in order to justify this international crime they need to make a u-turn on their previously expressed views with respect to the relationship between the right to self-determination and the principle of territorial integrity, as well as Russia's practice of struggle against "separatism." As Estonian researcher of the Russian doctrine of international law, Professor Lauri Mälksoo, puts it: "These scholars are now in quite a difficult situation. If one applies the legal criteria that they have supported all along, one must characterize Russia's annexation of Crimea as illegal."<sup>38</sup>

Perhaps, this explains why there are relatively few articles published by outstanding Russian specialists on international law on the issue of Crimea: not every Russian legal scholar is eager to tarnish his academic reputation by denying obvious facts and looking for artificial argumentation aimed at the justification of Russia's aggression and annexation at all costs.

Let us consider some of the arguments put forward by Russia's president and Russian scholars.

### *1. Crimea's Annexation and the Right to Self-Determination*

One of the key arguments by Russia's president allegedly justifying Crimea's annexation is the right to self-determination of the "people of Crimea." As Putin has put it in his address:

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38 Lauri Mälksoo, "Crimea and (the Lack of) Continuity in Russian Approaches to International Law," accessed September 4, 2016, <http://www.ejiltalk.org/crimea-and-the-lack-of-continuity-in-russian-approaches-to-international-law>.

[A]s it declared independence and decided to hold a referendum, the Supreme Council of Crimea referred to the United Nations Charter, which speaks of the right of nations to self-determination. Incidentally, I would like to remind you that when Ukraine seceded from the USSR it did exactly the same thing, almost word for word. Ukraine used this right, yet the residents of Crimea are denied it. Why is that?<sup>39</sup>

First of all, Russia's president does not understand or pretends not to understand quite an obvious fact, known to every lawyer familiar with Soviet constitutional law: under both the USSR's Constitution and Constitution of the Ukrainian SSR, Ukraine, being officially a sovereign state, had a sovereign right to freely withdraw from the USSR, whereas Crimea never had such a right under both the USSR's Constitution and the Ukrainian SSR's Constitution. Additionally, Ukraine had the right to withdraw from the Treaty Union of 1922, on the basis of which the USSR was created, in accordance with the law of international treaties.

Second, Putin mentions "the right of nations to self-determination," but the population living in Crimea can hardly be considered to be a "nation." It is equally difficult to qualify this population of mixed ethnic origin (made up of Ukrainians, Russians, Crimean Tatars, etc.) as a "people." Officially, the population of Crimea has never been considered by Ukraine, or even for that matter by Russia, as a separate "people." Legally, the Crimean population is an integral part of the people of Ukraine which has the right to self-determination as a totality. So, for example, according to Russian Professor of international law, S. V. Chernichenko, part of the population of one state, which is of the same ethnicity (having, in terms of Chernichenko, "general national roots") as the majority of the population of the other state (nation), does not have the right to self-determination.<sup>40</sup> Referring to the case of Cyprus, Professor Chernichenko stresses that "the right to self-determination belongs to the whole people of Cyprus."<sup>41</sup> He maintains that "the declaration of the separate Turkish state on Cyprus contradicts the principle of self-determination of peoples, let alone violates the territorial integrity of Cyprus."<sup>42</sup>

Extrapolating the legal reasoning of Professor Chernichenko on the situation with Crimea it is quite obvious that the population of Crimea of Russian ethnic origin does not have right to self-determination, i.e. secession from Ukraine.

Third, the right to self-determination, as Russian doctrine of international law and the Russian Constitutional Court maintain, does not include the right to secede from the existing state. The right to self-determination should not destroy the territorial integrity of a state.

Fourth, Ukraine's Constitution does not allow secession and Ukraine's criminal law makes it a crime to undermine the territorial integrity of the state.

Fifth, Russia and Ukraine have always viewed attempts at secession as dangerous separatism, which should be combated by national and international legal means.

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39 (<http://www.bbc.com/news/world-europe-26652058>).

40 Chernichenko, *Teoria mezhdunarodnogo prava*, vol. II., 174–75, 184.

41 Chernichenko, *Teoria mezhdunarodnogo prava*, vol. II., 184.

42 Chernichenko, *Teoria mezhdunarodnogo prava*, vol. II., 184–85.

Sixth, the so-called “referendum” in Crimea was unconstitutional in Ukraine<sup>43</sup> and was nothing but a sham. President Putin has acknowledged that during the holding this “referendum,” hastily conducted in record time, “Crimean self-defense forces were of course backed by Russian servicemen.” This fact alone is enough not to recognize this “referendum” as ostensibly violating principles of the non-use of force in international relations and non-interference with internal affairs.

One of the fundamental requirements of the legality of each plebiscite in Russian international legal literature is the withdrawal of foreign troops from the “self-determining territory,” and the transfer of governance into the hands of democratically elected organs consisting of local inhabitants, because the possibility of the free expression of will depends upon fulfillment of this requirement.<sup>44</sup>

It is noteworthy that in Russian legal doctrine the subject matter of a plebiscite, in contradistinction to a referendum, is primarily territorial issues. According to Russian professor L. I. Volovova, among the characteristic features of a plebiscite are the following: 1) the period of preparation for a plebiscite is longer than for a referendum<sup>45</sup>; 2) a plebiscite is often held under the supervision of the UN or international commission<sup>46</sup>; 3) a plebiscite should be well prepared and organized; 4) the term of preparation for holding a plebiscite should be no less than three months<sup>47</sup>; 5) before holding a plebiscite the evacuation of all foreign troops from the territory where the plebiscite will take place should be completed<sup>48</sup>; and 6) different political parties and representatives of public on an equal basis should be represented in the commissions for holding a plebiscite.<sup>49</sup>

One of the reasons for the illegality of a plebiscite, according to Professor Volovova, is “the holding of the people’s voting in the absence of the necessary, established in the law, conditions”; and its results are legally valid only when the absolute majority of the citizens, meeting the requirements of the law, take part in it.<sup>50</sup>

As we can see, the “referendum” in Crimea didn’t meet all these requirements put forward in the Russian doctrine of international law.

It is interesting to note that talking about the principle of non-intervention of states in the internal affairs of each other Russian authors underline that among the obligations of states within this principle belong the non-interference of states in such issues as the establishment of

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43 At the plenary meeting of the Constitutional Court of Ukraine on 14 March 2014 the decision of the Supreme Council of the Autonomous Republic of Crimea to hold a referendum was found to be in contradiction to Ukraine’s Constitution.

44 L. I. Volovova, *Plebistsit v mezhdunarodnom prave* [*The Plebiscite in International Law*] (Moscow: Mezhdunarodnye otnoshenia, 1971), 38.

45 Volovova, *Plebistsit v mezhdunarodnom prave*, 54.

46 Volovova, *Plebistsit v mezhdunarodnom prave*, 54.

47 Volovova, *Plebistsit v mezhdunarodnom prave*, 122.

48 Volovova, *Plebistsit v mezhdunarodnom prave*, 123.

49 Volovova, *Plebistsit v mezhdunarodnom prave*, 123.

50 Volovova, *Plebistsit v mezhdunarodnom prave*, 139.

forms of governance and holding referenda and plebiscites.<sup>51</sup> Discussing changes of the states' territory through the use of plebiscites, Russian authors maintain that under contemporary international law any territorial changes are legal only with the consent of the states involved.<sup>52</sup>

It is worth reminding that the OSCE observers who tried to enter Crimea on the eve of the "referendum" were denied access by the Russian military.

Seventh, the international community in the person of the UN, Council of Europe, and OSCE did not recognize the legality of this "referendum," thereby effectively declaring it null and void. In fact, this "referendum" was nothing but a mockery of democracy and the right to self-determination.

Interestingly enough, even the Russian Presidential Council on Civil Society and Human Rights in its report entitled "Problems of Crimean Residents" in fact acknowledged that the majority of the Crimean population did not vote for secession from Ukraine. According to this report: "According to almost all citizens and professionals surveyed: — The vast majority of the people of Sevastopol voted in a referendum to join Russia (50–80% turnout). According to various sources, in Crimea 50–60% voted for joining Russia, with a total turnout of 30–50%."<sup>53</sup>

It was also acknowledged in this report that: "The people of Crimea voted not so much for joining Russia, as for the termination, in their words, of 'the corruption and lawlessness of the thieves of the domineering Donetsk henchmen.'"

## 2. *The "Kosovo Precedent" and Crimea's Annexation*

President Putin has also referred to the "Kosovo precedent" in an attempt to justify Crimea's annexation. As he put it:

Moreover, the Crimean authorities referred to the well-known Kosovo precedent — a precedent our Western colleagues created with their own hands in a very similar situation, when they agreed that the unilateral separation of Kosovo from Serbia, exactly what Crimea is doing now, was legitimate and did not require any permission from the country's central authorities. Pursuant to Art. 2, Chapter 1 of the United Nations Charter, the UN International Court agreed with this approach and made the following comment in its ruling of 22 July 2010, and I quote: "No general prohibition may be inferred from the practice of the Security Council with regard to declarations of independence," and "General international law contains no prohibition on declarations of independence." Crystal clear, as they say.<sup>54</sup>

51 K. A. Bekyashev, ed., *Mezhdunarodnoe publichnoe pravo. Uchebnik [International Public Law: A Manual]*, 4th ed. (Moscow: Prospekt, 2005), 84.

52 Bekyashev, ed., *Mezhdunarodnoe publichnoe pravo*, 449.

53 The Russian Presidential Council questioned the results of the Crimean referendum. See: <http://www.stopfake.org/en/the-russian-presidential-council-questioned-the-results-of-the-crimean-referendum/> (accessed September 15, 2016).

54 See: <http://www.bbc.com/news/world-europe-26652058> (accessed September 4, 2016).

With respect to this statement the following points should be mentioned.

First of all, the advisory opinion of the International Court of Justice on the declaration of Kosovo's independence cannot be regarded a precedent in a legal sense of this term, because it is: 1) an advisory opinion is only consultative in character and non-binding under the Statute of the ICJ<sup>55</sup>; and 2) there is no such source in international law as a precedent.

Perhaps President Putin by the word "precedent" means here a sort of political precedent, but politically the situation with Kosovo and Crimea are considerably different. The Independence of Kosovo was preceded by ethnic cleansing and other violations of human rights of the Kosovars on a mass scale, which was testified to by international organizations, whereas in the case of Crimea there were no internationally registered violations of the local population's rights. Neighboring Albania didn't have its military bases on the soil of Yugoslavia in Kosovo and its troops didn't intervene in the situation in Kosovo. Neither did Albania annex Kosovo.

Second of all, in its advisory opinion, the ICJ deliberately limited itself to answering a very narrow issue, i.e. whether or not the declaration of Kosovo's independence is in accordance with international law. The ICJ refused to answer such questions as: whether, outside the context of non-self-governing territories and peoples subject to alien subjugation, domination and exploitation, the international law of self-determination confers upon part of the population of an existing State a right to separate from that State; whether international law provides for a right of "remedial secession" and, if so, in what circumstances; whether the circumstances which would give rise to a right of "remedial secession" were actually present in Kosovo.<sup>56</sup> In other words, the ICJ was very careful about not touching upon these very sensitive issues on which there is no common opinion among lawyers and politicians. It thereby underlined the unique character of the Kosovo case. For this reason the ICJ's advisory opinion cannot be extrapolated on other situations and it in no way can be viewed as a justification of secession as such.

Thirdly, the words of the advisory opinion that "General international law contains no prohibition on declarations of independence" should not be necessarily construed as meaning that general international law allows "declarations of independence." Generally speaking, international law is neutral on the question of the legality of unilateral secession.

Fourthly, President Putin and Russian international lawyers did not pay due attention to the following very important statement of the ICJ:

[T]he illegality attached to the declarations of independence thus stemmed not from the unilateral character of these declarations as such, but from the fact that they were, or would have been, connected with the unlawful use of force or other egregious violations of norms of general international law, in particular those of a peremptory character (*jus cogens*).<sup>57</sup>

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55 President Putin mistakenly calls this advisory opinion "a ruling" (*reshenie*).

56 "The Kosovo Advisory Opinion," para 82, accessed September 4, 2016, <http://www.icj-cij.org/docket/files/141/15987.pdf>.

57 "The Kosovo Advisory Opinion," para 81.

As Jure Vidmar correctly points out in this connection:

This pronouncement of the ICJ is highly significant. The Court was otherwise heavily criticised for establishing a formalistic distinction between issuing a declaration of independence and creating a state. But here it affirmed that under some circumstances even a declaration itself may be illegal — where it tries to consolidate a situation created in violation of *jus cogens*.<sup>58</sup>

Jure Vidmar maintains:

[T]he problem in Crimea is not that secession from Ukraine was unilateral. The problem is that it was achieved by Russia's use or at least threat of force. International law prohibits any change of legal status of a territory in violation of a peremptory norm. This is what makes declarations of independence illegal. Pursuant to Article 41 of ILC Articles on State Responsibility, foreign states are under obligation to withhold recognition. This obligation exists under general international law; no Security Council resolution is needed. Although it was integration with Russia rather than independence that was sought, the territorial illegality is reminiscent of that in Northern Cyprus and does not follow the Kosovo precedent, let alone Scotland.<sup>59</sup>

From this perspective it can be argued that, in accordance with the legal reasoning and logic of the ICJ in this advisory opinion, the proclamation of independence by Crimea is illegal because it violated a number of norms *jus cogens*, e.g., such principles of international law as territorial integrity, non-interference in internal affairs, the inviolability of borders, and the non-use of force or threat of force in international relations.

### *3. Argument of Russian National Unity*

In his address to State Duma deputies, Federation Council members, heads of Russian regions, and civil society representatives in the Kremlin, President Putin has also used the argument regarding the national unity of Russians as a sort of justification for the “integration” of Crimea with its “predominantly Russian speaking population” into Russia. At the same time, he made reference to the unification of the FRG and the GDR as an example for the “unification” of Russia and Crimea:

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<sup>58</sup> Jure Vidmar, “Crimea’s Referendum and Secession: Why it Resembles Northern Cyprus More than Kosovo,” accessed September 4, 2016, <http://www.ejiltalk.org/crimeas-referendum-and-secession-why-it-resembles-northern-cyprus-more-than-kosovo/>.

<sup>59</sup> Vidmar, “Crimea’s Referendum and Secession.”

Let me remind you that in the course of political consultations on the unification of East and West Germany, at the expert, though very high level, some nations that were then and are now Germany's allies did not support the idea of unification. Our nation, however, unequivocally supported the sincere, unstoppable desire of Germans for national unity. I am confident that you have not forgotten this, and I expect that the citizens of Germany will also support the aspiration of the Russians, of historical Russia, to restore unity.<sup>60</sup>

It should be reminded that the unification of the FRG and the GDR cannot be viewed as a "precedent" justifying Russia's annexation of Crimea because, unlike Crimea, by the time of Germany's unification the GDR was a sovereign state, member of the UN, and as such had a sovereign right under the principles of sovereignty, equality, and self-determination to join the FRG. This choice on the part of the GDR was not a result of the use of force by any other state and was recognized by the world community.

It is symptomatic that Putin, when talking about the support of Germany's reunification, uses the term "our nation," meaning apparently by this the "Russian nation," whereas in reality the reunification of Germany was upheld by the USSR.

Russia's annexation of Crimea cannot be excused on the basis of the argument that it was about "the aspiration of the Russians, of historical Russia, to restore unity," because this argument has no legal meaning. The need to "restore national unity" is no excuse for annexing parts of the territories of other states. Moreover, it is a very dangerous illegal pretext that was used by Hitler in Nazi Germany's expansion and which could be used by Russia to annex territories with Russian speaking populations in Kazakhstan, Estonia, Moldova, etc.

#### *4. Was there Aggression against Ukraine?*

President Putin in his address denied the fact that Crimea's annexation was the result of aggression on the part of Russia. As he stated referring to Russia's Western "partners": "They keep talking of some Russian intervention in Crimea, some sort of aggression. This is strange to hear. I cannot recall a single case in history of an intervention without a single shot being fired and with no human casualties."<sup>61</sup>

The truth is that to invade and occupy Crimea Russia resorted to a new kind of war which is sometimes referred to as "hybrid war" or "non-linear war."

It is worth mentioning in this context that the concept of "hybrid war," as a war of the 21st century, was clearly articulated in an article by Chief of the Russian General Staff, Valery

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60 Address by President of the Russian Federation. See: <http://eng.kremlin.ru/news/6889> (accessed July 23, 2016).

61 See: <http://www.bbc.com/news/world-europe-26652058> (accessed July 23, 2016).

Gerasimov, published in *Voенно-promyshlennyikurer* (Military-Industrial Courier).<sup>62</sup> According to General Gerasimov:

In the 21st century we have seen a tendency toward blurring the lines between the states of war and peace. Wars are no longer declared and, having begun, proceed according to an unfamiliar template. The experience of military conflicts — including those connected with the so-called colored revolutions in North Africa and the Middle East — confirm that a perfectly thriving state can, in a matter of months and even days, be transformed into an arena of fierce armed conflict, become a victim of foreign intervention, and sink into a web of chaos, humanitarian catastrophe, and civil war.<sup>63</sup>

In his article General Gerasimov describes “hybrid war” in the following way:

The focus of applied methods of conflict has altered in the direction of the broad use of political, economic, informational, humanitarian, and other nonmilitary measures — applied in coordination with the protest potential of the population. All this is supplemented by military means of a concealed character, including carrying out actions of informational conflict and the actions of special-operations forces. The open use of forces — often under the guise of peacekeeping and crisis regulation — is resorted to only at a certain stage, primarily for the achievement of final success in the conflict.<sup>64</sup>

It should be admitted that, faced with such a kind of a perfidious war on the part of Russia, the Ukrainian military has found itself in a rather difficult position and ill prepared.<sup>65</sup> Besides, Russian troops in Crimea without insignia (the so-called unidentified “little green men”), also used were such provocative methods as “living shields,” when barracks of the Ukrainian military were stormed from behind shields of civilians. In fact, the Russian president rather openly warned about the possible use of such tactics in his interview on March 4, 2014. When asked by a correspondent about possibility of war between Russia and Ukraine as a result of Russia’s actions in Crimea, President Putin emotionally replied:

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62 See: [http://vpk-news.ru/sites/default/files/pdf/VPK\\_08\\_476.pdf](http://vpk-news.ru/sites/default/files/pdf/VPK_08_476.pdf) (accessed September 4, 2016); see also Mark Galeotti, “The ‘Gerasimov Doctrine’ and Russian Non-Linear War,” accessed July 23, 2016, <http://inmoscowsshadows.wordpress.com/2014/07/06/the-gerasimov-doctrine-and-russian-non-linear-war/>.

63 Galeotti, “The ‘Gerasimov Doctrine’ and Russian Non-Linear War.”

64 Galeotti, “The ‘Gerasimov Doctrine’ and Russian Non-Linear War.”

65 Judging by the excellent organization of the military Russian operation to annex Crimea it looks very plausible that the whole operation to invade and annex Crimea was prepared by Russia long before; may be even right after the “Orange Revolution” in Ukraine.

Listen carefully. I want you to understand me clearly: if we make that decision, it will only be to protect Ukrainian citizens. And let's see those troops that would try to shoot their own people, with us behind them — not in the front, but behind. Let them just try to shoot at women and children! I would like to see those who would give that order in Ukraine.<sup>66</sup>

While Russian troops, using such “living shields,” were storming barracks of the Ukrainian Army, Ukrainian troops were given orders not to shoot and not to fall for the provocations of the Russian army. This explains why Crimea's annexation by Russia was bloodless.

In the same interview President Putin denied the fact that the “little green men” were in actuality Russian troops. The following dialog took place between a correspondent and President Putin:

*Question:* Mr. President, a clarification if I may. The people who were blocking the Ukrainian Army units in Crimea were wearing uniforms that strongly resembled the Russian Army uniform. Were those Russian soldiers, Russian military?

*Vladimir Putin:* Why don't you take a look at the post-Soviet states. There are many uniforms there that are similar. You can go to a store and buy any kind of uniform.

*Question:* But were they Russian soldiers or not?

*Vladimir Putin:* Those were local self-defence units.<sup>67</sup>

Only later did President Putin finally acknowledge that “Crimean self-defense forces were of course backed by Russian servicemen.”

Incidentally, in this interview Vladimir Putin also ruled out the possibility of joining Crimea with Russia. When asked by a correspondent: “How do you see the future of Crimea? Do you consider the possibility of it joining Russia?,” Putin replied: “No, we do not.”<sup>68</sup>

From the perspective of international law and taking into consideration the above-mentioned facts, several points should be made with regard to Putin's claim that Crimea's annexation was not an aggression.

First of all, under the Definition of Aggression adopted by the UN General Assembly (Art. 3 (g)), Russia's actions in Crimea can be qualified as “indirect aggression,” which presupposes the “sending by or on behalf of a State armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another State.”<sup>69</sup>

Second of all, the fact that the victim of the aggression, Ukraine, did not resist does not make Russia's actions, leading to Crimea's occupation and annexation, legal or permissible

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66 “Vladimir Putin Answered Journalists' Questions on the Situation in Ukraine,” accessed September 4, 2016, <http://eng.kremlin.ru/news/6763>.

67 “Vladimir Putin Answered Journalists' Questions on the Situation in Ukraine.”

68 “Vladimir Putin Answered Journalists' Questions on the Situation in Ukraine.”

69 A/RES/29/3314. See: <http://www.un-documents.net/a29r3314.htm> (accessed September 4, 2016).

under international law. The military occupation of Crimea by Russian troops and its subsequent annexation are crimes under international law in themselves.

Additionally, it should be kept in mind that disguising Russian military men as “local self-defense units” could be regarded as an act of perfidy under international humanitarian law.<sup>70</sup> Besides, under the Hague Convention (IV) respecting the laws and customs of war of October 18, 1907, the laws, rights, and duties of war apply to armies, militia, and volunteer corps fulfilling, *inter alia*, such conditions as having a fixed distinctive emblem recognizable at a distance and conducting their operations in accordance with the laws and customs of war. From this perspective Russian troops during Crimea’s invasion were in a violation of international humanitarian law.

### 5. *The Argument of a Coup d’État*

One of the key arguments of Russian politicians and lawyers aimed at the justification of Crimea’s annexation is that in Ukraine in February 2014 an illegal *coup d’état* had taken place,<sup>71</sup> as a result of which, arguably, the Ukrainian state collapsed, and the Crimean population in fear of the violation of its rights obtained the right to secede from Ukraine.

For example, Russian Professor at the Institute of State and Law, G. M. Vel’iaminov, in his article “The Unification of Crimea with Russia: The Legal Vantage point” contends: “An anti-constitutional state *coup d’état* had taken place in Ukraine, with the use of, by the so-called ‘opposition,’ illegal armed groups of nationalistic color under the banners of the war criminals Bandera and Shushkevich (sic).”<sup>72</sup>

The argument of a *coup d’état* was also used by the Association of Lawyers of the Russian Federation in its “Statement Concerning the Situation in Ukraine and the Legitimacy of Conducting the All-Crimean Referendum on the Status of Crimea on March 16, 2014,” which was issued on March 18, 2014.

This argument was formulated in a Statement of the Russian Association of Lawyers in the following way:

We propose to proceed from a general principle of law — *ex injuria non oritur jus* — meaning “law does not arise from injustice.” There is

<sup>70</sup> See Article 37 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), June 8, 1977.

<sup>71</sup> In his interview on 4 March 2014 Russia’s president was very categorical in this respect: “First of all, my assessment of what happened in Kyiv and in Ukraine in general. There can only be one assessment: this was an anti-constitutional takeover, an armed seizure of power” (<http://eng.kremlin.ru/news/6763>).

<sup>72</sup> G. M. Veliaminov, “Vossoedinenie Kryma s Rossiei: Pravovoi rakurs [The Reunion of Crimea and Russia: The Legal Aspect],” accessed September 4, 2016, <http://www.igpran.ru/articles/3556/>. Incidentally, it is absolutely not clear why Professor Veliaminov has called “Shushkevich” a war criminal and whom he meant: Belarus ex-president Stanislav Shushkevich or, perhaps, one of the leaders of the Ukrainian resistance to Stalinism, Roman Shukhevych.

no doubt that the cause of the tragic events in Ukraine was the forceful change of government in Kyiv that occurred outside the constitutional framework as a result of the illegal actions of radical elements in the Maidan movement, whose participants largely comprise the current government in Kyiv. An unconstitutional coup has been committed, accompanied by the forceful seizure of government bodies, illegal actions towards Ukraine's Constitutional Court, and the illegitimate countering of legitimate demands of law enforcement officers on the part of the armed "Maidanians." The removal from office of the Ukrainian president by the new, self-appointed leaders of Ukraine does not fit in any legal framework. A legal classification of so high a level is the exclusive right of the Ukrainian people that should only be exercised according to the procedure set forth in the Ukrainian Constitution.<sup>73</sup>

It is clear from this text that for the Russian Association of Lawyers the central argument justifying Crimea's annexation was a *coup d'état* in Ukraine. At the same time, this Association in its statement tries to play the role of the Ukrainian Constitutional Court, judging whether or not the change of government in Kyiv "occurred outside the constitutional framework" and what "fits in any legal framework" in Ukraine and what does not. Besides, the idea of the Russian Association of Lawyers "to proceed from a general principle of law, *ex injuria non oritur jus*" seems out of place because under the principle of the sovereign equality of states it is up to the Ukrainian legal system and not to Russia or the Russian Association of Lawyers to judge whether "the tragic events in Ukraine" were legal and legitimate or not. It is worth reminding that when in October of 1993 Russia's President Boris Yeltsin committed a *coup d'état* and crushed the Russian parliament Ukraine did not interfere in the internal affairs of Russia and officially refrained from commenting on the character of these events in Russia.

Regarding the principle *ex injuria jus non oritur*, meaning in Latin "illegal acts cannot create law," or, in other words, meaning that a legal right or entitlement cannot arise from an unlawful act or omission, this is a "principle of great importance in international law and suggests that any state which obtains land by a non-defensive war or such other aggressive action, cannot claim any legal rights to the land unlawfully obtained."<sup>74</sup> To put it differently, this principle, as applied to Crimea's annexation, signifies that Russia, having committed a serious international crime by annexing Crimea, cannot claim any legal rights to Crimea.

Regarding a *coup d'état*, first of all, it should be remembered that a *coup d'état* as such is a matter of national, not international law and it is not a violation of international law. As Jean

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73 Statement of the Association of Lawyers of the Russian Federation Concerning the Situation in Ukraine and Legitimacy of Conducting the All-Crimean Referendum on the Status of Crimea on March 16, 2014. See: <http://www.alrf.ru/press/prof/item/16282-zayavlenie-ayur-po-ukraine-i-obshchekrymskomu-referendumu> (July 13, 2016).

74 *Ex Injuria Jus Non Oritur* at Law & Legal Definitions. See: <http://definitions.uslegal.com/e/ex-injuria-jus-non-oritur/> (accessed September 4, 2016).

d'Aspermont notes: "The *coup d'état* cannot be considered an internationally wrongful act, and no state incurs international responsibility."<sup>75</sup>

Second of all, a *coup d'état* or revolution for that matter does not lead to the disappearance of the existing state or its international legal personality and continuity.

As Hans Kelsen rightly points out:

A victorious revolution or a successful *coup d'état* does not destroy the identity of the legal order which it changes, provided that its territorial sphere of validity remains identical. The order established by revolution or *coup d'état* has to be considered as a modification of the old order, not as a new order, if this order is valid for the same territory. The government brought into permanent power in an unconstitutional way is, according to international law, the legitimate government of the state whose international identity is not affected by these events. Hence, according to international law, victorious revolutions or successful *coups d'état* are to be interpreted as procedures by which a national legal order can be changed. Both events are, viewed in the light of international law, law-creating facts. By mere revolution or *coup d'état*, the legal continuity, though interrupted under national law, is not interrupted under international law.<sup>76</sup>

Third of all, it is up to the state where a *coup d'état* has occurred to judge what exactly happened from a legal point of view, and not to other foreign states.

Doug Cassel in this respect notes: "Ordinarily international law imposes its own, autonomous norms for the permissible conduct of a government. Questions of domestic law — including constitutionality — are left to domestic authorities, both as a matter of their sovereign entitlements, and because they are presumed better able to interpret their own constitution."<sup>77</sup>

Interestingly enough, during and after the events in Kyiv, Russia did not sever diplomatic relations with Ukraine, even though for a short period of time it stopped political contacts on the high level with representatives of the new Ukrainian government. This fact can be construed as meaning that legally Russia itself did not consider the events in Ukraine an "illegal *coup d'état*." It could even be argued that for Russian officials it was nothing but a part of political rhetoric without legal consequences.

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75 Jean d'Aspremont, "Responsibility for Coups d'État in International Law," *Tulane Journal of International and Comparative Law* 18 (2009–2010): 470.

76 Hans Kelsen, *Principles of International Law*, 2nd ed. (New York: Holt, Rinehart and Winston, 1966), 387.

77 Doug Cassel, "Honduras: Coup d'Etat in Constitutional Clothing?" *American Society of International Law Insights*, accessed September 4, 2016, <http://www.asil.org/insights/volume/13/issue/9/honduras-coup-d%E2%80%99etat-constitutional-clothing-revision>.

At any rate, when it comes to Russia's "non-recognition" of the new Ukrainian government, it should be kept in mind that the recognition of a state or government "is in all cases a political act with legal and political consequences."<sup>78</sup>

An attempt to combine the argument of a *coup d'état* with the argument of self-determination to justify Crimea's annexation was made by the press-secretary of the Russian president, Dmitry Peskov, who in one of the programs of Russian TV stated that "the right of a people to self-determination comes to the fore in a situation when international law stops to function and the threat of chaos emerges, as it happened in Ukraine."<sup>79</sup> Peskov contended: "There is a unity of opposites: the inviolability of borders, the inviolability of the territorial and political integrity of states, and the right of peoples to self-determination. And these opposites remain inviolable only until international law is observed, until an extreme moment occurs — some kind of X moment, until the state exists as a state."<sup>80</sup> He also added: "As soon as the state finds itself in a phase beyond international law, what happened in Ukraine, i.e. in the phase of an armed *coup d'état* — this unity of opposites crumbles and the principle of self-determination comes to the fore, because people then follow the mere instinct of self-preservation, when the threat of chaos emerges."<sup>81</sup>

This line of argumentation of the Russian president's press-secretary begs for numerous questions and clarifications.

First, it is absolutely not clear why Mr. Peskov considers that during political protests in Ukraine and after Yanukovych's escape international law has stopped "to function." In actuality, international law didn't stop "to function" at that time because internal political processes within a state don't prevent international law from "functioning," and international legal obligations of Russia with respect to Ukraine and the international community continue to be in force.

Second, nowhere in the world, including in Russian literature on international law can one find the notion that the principles of the inviolability of borders, territorial integrity, and the right to self-determination are in a state of some kind of incomprehensible "unity of opposites."<sup>82</sup>

Third, Mr. Peskov is talking about some kind of "X moment, until a state exists as state." This is too vague and indistinct a term to be used in international legal discourse.

Fourth, the legitimate question is: who has the right to decide whether a given state "exists as a state"? Russia, which invaded Ukraine and annexed part of its territory? It is logical to assume that Ukraine remained a full-fledged state during all the events in 2013–2014 because it remained a member-state of the UN. Besides, neither the international community nor any state in the world ever claimed that Ukraine ceased being a state.

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78 Robert L. Bledsoe, Boleslav A. Boczek, *The International Law Dictionary* (Santa Barbara: ABC-CLIO, 1987), 46.

79 RIA Novosti, <http://ria.ru/world/20140419/1004644784.html> (accessed September 4, 2016).

80 See: <http://ria.ru/world/20140419/1004644784.html>

81 See: <http://ria.ru/world/20140419/1004644784.html>.

82 The concept of the "unity of opposites" appears to be taken by Mr. Peskov from philosophical discourse, perhaps even from Hegelian or Marxist dialectics, but in international legal discourse this concept seems to be out of place.

Fifth, Mr. Peskov's statement that "these opposites remain inviolable only until international law is being observed" is absolutely incomprehensible. It is impossible to find any corroboration for this strange statement in world or even Russian legal literature. Besides, it is not clear who exactly, proceeding from Peskov's logic, determines whether or not international law is being observed or not. For example, during the events in Ukraine the international community through such bodies as the UN, the Council of Europe, and the OSCE never accused Ukraine of violations of international law, whereas these organizations in their documents came to the conclusion that Russia committed a whole range of international crimes against Ukraine.

Sixth, Mr. Peskov, without any proof, puts forward the groundless claim that Ukraine allegedly found itself "in a phase beyond international law," a statement which is in contradiction with the point of view of the UN, the Council of Europe and the OSCE, who consider Russia, not Ukraine, to be "beyond international law."

Seventh, as indicated above, legally speaking, there was no *coup d'état* in Ukraine, but only the escape of a president suspected of corruption, massive human rights violations, and high treason. In any case, it is not up to Mr. Peskov or Russia, but to the Ukrainian court system, to judge what exactly happened in Ukraine.

Eighth, Mr. Peskov's thesis that when "the unity of opposites" of the principles of the inviolability of borders, the inviolability of the territorial and political integrity of states, and the right of peoples to self-determination crumbles, that the principle of self-determination comes to the fore, doesn't find any ground in the theory and practice of international law. On the contrary, the doctrine of international law and international documents (The Declaration on Principles of International Law of 1970 and the Helsinki Final Act of 1975) are inclined to stress the equality of these principles. So, for instance, the Declaration on Principles of International Law declares that the principles enshrined in this document in their interpretation and application are interrelated and each principle should be construed in the context of the other principles.

Ninth, Mr. Peskov in his statement is using a biological category of "the instinct of self-preservation," which is out of place in a given legal context: it is absolutely not clear what it has to do at all with the right to self-determination or international law in general.

And finally, Mr. Peskov is talking about the "threat of chaos" in Ukraine, meaning perhaps by this the situation in Ukraine preceding Crimea's annexation by Russia, but he doesn't provide any proof of that and ignores the fact that international organizations, including the UN, didn't register such a "threat" in Ukraine.

#### ***6. "Revolution" in Ukraine and the International Obligations of Russia with Respect to Ukraine***

Another argument of Russia's president purports to prove that a revolution took place in Ukraine, as a result of which a new Ukrainian state emerged, and this allegedly absolves Russia of its international obligation with regard to Ukraine. So, in his interview on March 4, 2014 a correspondent put to Russia's president a question about the possibility of using the Russian military in Ukraine, which would violate the Budapest Memorandum, under which the United

States and some NATO countries consecrated the territorial integrity of Ukraine in exchange for its promise to give up nuclear weapons.

Russia's president responded by claiming that revolution had taken place in Ukraine:

[I]f this is revolution, what does this mean? In such a case it is hard not to agree with some of our experts who say that a new state is now emerging on this territory. This is just like what happened when the Russian Empire collapsed after the 1917 revolution and a new state emerged. And this would be a new state with which we have signed no binding agreements.<sup>83</sup>

In the words of Russia's president, we can distinctly hear the echo of Soviet international legal scholarship, which always insisted that the Bolshevik revolution of 1917 marked the demise of the Russian Empire and the emergence of a new subject of international law, a new state — Soviet Russia. Soviet lawyers claimed that there was no continuity between the Russian Empire and Soviet Russia in order to avoid the need for payment of the Russian Empire's debts by the new Soviet government. However, this was a unique Soviet position on the influence of social revolution upon the continuity and identity of a state, whereas in reality, as practice shows, revolutions as a rule do not lead to the emergence of a new subject of international law in the place of the old one.

Basically, what was said about a *coup d'état* above refers to revolution, i.e., legally speaking, in Ukraine no revolution occurred and Ukrainian legal order did not collapse and was not substituted by a new one.<sup>84</sup>

Secondly, revolutions are not regulated by international law and belong to the domain of the internal matters of a state. Russian Professor of international law, S. V. Chernichenko, in his fundamental *Theory of International Law*, even speaks about “social self-determination” when it comes to revolutions. According to him true revolutions, i.e. quick social changes having impact upon deep layers of social life, are within the framework of the right to self-determination and “cannot be prohibited by national legal means, if movement in this direction gains momentum.”<sup>85</sup>

The important thing here is also that in accordance with the principles of the sovereign equality of states and non-interference in internal affairs it is up to the state to decide what exactly has happened on its territory (a *coup d'état*, revolution or something else) and whether or not it had any impact upon the state's identity and its legal order. Here again Russia's president tried to assume the role of the Ukrainian Constitutional Court.

The general position of the Russian doctrine of international law on such issues as revolution, *coups d'état*, and recognition of a new government that comes to power in an “unconstitutional manner” is expressed in the “Course of International Law” in the following way:

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83 “Vladimir Putin Answered Journalists' Questions on the Situation in Ukraine.”

84 Sometimes events in Ukraine in Maidan Square leading to President Yanukovich's escape are referred to as the “Revolution of Dignity,” but this is a figure of speech only and not a legal qualification.

85 Chernichenko, *Teoria mezhdunarodnogo prava*, vol. II, 173.

Revolutions, civil wars, state *coups d'état* — these are the normal ways of the emergence of new governments that need recognition. International law does not intervene in an internal struggle, as a result of which in a state-subject of international law, a new government comes to power. That is why it considers the government that effectively and independently exercises power to be the representative of a state in international relations. The recognizing state considers the given foreign government to be the organ independently exercising power on the territory of its state and representing this state in international relations.<sup>86</sup>

This *inter alia* implies that Russia in its relations with new foreign governments should be guided by the principle of the effectiveness of these governments and when faced with a dilemma of who to consider the legitimate representative of Ukraine in international relations — Viktor Yanukovich, who had lost effective control over Ukraine and escaped abroad, or the Ukrainian government effectively exercising power in Ukraine — should have recognized the new government as the representative of Ukraine.

The interesting thing here also is that the Russian president's statement on "revolution" in Ukraine implies that Russia would have guaranteed Ukraine's territorial integrity, as the Budapest Memorandum demands, had it not been for this "revolution."

Later on, to explain Russia's non-observance of its obligations under the Budapest Memorandum, Russian officials and lawyers had to jettison the "revolution" argument and to find other ways of argumentation. So, for example, the Russian Ministry of Foreign Affairs and Premier Dmitry Medvedev took different position from Russia's president, arguing that Russia is allegedly observing its obligations with respect to Ukraine under the Budapest Memorandum and did not violate its territorial integrity. Such argumentation is based upon *mala fides* and upon an absurd interpretation of the Budapest Memorandum's text. Whereas the 1969 Vienna Convention on the Law of Treaties stipulates that a "treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose" (Art. 31 (1)), Russian officials and lawyers are prone to disregard this rule (which is also part of international customary law and applicable to international agreements of a political character) when interpreting agreements concluded with Ukraine.

The object of interpretation in international law, according to Professors I. I. Lukashuk and O. I. Lukashuk, is a norm, its content, which embodies the concordant will of subjects.<sup>87</sup> In other words, the object of interpretation of an international agreement should be the common intention of the parties.

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86 N. A. Ushakov, ed., *Kurs mezhdunarodnogo prava. V 7 t.* [Course in International Law: In 7 Volumes], vol. III (Moscow: Nauka, 1990), 109.

87 I. I. Lukashuk, O. I. Lukashuk, *Tolkovanie norm mezhdunarodnogo prava. Uchebno-prakticheskoe posobie* [The Interpretation of the Norms of International Law: A Manual] (Moscow: NOTA BENE, 2002), 27.

It can be argued that Medvedev's "interpretation" of the Budapest Memorandum violates such principles of interpretation in international law as the principle of good faith, the principle of effectiveness (meaning that interpretation of the agreement should be conducive to the effectiveness of its goal), the principle of legality (meaning that the interpretation of the Budapest Memorandum should not lead to violation of the fundamental principles of international law, including, of course, the principle of territorial integrity), and the principle of justice.<sup>88</sup>

It cannot be argued that as a result of a *coup d'état* or "revolution" in Ukraine it ceased its existence as state, even temporarily. This is even recognized by some Russian scholars. For example, Professor A. A. Moiseev, talking about the political events in Kyiv, acknowledges: "Without any doubt, Ukraine, due to its sovereignty, the source of which is its people, didn't disappear as a subject of international law..."<sup>89</sup> For this reason it would be wrong to argue that because of a "temporary disappearance" of Ukraine as a subject of international law and state, the population of Crimea obtained the right to secede.

The words of Professor Moiseev are also important for us because they imply that there is only one people in Ukraine, which is the source of Ukraine's sovereignty, i.e. the Ukrainian people taken together, also the true subject of the right to self-determination.

### 7. *Whether Crimea's Annexation Violated Ukraine's Territorial Integrity*

In an attempt to justify Russia's violation of Ukraine's territorial integrity and non-observance of the Budapest Memorandum, the Russian Foreign Ministry in its statement on April 2, 2014 claimed that "the loss of territorial integrity by Ukraine resulted from internal processes in their country, and Russia and its obligations under the 1994 Budapest Memorandum have no relation to this."<sup>90</sup>

Russian Premier Dmitry Medvedev later on explained the non-observance by Russia of the Budapest Memorandum in his own particular way. On May 24, 2014 in an interview with the Rossiia-1 TV channel Premier Medvedev was asked the following question:

Mr Medvedev, just recently, you gave an interview to my colleague from Bloomberg TV, and the correspondent asked (I quote) a seemingly simple question: Can you guarantee that the Luhansk Region, the Donetsk Region, won't become part of Russia, and will remain part of the territorial integrity of Ukraine? And you replied (I quote): First, we don't have to guarantee anything to anyone, because we never took on any commitments concerning this. You are probably aware that in the following 24 hours the foreign media increasingly commented on this response and even accused

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88 Lukashuk and Lukashuk, *Tolkovanie norm mezhdunarodnogo prava*, 45–50.

89 A. A. Moiseev, "O nekotorykh mezhdunarodno-pravovykh pozitsiyakh po krymskomu voprosu [About Some International and Legal Positions on the Crimean Question]," *Vestnik Diplomaticheskoi akademii MID Rossii. Mezhdunarodnoe pravo* 1 (2014): 15.

90 Interfax: Russia & CIS Military Newswire; 4/ 2/2014, p. 1.

you of ignoring, despite your being a lawyer, the Budapest Memorandum, under which Russia, the US, and the UK — in response to the withdrawal of Soviet weapons from Ukraine — guaranteed Ukraine's territorial integrity and sovereignty.<sup>91</sup>

To this question Dmitry Medvedev replied:

I see. This is a profound legal issue. Of course, I'm aware of the Budapest Memorandum. I've read it. To give you some background on this issue, it should be noted that the memorandum resulted from a single event — Ukraine giving up its nuclear weapons (1994). The memorandum was signed by the leading nuclear powers and Ukraine. What was it about? Ukraine agrees to give up its nuclear arsenal, but if some third power threatens Ukraine, the guarantor states, the United States and Russia, are supposed to step in for Ukraine. Neither Russia nor any other state can guarantee the territorial integrity of another country through any documents. Only the country in question, its people and government can guarantee territorial integrity. And what if a country decides to split into two states? Should the guarantors be told: "Listen, they've decided to divide the country, so go ahead and use force. They've taken all these decisions, and you have to honor the documents you signed..."

I would like to reiterate that the guarantees provided by the Russian Federation were about threats to Ukraine's sovereignty. What happened in Crimea is a whole other story, since it was the people who identified it as an autonomous part of the country, who initiated a referendum and voted to leave Ukraine.

Listen, this is an entirely different story. There are many such cases in the world when states are divided but some commitments are assumed and documents signed nonetheless. So these reproaches are groundless. The Russian Federation honors its obligations but not a single state in the world, and this is my last point, can guarantee the territorial integrity of another state — this is a legal absurdity. Let those who are making such remarks read the Budapest Memorandum more attentively.<sup>92</sup>

There are, of course, some serious problems with this line of reasoning offered by Premier Medvedev.<sup>93</sup>

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91 "Dmitry Medvedev's Interview with the Rossiia-1 TV Channel," accessed September 4, 2016, <http://government.ru/en/news/12590>.

92 "Dmitry Medvedev's Interview with the Rossiia-1 TV Channel."

93 An interesting question might arise in connection with the statement of Premier Medvedev with respect to assurances of national security given by Russia to Belarus and Kazakhstan in the same manner as with Ukraine, when Belarus and Kazakhstan abandoned nuclear weapons. Judging by

First, the very intention of the states-guarantors under the Budapest Memorandum was to provide Ukraine with reliable guarantees of its territorial integrity, security, and the inviolability of its borders in exchange for Ukraine abandoning its nuclear weapons. Under this Memorandum, Russia, as one of states-guarantors, undertook to respect Ukrainian independence and sovereignty within its existing borders, as well as to refrain from the threat or use of force against Ukraine. Crimea's occupation with the use of Russian military servicemen ("little green men") constitutes a flagrant and obvious violation of the Budapest Memorandum. Crimea's subsequent annexation ("integration") by Russia is also an obvious violation of the Memorandum. There is no doubt about these violations by Russia of the Budapest Memorandum on the part of other states-guarantors, such as the US, the UK, and France.

Second, seen in the light of other documents related to the Budapest Memorandum (such the Trilateral Declaration of Russia, the US, and Ukraine; and the Verkhovna Rada's decision (*postanova*), adopted during the ratification of the START-1 and Lisbon protocol of 18 November 1993, which *inter alia* envisages that Ukraine will abandon its nuclear weapons "on condition of receiving by it reliable guarantees of its national security, in which the nuclear powers will undertake obligations not to use nuclear weapons against Ukraine, not to use ordinary armed forces against it, not to resort to the threat of force, and to respect the territorial integrity and inviolability of Ukraine's borders"), it is absolutely clear that Russia's actions in Crimea are incompatible with Ukraine's territorial integrity, security, and the inviolability of its borders.

Even if we, for the sake of argument and despite facts registered by international organizations and foreign observers with regard to the obvious involvement of Russia in events in Crimea preceding the sham "referendum," assume that Crimea seceded from Ukraine without Russia's help, it still goes against the principle of territorial integrity and the guarantees of the Budapest Memorandum for Russia to "integrate" Crimea into its territory.

Third, Medvedev's claim that Russia's actions and its "integration" of Crimea don't violate the principle of territorial integrity stands in sharp contrast with the position of the Russian doctrine of international law on the content of this principle, because Russian international legal scholarship has always construed this principle very broadly and in very categorical, imperative terms. So, for example, "The Course of International Law" underlined that under the principle of the territorial integrity of states the states are obliged "to refrain from the most minor use of military intervention, which may be in the form of the temporary transfer across borders of small armed groups."<sup>94</sup> This principle, according to Russian doctrine of international law, envisages that states should refrain from turning each other's territories into objects of acquisition and prohibits, *inter alia*, to dismember and to acquire any part of foreign state's territory.<sup>95</sup>

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Medvedev's contention that "not a single state in the world [...] can guarantee the territorial integrity of another state — this is a legal absurdity" Belarus and Kazakhstan now cannot rely any more on the guarantees of their security and territorial integrity on the part of Russia.

94 G. V. Ignatenko et al., *Kurs mezhdunarodnogo prava. V 7 t.* [Course in International Law: In 7 Volumes], vol. 2 (Moscow: Nauka, 1989), 109.

95 Ignatenko et al., *Kurs mezhdunarodnogo prava*, 109.

Russian researcher of the principle of territorial integrity, Professor L. I. Volovova, in her book *The Principle of Territorial Integrity and Inviolability in Contemporary International Law* underlined that by territorial integrity and inviolability, the UN Charter means “complete and exclusive state sovereignty over its territory, not allowing any whatsoever foreign military or non-military interference irrespective of the fact of whether or not such interference has as its purpose the partitioning of the state’s territory.”<sup>96</sup>

According to Russian professor B. M. Klimenko, the principle of a state’s territorial inviolability and integrity imposes upon the state such obligations as:

- not to acquire territories by means of threat of force or its use;
- to respect the inviolability of states’ borders;
- not to use foreign territory without the consent of the territorial sovereign; and
- not to use own territory in such a way as to damage the territory of the other state.<sup>97</sup>

The Contemporary Russian Doctrine of International Law (distinguishes between “territorial inviolability” and “territorial integrity.” “Territorial inviolability” is the securing of state territory from any encroachment from outside; no one should encroach upon state territory with a view of its complete or partial taking over or occupation, to enter its land, underground, sea or air territory against the will of the state’s authorities.<sup>98</sup> “Territorial integrity” is a state of the unity and indivisibility of a state’s territory; no one should encroach upon its territory with a view of complete or partial violation of its unity, illegal dismemberment, secession, seizure, transfer or joining the whole or part of it to the territory of another state.<sup>99</sup>

As we can see, Russia’s actions, preceding Crimea’s annexation, and the annexation (“integration”) itself constitute serious violations of Ukraine’s territorial integrity and territorial inviolability.

Russian researcher of the principle of territorial integrity, N. V. Ostroukhov, in his doctoral thesis entitled *The Territorial Integrity of States in Contemporary International Law and Its Guarantee in the Russian Federation and in the Post-Soviet Sphere*, comes to the conclusion that from the point of view of contemporary international law the preservation of territorial integrity is the most important sovereign right of a state and that the obligation of all other subjects of international law to observe and respect the territorial integrity of a state corresponds to this right, as do not using force or threat of force against it and not interfering in affairs belonging to its competence with a view to violating territorial integrity, or in any other illegal act.<sup>100</sup>

In a word, Premier Medvedev’s statement that Russia allegedly did not violate Ukraine’s territorial integrity and guarantees to Ukraine under the Budapest Memorandum doesn’t

96 L. I. Volovova, *Printsip territorialnoi tselostnosti i neprikosnovennosti v sovremennom mezhdunarodnom prave* [*The Principle of Territorial Integrity and Immunity in Contemporary International Law*], (Moscow: Izdatelstvo Rostovskogo universiteta, 1981), 61.

97 B. M. Klimenko, *Gosudarstvennaia territoria. Voprosy teorii i praktiki mezhdunarodnogo prava* [*The State’s Territory: Issues of Theory and the Practice of International Law*] (Moscow: Mezhdunarodnye otnosheniia, 1974), 24–25.

98 Kuznetsov and Tuzumukhamedov, eds., *Mezhdunarodnoe pravo*, 202.

99 Kuznetsov and Tuzumukhamedov, eds., *Mezhdunarodnoe pravo*, 202.

100 Ostroukhov, “Territorialnaia tselostnost gosudarstv,” 8.

correspond to facts, principles of international law, Russia's international obligations, and the position of Russian doctrine of international law.

After Crimea's annexation Russian professor G. M. Veliamonov attempted to justify the violation of the Budapest Memorandum by Russia in his own way. He claimed that: 1) the Budapest Memorandum is about "the collective obligation of the three countries-guarantors" (Russia, the UK, and the US) before Ukraine and not about "any individual obligations of each of these three states-guarantors to Ukraine"; 2) the guarantees envisaged by the Budapest Memorandum as well as the state of Ukrainian borders in 1994 are subject to the general principle of law *rebus sic stantibus* (things thus standing), i.e. the obligations under the Budapest Memorandum remained in force until conditions existing in 1994 remained in Ukraine, as well as a state of law and order. In Vel'iaminov's view, law and order, as well as legal government, do not exist in Ukraine; and "the subject of law has changed."<sup>101</sup>

Regarding Professor Vel'iaminov's claim that the obligations under the Budapest Memorandum were of a collective rather than individual nature does not find corroboration in the text of the Memorandum. On the contrary: from this Memorandum, as well as from the Trilateral Declaration of Russia, the US, and Ukraine preceding this Memorandum it is absolutely obvious that we have here not only one "collective obligation" but also the concrete obligation of each of the states-guarantors. Professor Veliamonov's logic leads to an absurd conclusion: i.e. if one of the states-guarantors violates its obligations before Ukraine, it ruins the whole "collective obligation" and automatically absolves all the states-guarantors of their obligations to Ukraine. It is equally impossible to agree with Veliamonov's claim that the guarantees under the Budapest Memorandum were not given to Ukraine "forever" and that they were given by the states-guarantors on condition that Ukraine will observe generally recognized principles of international law, including such principles as the principle of respect for human rights and the principle of self-determination.<sup>102</sup>

As it flows from the text of the Budapest Memorandum, there were no conditions attached to these guarantees, and there is no time limit set for these guarantees. Besides, the international community, including such organizations as the UN, the Council of Europe, the OSCE, and the EU did not accuse Ukraine of violations of the generally recognized principles of international law; on the contrary, it was Russia which was accused by these international organizations of aggression against Ukraine and brutal violations of international law.

As for Veliamonov's claim about *rebus sic stantibus*, it goes against how this principle is understood in international law. In international law *clausula rebus sic stantibus* is the legal doctrine allowing for treaties to become inapplicable because of a fundamental change of circumstances. This *clausula* is essentially viewed as an "escape clause" that makes an exception to the general rule of *pacta sunt servanda* (promises must be kept), and is expressed in the 1969 Vienna Convention on the Law of Treaties. Before a fundamental change of circumstances (i.e. *clausula rebus sic stantibus*) can be invoked, the following prerequisites must be met under the 1969 Vienna Convention on the Law of Treaties (Art. 62 (1)): 1) the change must be because of circumstances existing at the time of the conclusion of the treaty (for an indefinite

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<sup>101</sup> Veliamonov, "Vossoedinenie Kryma s Rossiei."

<sup>102</sup> Veliamonov, "Vossoedinenie Kryma s Rossiei."

or fixed duration); 2) the change must have been fundamental; 3) the change must have been unforeseen by the parties; 4) the circumstances that have changed must have constituted an essential basis of the consent of the parties to be bound by the treaty; 5) the effect of the change must be to radically transform the extent of obligations of the party invoking the change; and 6) the obligations must still be performed under the treaty, which means that fully executed treaties are not included.<sup>103</sup>

Regarding a fundamental change of circumstances allowing to resort to the *clausula rebus sic stantibus* and not to observe obligations under the Budapest Memorandum, Veliaminov in his article is making reference to such “new circumstances” (such as, in his words, “the non-existence of law and order in Ukraine,” “illegal government,” “the change of the subject of law”) which: 1) in fact didn’t have place in Ukraine; 2) even if they had happened would have belonged to the domain of Ukraine’s internal affairs which should be estimated from the point of view of the Ukrainian legal system and within this system, and not by a foreign state, especially the one that initiated an aggressive war against Ukraine; and 3) don’t correspond to the above mentioned criteria under art. 62 of the 1969 Vienna Convention on the Law of Treaties (at least Professor Veliaminov himself doesn’t try to prove that his perception of the alleged change of circumstances somehow fits into these criteria).

Perhaps the most amazing claim by Professor Veliaminov is his statement about the influence of the principle *rebus sic stantibus* upon the state of Ukrainian borders after 1994 (i.e. the date of the conclusion of the Budapest Memorandum). He completely ignores art. 62 (2) of the 1969 Vienna Convention on the Law of Treaties according to which:

A fundamental change of circumstances may not be invoked as a ground for terminating or withdrawing from a treaty:

- (a) If the treaty establishes a boundary; or
- (b) If the fundamental change is the result of a breach by the party invoking it either of an obligation under the treaty or of any other international obligation owed to any other party to the treaty.

Perhaps because of this article of the Vienna Convention Russia, unlike Professor Veliaminov, has never raised the pretext of a fundamental change of circumstances (*clausula rebus sic stantibus*) on the official level in order to justify its violation of the Budapest Memorandum.

### *8. Humanitarian Intervention and Intervention by Invitation*

Trying to justify Crimea’s annexation, Russia’s president resorted to two concepts known in international legal discourse as “humanitarian intervention” and “intervention by invitation.”

In his interview President Putin said:

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<sup>103</sup> See: Bledsoe and Boczek, *The International Law Dictionary*, 246–48.

We proceed from the conviction that we always act legitimately. I have personally always been an advocate of acting in compliance with international law. I would like to stress yet again that if we do make the decision, if I do decide to use the Armed Forces, this will be a legitimate decision in full compliance with both 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 interests. This is a humanitarian mission.<sup>104</sup>

The truth, however, is that Russia and its doctrine of international law has always been against the use of any kind of “humanitarian interventions” in international relations.

For example, Russian Minister for foreign affairs, I. S. Ivanov, in his speech “The Rule of Law in International Relations — A Guarantee of the Comprehensive Strategic Stability and Security in the 21st Century” (November 2, 2000) declared: “We shouldn’t rule out that the use of different doctrines of “humanitarian intervention” can destabilize international order to the point that would be dangerous even for those who would like to appropriate the “right” to hold military actions. If in international law the idea of the permissibility of the use force without permission of the UN Security Council becomes entrenched, then the “humanitarian baton” might end up in the hands of anyone. Another, absurd from the legal point of view, situation is possible: one party is resorting to force invoking the right to “humanitarian intervention,” while the other party — the victim of such aggression — in a no less legal way uses force in self-defense.”<sup>105</sup>

Denouncing the concept of humanitarian intervention, Igor Ivanov notes that this concept “in advance presupposes inequality and arbitrariness in relations between states.”<sup>106</sup>

Of great interest with respect to Russia’s opposition on humanitarian intervention and “the responsibility to protect” is an article by the Dean of the International Law Faculty of the Diplomatic Academy at the Russian Ministry of Foreign Affairs, Professor A. A. Moiseev, published in *Nezavisimaya Gazeta* in 2013 under telling title “Carte-Blanche. There is no Alternative to the Resolutions of the UN Security Council. Humanitarian Intervention Undermines Rule-of-Law.”<sup>107</sup> In his article Professor Moiseev, referring to the UN Charter in connection with the events in Syria, argues:

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104 “Vladimir Putin Answered Journalists’ Questions on the Situation in Ukraine.”

105 I. S. Ivanov, “Verkhovinstvo prava v mezhdunarodnykh otnosheniyakh — zalog vseobimiuschei strategicheskoi stabilnosti i bezopasnosti v XXI veke [The Supremacy of Law in International Relations — the Guarantee of Comprehensive Strategic Stability and Security in the 21st Century],” *Moskovskii zhurnal mezhdunarodnogo prava* 41.1 (2001): 7.

106 Ivanov, “Verkhovinstvo prava v mezhdunarodnykh otnosheniyakh,” 7.

107 A. A. Moiseev, “Kart-blansh. Resheniam Soveta Bezopasnosti OON net alternativy. Gumanitarnaia interventsia podryvaet verkhovinstvo prava [Carte Blanche. There is no Alternative to the Decisions of the United Nations Security Council. Humanitarian Intervention Undermines the Supremacy

[I]nternational law establishes norms, according to which the use of armed force is allowed only in the case of self-defense when an armed attack takes place, as well as if the international community, and not a separate state or group of states, establish facts of the threat to peace, brutal and massive violations of human rights, or an act of aggression. It is the UN that represents the international community, within the framework of which it is the UN Security Council, which is competent to establish the facts of crimes and to take decisions on the possible use of force.<sup>108</sup>

Professor Moiseev, being highly critical of the use of “humanitarian intervention” by the US and referring to the concept of this kind of intervention, stresses: “The concept [of humanitarian intervention] has already proved to the world community its legal insolvency. The international community until now is going through the consequences of irresponsible ‘humanitarian interventions,’ which deteriorated internal conflicts, having allowed terrorism and extremism to flourish, having caused new waves of violence, making the civilian population even more vulnerable.”<sup>109</sup>

Decisively rejecting the concept of “the responsibility to protect” (R2P) as illegal under international law and as a new term for the old discredited “humanitarian intervention,” Professor Moiseev underlines that any use of force in international relations is possible only with the permission of the UN Security Council, and that “attempts to act in obviolation of the UN Security Council not only undermine its role but also the UN in general as a forum in the system of international relations, which has no alternative.”<sup>110</sup>

In an attempt to justify Crimea’s annexation, Russia has also tried to use such an argument as the possibility of the violation of human rights of the local population of Crimea. The interesting thing is that when Viktor Yanukovych was in power Russia had never raised the issue of any violations of human rights in Crimea, at least on the official level. It should also be kept in mind that Russia participates in numerous international legal mechanisms, which could be used to protect the human rights of the Crimean population had it been subject to any tangible threat to these rights. In other words, had there been any signs of the violation of human rights in Crimea, Russia should have instead of resorting to force, turned to such international organizations as the UN, the Council of Europe, the ECHR, and the OSCE. The very fact that Russia made no serious attempt to turn to these organizations is very telling. Moreover, as the reports and documents of these organizations on the situation in Crimea clearly demonstrate, there was no violation of human rights in Crimea on the part of Ukrainian authorities and violations began only after Russia invaded and annexed Crimea. Of special concern to the international community now are violations by the Russian occupational authorities in Crimea of the rights of Crimean Tatars.

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of Law],” *Nezavisimaia Gazeta*, September 5, 2013, accessed October 3, 2016, [http://www.ng.ru/world/2013-09-05/3\\_kartblansh.html](http://www.ng.ru/world/2013-09-05/3_kartblansh.html).

108 Moiseev, “Kart-blansh.”

109 Moiseev, “Kart-blansh.”

110 Moiseev, “Kart-blansh.”

Regarding “intervention by invitation,” i.e. the appeal of Ukraine’s President Viktor Yanukovych, who by that time had already left the territory of Ukraine and escaped to Russia, to the Russian president to use force against Ukraine, there are at least two problems with such an “appeal”: 1) Under the Ukrainian Constitution, Yanukovych had no power to “invite” a foreign Army to Ukraine without the permission of the Verkhovna Rada;<sup>111</sup> moreover, in the light of Ukrainian criminal law such an “appeal” could be viewed as high treason;<sup>112</sup> 2) By the time of the making of such an “appeal” to Russia, Yanukovych had already lost effective control over Ukraine and Russia’s positive response to his “appeal” would have been in violation of the principles of self-determination and non-interference in the internal affairs of a state, and the non-use of force in international relations.

The Russian doctrine of international law viewed “intervention by invitation” with great suspicion. As pointed out in the “Course of International Law,” “The major argument against ‘intervention by invitation’ is that it is fraught with the violation of the principle of peoples’ self-determination, limiting the rights of peoples to choose ways of their development.”<sup>113</sup>

At the same time the Russian doctrine of international law did not rule out completely an “intervention by invitation” if the armed forces of the sending state are used only with the purpose to repel actions (e.g. armed aggression) from abroad. For the Russian doctrine of international law the major yardstick, allowing to ascertain whether a given “intervention by invitation” is legal or not, is the “reaction of the international community, universal international organizations and, first of all, the UN.”<sup>114</sup>

Regarding international law as such it leans towards the prohibition of “intervention by invitation,” especially when it comes to the use of foreign troops to quell internal opposition. Thus, the Resolution “Military Assistance on Request” by the *Institut de Droit International* declares that “[m]ilitary assistance [upon request] is prohibited when [...] its object is to support an established government against its own population” (Article 3(1)).

The reason why the Russian doctrine of international law has always been critical towards any kinds of interventions and interferences into the internal affairs of states lies in its emphasis on the principle of non-interference in the internal affairs of states. According to Russian legal doctrine, under the principle of non-interference, no state is allowed “to organize, support, instigate, finance, encourage, or allow armed, subversive or terrorist activities,” aimed at the

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111 Under Article 85 (23) of the Ukrainian Constitution the authority of the Verkhovna Rada of Ukraine comprises “approving decisions on providing military assistance to other states, on sending units of the Armed Forces of Ukraine to another state, or on admitting units of armed forces of other states onto the territory of Ukraine.”

112 Article 111 (1) of the Ukraine’s Criminal Code (“High Treason”) stipulates: “High treason, that is an act willfully committed by a citizen of Ukraine in the detriment of sovereignty, territorial integrity and inviolability, defense capability, and state, economic or information security of Ukraine: joining the enemy at the time of martial law or armed conflict, espionage, assistance in subversive activities against Ukraine provided to a foreign state, a foreign organization or their representatives, shall be punishable by imprisonment for a term of ten to fifteen years.”

113 Ignatenko et al., *Kurs mezhdunarodnogo prava*, 80.

114 Ignatenko et al., *Kurs mezhdunarodnogo prava*, 80.

change of the social system of the other state by means of violence, nor should it “interfere into an internal struggle in the other state.”<sup>115</sup>

It is worthwhile to quote at this juncture the “Course of International Law,” due its imperative formulation of the principle of non-interference:

Hence, no state has the right to interfere directly or indirectly for any reason whatsoever into the internal and external affairs of another state. The important value of this formula is its strict and categorical character. Any — direct or indirect — interference is prohibited. It cannot be justified by any reason whatsoever. Any actions against the legal personality of a state or against its political, economic, and cultural foundations constitute illegal interference.<sup>116</sup>

As we can see from this categorical statement, Russia’s interference in the internal and external affairs of Ukraine, including, of course, Crimea’s annexation, constitutes a serious international crime even from the perspective of the Russian doctrine of international law.

### 9. *The “Constitutionality” of Crimea’s Annexation*

After Crimea’s secession from Ukraine, on March 18, 2014, a “treaty” was concluded between the Russian Federation and the Republic of Crimea “On the admission of the Republic of Crimea into the Russian Federation and on the creation within the Russian Federation of new subjects — the Republic of Crimea and the federal city of Sevastopol.” Before this “treaty” entered into force, it was referred to the Russian Constitutional Court to ascertain its constitutionality. In its decision on 20 March 2014, the Russian Constitutional Court came to the conclusion that this “treaty” conforms to the Constitution of the Russian Federation.<sup>117</sup> The peculiar feature of this decision is that the Russian Constitutional Court came to the conclusion that the “treaty” between Russia and Crimea does not contradict the Russian Constitution on rather formal grounds, i.e. because Russia’s president had competence under the Russian Constitution to conclude such a treaty. It is noteworthy that the Constitutional Court avoided the crucial issue of whether or not this “treaty” is in conformity with the universally-recognized norms of international law, including the principles of self-determination and territorial integrity, which form part of Russia’s legal system according to article 15 (4) of the Russian Constitution.<sup>118</sup>

<sup>115</sup> Ignatenko et al., *Kurs mezhdunarodnogo prava*, 143.

<sup>116</sup> Ignatenko et al., *Kurs mezhdunarodnogo prava*, 143.

<sup>117</sup> For the text of the Russian Constitutional Court decision see: <http://www.rg.ru/2014/03/19/ks-site-dok.html> (accessed September 5, 2016).

<sup>118</sup> Article 15 (4) of the Russian Constitution stipulates: “The universally-recognized norms of international law and international treaties and agreements of the Russian Federation shall be a component part of its legal system. If an international treaty or agreement of the Russian Federation fixes other rules than those envisaged by law, the rules of the international agreement shall be applied.”

Taking into consideration Russia's Federal Law "On International Treaties of the Russian Federation" of June 16, 1995, article 1 (1) of which stipulates that international treaties of the Russian Federation shall be concluded and performed in accordance with the generally recognized principles and norms of international law, as well as article 53 of the 1969 Vienna Convention on the Law of Treaties, according to which "a treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law." The "treaty" concluded between Russia and Crimea is null and void *ab initio* both from both the point of view of the international law of treaties and Russia's law because it conflicts with a number of norms *jus cogens* (e.g. fundamental principles of international law, such as the principle of the non-use of force or the threat of force in international relations, the principle of territorial integrity, the principle *pacta sunt servanda*, the principle of non-interference etc).

In the said decision of the Russian Constitutional Court references to the previous highly relevant in this context decisions of the Constitutional Court on Chechnya and Tatarstan were conspicuously absent, in which the Court gave its interpretation of the key for the Crimean case principles of international law, such as the principles of self-determination and territorial integrity, which displayed obvious inconsistency in the practice of the Russian Constitutional Court and, perhaps, its deference to politics, rather than law. In any case, this decision of the Russian Constitutional Court became a serious blow to the state of rule-of-law in Russia, its international legal obligations and rule-of-international law.

## **VI. Russia's International Legal Responsibility for Crimea's Annexation and War in the East of Ukraine**

From the international legal perspective we should treat Crimea's annexation by Russia and the ongoing war in the East of Ukraine not as two separate events, but as one aggressive war waged by Russia against Ukraine. This war was carefully preplanned by Russia, perhaps, since the Orange revolution; and even though it is sometimes referred to as a "hybrid war," in reality and from the vantage point of international law it is still an aggressive war, banned by international law.

It is worth mentioning in this context that the concept of "hybrid war," as a war of the 21st century, was clearly articulated in an article by the Chief of the Russian General Staff, Valery Gerasimov, published in *Voenna-promyshlennyyi kurer* (Military-Industrial Courier).<sup>119</sup>

As a matter of practice, these hybrid wars were used by Russia in Georgia and Ukraine.

In terms of international law, the actions by Russia against Ukraine, starting with the military occupation of Crimea, its subsequent annexation, and current actions can be qualified as: 1) an act of aggression (in accordance with the Definition of Aggression of 1974); 2) war (in both the technical and material sense of this word); and 3) an armed attack (in the sense of art. 51 of the UN Charter) and 4) the illegal use of force in international relations (in the sense of art. 2 (4) of the UN Charter, Declaration on the Principles of International Law of 1970, and the Helsinki Final Act of 1975).

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119 See: [http://vpk-news.ru/sites/default/files/pdf/VPK\\_o8\\_476.pdf](http://vpk-news.ru/sites/default/files/pdf/VPK_o8_476.pdf) (accessed June 11, 2016); see also Galeotti, "The 'Gerasimov Doctrine' and Russian Non-Linear War."

First of all, under the Definition of Aggression adopted by the UN General Assembly (Art. 3 (g)), Russia's actions in Crimea and in the East of Ukraine can be qualified as "indirect aggression," which presupposes the "sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another State."<sup>120</sup>

According to the International Court of Justice in the *Nicaragua vs. US* case:

The Court sees no reason to deny that, in customary law, the prohibition of armed attacks may apply to the sending by the State of armed bands to the territory of another State, if such an operation, because of its scale and effects, would have been classified as an armed attack rather than as a mere frontier incident had it been carried out by regular armed forces.<sup>121</sup>

Polish international lawyer Krzysztof Skubiszewski states in this respect that "it appears to be beyond doubt that an armed attack has occurred when the armed forces of one state, regular, or armed bands composed of private individuals controlled by, and in fact remaining under the orders of, the state using violence in or against [...] another state."<sup>122</sup>

Second of all, the fact that the victim of the aggression, Ukraine, did not resist does not make Russia's actions, leading to Crimea's occupation and annexation, legal or permissible under international law. The military occupation of Crimea by Russian troops and its subsequent annexation are crimes under international law in themselves.

Additionally, it should be kept in mind that disguising Russian military men as "local self-defense units" can be regarded as an act of perfidy under international humanitarian law.<sup>123</sup> Besides, under the Hague Convention (IV), respecting the laws and customs of war of October 18, 1907, the laws, rights, and duties of war apply to armies, militia, and volunteer corps fulfilling, *inter alia*, such conditions as having a fixed distinctive emblem recognizable at a distance and conducting their operations in accordance with the laws and customs of war. From this perspective, Russian troops, both during Crimea's invasion and in the East of Ukraine, were in violation of international humanitarian law.

At the same time, Russia's action in Crimea and the East of Ukraine represents not only "indirect" but also direct aggression and full-fledged war, because Russia's military forces directly invaded the territory of Ukraine in the East of Ukraine in August 2014, directly invaded and occupied Crimea, and directly shelled Ukraine's territory from the territory of Russia.

The Russian state, waging this war against Ukraine, should be legally qualified as a criminal state, as well as terroristic state, because its actions fall within the definition of state terrorism, as defined in the Geneva Declaration on State Terrorism of 1987.<sup>124</sup> According to this

<sup>120</sup> A/RES/29/3314. See: <http://www.un-documents.net/a29r3314.htm> (accessed September 4, 2016).

<sup>121</sup> ICJ Reports (1986), p. 103, para. 195.

<sup>122</sup> Krzysztof Skubiszewski, "Use of Force by States. Collective Security. Laws of War and Neutrality," in *Manual of Public International Law*, ed. M. Sorensen (New York: St. Martin's Press, 1968), 777.

<sup>123</sup> See Article 37 of the Protocol Additional to the Geneva Conventions of 12 August 1949, relating to the Protection of Victims of International Armed Conflicts (Protocol I), June 8, 1977.

<sup>124</sup> See: <http://i-p-o.org/GDT.HTM> (accessed June 11, 2016).

Declaration, state terrorism, in particular, manifests itself in: military exercise maneuvers or war games conducted by one state in the vicinity of another state for the purpose of threatening the political independence or territorial integrity of the other state; an armed attack by the military forces of a state on targets that put at risk the civilian population residing in another state; the creation and support of armed mercenary forces by a state for the purpose of subverting the sovereignty of another state; covert operations by the "intelligence" or other forces of a state, which are intended to destabilize or subvert another state, national liberation movements, or the international peace movement; disinformation campaigns by a state, whether intended to destabilize another state or to build public support for economic, political or military force or intimidation directed against another state.

All these manifestations of state terrorism were present in the case of Russia's war against Ukraine.

The issue of Russia's international legal responsibility for the mass killings of Ukrainians in the East of Ukraine might also arise. Russia's occupational army in the East of Ukraine consists of the following elements: 1) heavily armed, by Russia, Russian regular military forces (despite not always displaying military insignia in order to obscure the fact they belong to the Russian Army); 2) controlled, financed, trained and equipped by Russia bands of terrorists (Russian citizens, including leaders of the self-proclaimed "People's Republic of Donetsk" ("PRD") and the "People's Republic of Luhansk" ("PRL")); and 3) mercenaries, however not numerous, from the local population.

There is numerous factual and legal evidence corroborating the fact of the Russian Army's presence in the East of Ukraine (among them a confession by Aleksandr Zakharchenko, one of the terrorists' leaders, that three thousand Russian military servicemen fought in the Donbas; a resolution of the Council of Europe calling upon Russia to withdraw its troops from Ukraine and numerous testimonies of Western journalists etc).

These forces are controlled and equipped by Russia. For this reason they should be treated as de facto organs of Russia and it is the Russian state that bears international legal responsibility for their actions and crimes. As Israeli author Yoram Dinstein has put it: "When terrorists are sponsored by Arcadia against Utopia, they may be deemed 'de facto organs' of Arcadia."<sup>125</sup>

It is noteworthy that the mass media in the West are sometimes misled by Russian propaganda in this respect, especially when they use such terms as "pro-Russian separatists" or "rebels" in the East of Ukraine, instead of using legally correct designations, such as "Russian troops" or "Russian military servicemen."

Additionally, crimes committed by the "PRD" and "PRL" terrorist organizations should be attributed to Russia because under article 8 of the Articles on the Responsibility of States for Internationally Wrongful Acts, drafted by the International Law Commission, "The conduct of a person or group of persons shall be considered an act of a State under international law if the person or group of persons is in fact acting on the instructions of, or under the direction or control of that State in carrying out the conduct."

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125 Yoram Dinstein, *War, Aggression and Self-Defence*, 3rd ed. (Cambridge: Cambridge University Press, 2003), 182.

All of the crimes committed by Russia in the course of war against Ukraine taken together in their totality (i.e. including war crimes, crimes against peace, and crimes against humanity committed by Russian Army in the East of Ukraine), allow us to state that, in the final analysis, Russia is committing genocide against the Ukrainian people. Russia's genocidal actions are objectively aimed at the annihilation of the Ukrainian state and partially, at least, at the annihilation of its people, especially those who resist Russian aggression. These genocidal actions encompass crimes against the physical and psychological inviolability of Ukrainians. There is also a "mental element" of Russia's genocidal actions, because Russia is killing Ukrainians deliberately and with premeditation. In terms of article 2 of the Convention on the Prevention and Punishment of the Crime of Genocide of 1948, Russia's actions in Crimea and in the East of Ukraine can also be qualified as genocide.

These international crimes committed by Russia lead us to the issue of how, and in what forms, Russia and its leaders should bear responsibility for their crimes. First of all, Russian leaders, beginning with current Russian President Vladimir Putin, should be brought to criminal justice, either before the International Criminal Court or before the specially created ad hoc international tribunal.

Russia itself should also be brought to international justice. Even though the concept of the criminal responsibility of states for serious international crimes is still a controversial issue in international legal doctrine,<sup>126</sup> the case of Russia's heinous crimes clearly indicates that without this form of legal responsibility it is impossible to prevent Russia from committing such crimes again.

## VII. Crimea's Annexation and International Morality

Besides international law, as a normative system, there is also another normative system regulating relations within the international community — international morality. As Russian professor of international law Igor Lukashuk puts it, "morality exists and operates as a system of ideals, principles, and norms, the bearer of which is more or less a large social entity."<sup>127</sup> According to him, one of these social entities is the international community with its own international morality, which is emerging "on the basis of the generally accepted in different national systems of norms, by means of their adaptation with a view to regulating interstate relations."<sup>128</sup>

In Professor Lukashuk's view the major norm of international morality in international relations is "the golden rule": one should treat others as one would like others to treat oneself.<sup>129</sup>

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126 See: E. S. Rappaport, *Naród-Zbroniarz: przestępstwa hitleryzmu a naród niemiecki: szkic analityczny przestępczości i odpowiedzialności osobowo-zespołowej* (Łódź: Spółdzielnia dziennikarska "Prasa," 1945); R. Bierzanek, *Wojna a prawo międzynarodowe* (Warszawa, 1982), 110–12.

127 Igor Lukashuk, *Mezhdunarodnoe pravo. Obschaia chast. Uchebnik [International Law. General Section. A Manual]* (Moscow: Izdatelstvo BEK, 1996), 147.

128 Lukashuk, *Mezhdunarodnoe pravo*, 147.

129 Lukashuk, *Mezhdunarodnoe pravo*, 146.

From the perspective of this principle of international morality Crimea's annexation can be regarded as a violation of international morality, for Russia, having annexed part of a neighboring state, would never agree to be treated in international relations in the same way by its neighboring states as it treats Ukraine.

It can also be argued that Russia's behavior with regard to Ukraine is an obvious violation of the Categorical Imperative, which provides the rule: "Act only in accordance with that maxim through which you can at the same time will that it become a universal law."<sup>130</sup> The thing is that if Russia's pattern of behavior in the international arena becomes a universal law, then the whole system of international security and world order collapse, by plunging the world into the war of all against all (*bellum omnium contra omnes*).

Against this background it comes as no surprise that Russia's annexation of Crimea has caused moral indignation on the part of the international community, which found its expression in the documents of the UN General Assembly, the Council of Europe, the OSCE, and the EU.

## Conclusion

Crimea's annexation by Russia is an international crime which presents grave danger to the contemporary international legal order and global system of security. Thus, for example, by violating the Budapest memorandum of 1994 Russia has effectively undermined the system of nuclear weapons' control, having demonstrated that abandoning a nuclear arsenal in exchange for guarantees by such states as Russia could be a grave mistake putting at risk the very existence of the state which naively relies upon Russia's commitment to international obligations.

It should also be noted that Crimea's annexation was not a single case in the whole history of Russia's systematic violations of international law and that we can discern a pattern of the ostentatiously anti-international law behavior of Russia. Suffice it to mention the massive atrocities and war crimes, on the verge of genocide, committed by Russia in Chechnya, the occupation of a part of the territory of Moldova, aggression against Georgia in 2008, etc. It is evident from these facts that Russia constitutes a mortal danger to its neighboring states, which live in constant fear of aggression on its part. Unfortunately, the international community did not react properly to Russia's aggressive behavior and this behavior was getting more dangerous, until Russia started an open war against Ukraine in an attempt to prevent its integration into the EU.

On the other hand, Crimea's annexation was not recognized and will never be recognized by the international community, first of all by such international organizations as the UN, the Council of Europe, the OSCE, etc. Having annexed Crimea and having initiated open aggression against Ukraine in the East of Ukraine, Russia has lost its credibility as a reliable subject of international law and a party to international agreements, destroyed the remnants of its "reputational capital" in the international arena, and became a pariah in world politics. After

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130 This formulation of the Categorical Imperative is similar to the "golden rule" of morality in its negative form ("Do not impose on others what you do not wish for yourself") and positive form ("Treat others how you wish to be treated").

Russia's aggression the world community is faced with a difficult dilemma: to make Russia stop committing gross violations of the principles of international law and observe international law, thereby returning to the civilized world of rule-of-international law, or to let the international legal order disintegrate even further.

Russia's aggression has also displayed certain weaknesses of contemporary international law, which needs to be reformed in order to prevent such crimes against peace in the future. One of the steps aimed at the support of rule-of-international law in the world is the removal of Russia as a state-aggressor from the UN, for Russia's taking the seat of the USSR in the UN Security Council was an evident and flagrant violation of the UN Charter and international law.

At the same time, as history shows, in the final outcome it is not the aggressor, relying on brutal force, but international law that is destined to win. There is no doubt that in this struggle of Russia against international law the final word and victory will belong to international law, just because there is no reasonable alternative to international law in interstate relations.

What can be done in order to rectify Russia's aggression against Ukraine and Crimea's annexation from the perspective of international law?

The following steps should be taken:

- 1) Russia should immediately and unconditionally return Crimea under Ukraine's sovereignty.
- 2) As a way of international legal responsibility, Russia should apologize and pay reparations to Ukraine for the damage done as a result of Crimea's annexation.
- 3) All the persons, irrespective of their positions and status in the Russian Federation, responsible for the aggression against Ukraine, Crimea's occupation, and other international crimes committed against Ukraine, should be brought to criminal justice.
- 4) The international community in the form of the UN should create a special International Tribunal for Russia to investigate international crimes committed against Ukraine by Russian officials and to bring them to justice.
- 5) Russia should pay fair and adequate compensation to the relatives of those Ukrainians killed by Russian troops and Russian terrorists in the East of Ukraine, as well as to the displaced persons who had to leave Crimea and the areas of Eastern Ukraine where Russia unleashed aggressive war.
- 6) Russia should adequately compensate Crimean Tatars whose rights were brutally violated by the Russian occupation authorities during Crimea's annexation.
- 7) The international community should create a system of effective guarantees that will prevent Russia from aggression against Ukraine and other neighboring states (e.g. Georgia, Moldova, Kazakhstan, Azerbaijan) in the future and will secure Ukraine's territorial integrity and independence.

Only the implementation of these measures can restore international legal order, peace, justice, mutual trust, and security in the world.

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**Dr. Oleksandr Merezhko** is the Chair of the Department of Law at Kyiv National Linguistic University. He teaches International law and is the author of 17 monographs and over 120 articles in the fields of international law, private international law, legal theory, and legal philosophy. Professor Merezhko has also taught at the John Paul II Catholic University of Lublin, and at Andrzej Frycz Modrzewski Krakow University.