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## **COMPARATIVE CHARACTERISTIC OF THE CRIMEA AND KOSOVO CASES: INTERNATIONAL LAW ANALYSIS**

The essay provides a comparative analysis of cases of secession of Kosovo (2008) and Crimea (2014) in terms of international law. The similarities and differences of these processes were analyzed; conclusions pertaining to their compliance with current international law were made. The essay deals with the question of the precedent character of Kosovo case and Ukraine's position thereto.

In February and March 2014 the Russian Federation carried out a special operation with a view to the annexation of the Crimea. The mechanism of the puppet government was used to do that. When a change in Kyiv authorities was taking place (the third decade of February), in Simferopol the Crimean politicians S. Aksyonov, V. Konstantynov, A. Chalyi seized power with the help of the Russian troops.

Though there were no “anti-Crimean” actions by the Ukrainian government, The Supreme Council of Crimea at its session held on 03.06.2014 voted in favour of joining of the region to Russia and addressed to the Russian President and the Parliament to initiate the procedure for granting the status of the federal subject to Crimea. In addition, the Crimean parliament decided to hold a referendum on 03.16.2014 as to the status of Crimea and approved the questions therefore:

- “ – Do you support the reunification of Crimea with Russia with all the rights of the federal subject of the Russian Federation?
- Do you support the restoration of the Constitution of the Republic of Crimea of 1992 and the status of the Crimea as part of Ukraine?”

Thus, the available choices did not include maintaining the status quo of Crimea, so the rights of the part of the population of the ARC, which supported this point of view, were ignored. The procedure of the referendum was also controversial. Paragraph 3 of the abovementioned decision stipulated that question that gets the majority of votes shall be deemed to be expressing the opinion of the Crimean population. Thus, notwithstanding the number of people who take part in the referendum, it can have a number of consequences. This approach does not comply with the fundamental principles of referendums.

A similar decision about becoming a part of the Russian Federation as a federal subject was taken by Sevastopol City Council. The latter

also decided to participate in the Crimean referendum on March 16. One more question added to those of the Crimean referendum was as follows:

“Shall the city of Sevastopol join the Russian Federation as a subject of the Russian Federation?”

The Declaration of independence of the Republic of Crimea was adopted on March 11, 2014 as a joint resolution by the Supreme Council of Crimea and the Sevastopol City Council: 78 of 81 participants are said to have voted in favour of the document<sup>1</sup>. It should be noted that the abovementioned decision on the referendum was not adopted without foreign influence. Although Russia consistently denied the presence of its troops in the Crimea, this fact was later recognized. In particular, President Putin said on April 17 that while Russian troops were in the peninsula pending the referendum, they “acted correctly” and “it was the only way to hold a referendum openly and with dignity.”

On March 16 the hastily organized “referendum” on the status of Crimea took place. Given the fact that the international community did not recognize the referendum, it was not attended by foreign observers. Self-proclaimed Crimean authorities said that 81.4% of the population, that had such a right, took part in the referendum. According to their own figures 96.77% of votes in the Crimea and 95.6% of votes in Sevastopol were given in favour of joining Russia<sup>2</sup>. The Russian president and parliament decided to join the Crimean Peninsula to the Russian Federation<sup>3</sup>. Later the Russian President’s Human Rights Council published a report on its website, stating that in Crimea 50-60% voted for unification with Russia, with a turnout of 30-50%. Many people voted so not because they wanted to join Russia, but with a view to putting an end to the corruption and violence of the authorities from Donetsk<sup>4</sup>. According to a leader of the Crimean Tatar people M. Dzhemilev, the

<sup>1</sup> Парламент Криму ухвалив Декларацію про незалежність. *Сайт BBC Україна*. <[http://www.bbc.co.uk/ukrainian/politics/2014/03/140311\\_crimea\\_rada\\_decisions\\_sx.shtml](http://www.bbc.co.uk/ukrainian/politics/2014/03/140311_crimea_rada_decisions_sx.shtml)> (2014, June, 5).

<sup>2</sup> Явка в Севастополі на референдумі составила 89,5 %, в Автономной Республике Крым – 81,36%. *Крым-Информ*. <<http://www.c-inform.info/news/id/766>> (2014, June, 5).

<sup>3</sup> UNSC Discusses Human Rights Violations And Freedom Of Press In Crimea. *Cihan News Agency*. <[http://en.cihan.com.tr/news/UNSC-discusses-human-rights-violations-and-freedom-of-press-in-Crimea\\_0312-CHMTM5MDMxMi80;jsessionid=B5ypJUb1sKOYIQ082tqzVtQX](http://en.cihan.com.tr/news/UNSC-discusses-human-rights-violations-and-freedom-of-press-in-Crimea_0312-CHMTM5MDMxMi80;jsessionid=B5ypJUb1sKOYIQ082tqzVtQX)> (2014, June, 5).

<sup>4</sup> Совет по правам человека при Путине: явка и результаты референдума в Крыму сильно завышены. *Интернет-издание «Левый берег»*. <[http://lb.ua/news/2014/05/01/265049\\_sovet\\_pravam\\_cheloveka\\_putine.html](http://lb.ua/news/2014/05/01/265049_sovet_pravam_cheloveka_putine.html)> (2014, June, 5).

actual turn-up was only 32.4%, not 82% of the inhabitants of the Crimea, as stated by the Russian authorities<sup>1</sup>.

In March over 10 meetings of the Security Council of the United Nations pertaining to the Crimea were held. The UN Security Council failed to adopt any decision because of Russia's use of its veto. In particular, on March 15 Russia blocked the adoption of a draft resolution condemning scheduled for March 16 "referendum" in the Crimea on the separation from Ukraine. 13 from among 15 members of the Security Council voted in favour of the resolution (3 permanent members – United States, Britain and France, and all 10 non-permanent members – Argentina, Australia, Chad, Chile, Jordan, Lithuania, Luxembourg, Nigeria, Rwanda and South Korea), China abstained and Russia was the only one who voted against it. Therefore, the resolution was not adopted<sup>2</sup>.

Instead, on March 27 at a special meeting of the 68th session by a recorded vote of 100 in favour to 11 against, with 58 abstentions, the Assembly adopted a resolution titled "Territorial integrity of Ukraine", calling on States, international organizations and specialized agencies not to recognize any change in the status of Crimea or the Black Sea port city of Sevastopol, and to refrain from actions or dealings that might be interpreted as such. The referendum and all further steps of the "government" of the Crimea and Russia were considered to have no legal effect<sup>3</sup>.

On March 12 leaders of the G7 (Canada, France, Germany, Italy, Japan, UK, USA), along with the President of the European Council and the President of the European Commission issued a statement in which they urged the Russian Federation to cease all efforts to change the status of Crimea contrary to Ukrainian legislation and international law<sup>4</sup>.

PACE Resolution 1988 (2014) "Recent developments in Ukraine: threats to the functioning of democratic institutions" was also very important. The Parliamentary Assembly strongly condemns the

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<sup>1</sup> UNSC Discusses Human Rights Violations And Freedom Of Press In Crimea. *Cihan News Agency*. <[http://en.cihan.com.tr/news/UNSC-discusses-human-rights-violations-and-freedom-of-press-in-Crimea\\_0312-CHMTM5MDMxMi80;jsessionid=B5ypJUb1sKOYIQ082tqzVtQX](http://en.cihan.com.tr/news/UNSC-discusses-human-rights-violations-and-freedom-of-press-in-Crimea_0312-CHMTM5MDMxMi80;jsessionid=B5ypJUb1sKOYIQ082tqzVtQX)> (2014, June, 5).

<sup>2</sup> Росія наклала вето на резолюцію Ради безпеки ООН про засудження «референдуму» в Криму. *Радіо «Свобода»*. <<http://www.radiosvoboda.org/content/article/25298182.html>> (2014, June, 5).

<sup>3</sup> General Assembly Adopts Resolution Calling Upon States Not To Recognize Changes In Status Of Crimea Region. *United Nations*. <<http://www.un.org/News/Press/docs/2014/ga11493>> (2014, June, 5).

<sup>4</sup> G7 warns Russia on 'annexing' Crimea. *BBC News*. <<http://www.bbc.com/news/world-europe-26547138>> (2014, June, 5).

authorisation of the Russian Federation Parliament to use military force in Ukraine, the Russian military aggression and subsequent annexation of Crimea, which constituted clear violation of international law, including the United Nations Charter, the OSCE Helsinki Act and the Statute and basic principles of the Council of Europe. The Parliamentary Assembly in its resolution also stressed that “neither secessionism, nor integration with the Russian Federation, was prevalent on the political agenda of the Crimean population, or widely supported, prior to Russian military intervention”. The Assembly considered that the drive for secession and integration into the Russian Federation had been instigated and incited by the Russian authorities, under the cover of a military intervention<sup>1</sup>.

Thus, all relevant international institutions did not recognize the so-called “referendum” in Crimea due to the fact that it violated both Ukrainian and international law, and condemned the actions of the Russian Federation regarding the annexation of the Crimea. However, Russia has not yet abandoned the occupation of the Crimea peninsula and considers it to be a part of its territory, extending to the peninsula its own law and order. For example, as from June 1 the Russian ruble officially became the only valid currency in Crimea, with the Ukrainian hryvnia being given the status of a foreign currency<sup>2</sup>. Many changes were made to the social life of the Crimea. The Crimean Tatars were even prevented from commemorating the seventieth anniversary of deportation (the so-called Kurultai) as they previously had planned to. Crimean Tatar leader Mustafa Dzhemilev who was prevented from entering Crimea said that he saw no prospects for the Crimean Tatars in the Russian Federation. It shall be noted that in June 2014 Mustafa Dzhemilev won the first Solidarity Prize<sup>3</sup>.

Meanwhile, justifying its actions aimed at the occupation of the Crimea, Russia has repeatedly referred to the case of Kosovo. The Kosovo precedent was referred to by the self-proclaimed Crimean authorities and the Ministry of Foreign Affairs of the Russian Federation in order to justify the legality of the Crimean referendum. Putin also spoke about

<sup>1</sup> The illegal annexation of Crimea has no legal effect and is not recognised by the Council of Europe. *Council of Europe official site*. <<http://www.assembly.coe.int/nw/xml/News/News-View-EN.asp?newsid=4975&lang=2&cat=8>> (2014, June, 5).

<sup>2</sup> Крим повністю перейшов на російський рубль. *Gazeta.ua*. <[http://gazeta.ua/articles/ukraine-newspaper/\\_krim-povnistyu-perejshov-na-rosijskij-rubl/561625](http://gazeta.ua/articles/ukraine-newspaper/_krim-povnistyu-perejshov-na-rosijskij-rubl/561625)> (2014, June, 5).

<sup>3</sup> Мустафа Джемільєв: у складі Росії перспектив для кримських татар ми не бачим. *Голос Америки*. <<http://ukrainian.voanews.com/content/perspectives-for-tatars-as-part-of-russia/1929400.html>> (2014, June, 5).

Kosovo before signing the Treaty on the Adoption of the Republic of Crimea to Russia<sup>1</sup>.

These arguments seem to be inconsistent given the official position of Russia on Kosovo's declaration of independence and non-recognition of the state by Russia. In particular, the Russian Foreign Ministry noted in its statement that unilateral actions as to the proclamation of independence by Kosovo violated the "sovereignty of the Republic of Serbia, the UN Charter, the UN Security Council resolution 1244, the principles of the Helsinki Final Act, the Kosovo constitutional framework, the agreement of the high-level Contact Group." It was stated that "Russia fully supports the reaction of the Serbian leadership to the events in Kosovo and its just demands to restore the territorial integrity of the country." Russian Foreign Ministry stressed the negative consequences that the separatism may have for "the world order and international stability, authority of the Security Council decisions."<sup>2</sup> And Putin pending the informal CIS summit said that "Kosovo precedent was a terrible precedent and that, in fact, it broke the whole system of international relations, developed not even during a decade, but over the centuries."<sup>3</sup> Given such a position there exists a dubious opportunity to justify the annexation of the Crimea by the example of Kosovo. Moreover, it should be emphasized that Ukraine has not recognized Kosovo's independence, and this position is unchanged. In particular, one of the last statements is the MFA Comment dated 26 June 2013 on the change of the order of entry for Ukrainian citizens to Kosovo, which confirmed once again, that "Ukraine does not recognize Kosovo's independence and has no diplomatic relations with that region."<sup>4</sup> It is also significant that despite its reference to the precedent of Kosovo, Russia does not change its position thereon. In particular, after the aforementioned events in the Crimea, Russian Embassy in Serbia issued a statement, which specified that Russia would not change its opinion on the recognition of Kosovo.<sup>5</sup>

<sup>1</sup> Владимир Путин: «Почему в Косово можно, а Крыму – нельзя?». *Известия*. <<http://izvestia.ru/news/567703>> (2014, June, 5).

<sup>2</sup> Заявление МИД России по Косово. *МИД РФ. Официальный сайт*. <[http://www.mid.ru/brp\\_4.nsf/0/69E1940601A4968BC32573F20053D7F7](http://www.mid.ru/brp_4.nsf/0/69E1940601A4968BC32573F20053D7F7)> (2014, June, 5).

<sup>3</sup> Путин: независимость Косово повлечет непредсказуемые последствия. *РИА Новости*. <<http://ria.ru/politics/20080222/99907461.html>> (2014, June, 5).

<sup>4</sup> Щодо зміни порядку в'їзду громадян України до Косово. *МЗС України*. <<http://mfa.gov.ua/ua/press-center/comments/335-shhodo-zmini-poryadku-vjizdu-gromadyan-ukrajini-do-kosovo>> (2014, June, 5).

<sup>5</sup> Russia Stance on Kosovo Unchanged Despite Crimea. *Balkaninsight*. <<http://www.balkaninsight.com/en/article/russia-keeps-its-stance-on-kosovo>> (2014, June, 5).

It should be noted that a part of the Western doctrine has very negative attitude towards recognition of Kosovo. An opinion by Jure Vidmar may be considered as some kind of generalization: even the pronouncements of the Kosovo Opinion are neither controversial nor far-reaching enough to tell whether or not Kosovo is a state.<sup>1</sup> However, even the biggest sceptics of recognizing Kosovo are unanimous that any opinion on the legality, legitimacy or lawfulness of Kosovo's case cannot justify the Russian annexation of the Crimea. Moreover, the doctrine provides that just as Russia is using the controversial nature of the Kosovo precedent, the Crimea precedent may be used against Russia itself in the future. According to the U.S. and some EU countries<sup>2</sup>, the situation in Kosovo is unique and the recognition of its independence should not become a precedent for other breakaway entities. For example, Angela Merkel at the Parliamentary Assembly of the Council of Europe said: "We believe that Kosovo's case is sui generis and for this reason we have decided to recognize Kosovo. We do not believe that based on Kosovo, there can be parallels drawn for other regions."<sup>3</sup> As the explanation of the uniqueness of the Kosovo case the State Secretary Condoleezza Rice enumerated the combination of the following factors: the general context of the disintegration of Yugoslavia, the ethnic cleansing and crimes against the civilian population of Kosovo, the long period under UN administration management. The Western powers consistently declared that Kosovo situation was exceptional and provided for pragmatic justification of their own behaviour in relation to Kosovo, which gave them enough flexibility for changes in their approach, meanwhile the constant reference of the Russian Federation to the international law regarding the situation with the Crimea will not let Russia give another interpretation of these events in the future.<sup>4</sup>

<sup>1</sup> Jure Vidmar The Kosovo Opinion and General International Law: How Far-reaching and Controversial is the ICJ's Reasoning? *The Hague Justice Portal*. <[http://www.haguejusticeportal.net/Docs/Commentaries%20PDF/Vidmar\\_Kosovo\\_Note\\_EN.pdf](http://www.haguejusticeportal.net/Docs/Commentaries%20PDF/Vidmar_Kosovo_Note_EN.pdf)> (2014, June, 5).

<sup>2</sup> Kosovo, Ue: «Decidono gli Stati» D'Alema: «L'Italia lo riconoscerà». *La Repubblica*. <<http://www.repubblica.it/2008/02/sezioni/esteri/kosovo-indipendenza/kosovo-diplomazia/kosovo-diplomazia.html>> (2014, June, 5).

<sup>3</sup> Angela Merkel: Kosovo, a sui generis case. *New Kosova Report*. <<http://newkosovareport.com/20080416883/Politics/angela-merkel-kosovo-a-sui-generis-case.html>> (2014, June, 5).

<sup>4</sup> Larison Daniel. Kosovo, Crimea, and Precedents. *The American Conservative*. <<http://www.theamericanconservative.com/larison/kosovo-crimea-and-precedents/>> (2014, June, 5)



At the same time, the most reasonable and scientific opinion seems to be that the examples of Kosovo and Crimea are fundamentally different in their nature. The Russian attempt to draw parallels between the declaration of Kosovo's independence and "self-determination" in Crimea makes it important to highlight different aspects of the two cases.

First of all, the Kosovo Albanians (Kosovars), unlike the Russians in the Crimea, were subjected to national oppression by the Serbian authorities. The nonviolent resistance to the oppression from Serbia in 1990 did not give any results, as well as the military resistance in 1997-1999, so the NATO launched a 78-day operation against Yugoslavia aimed at stopping the war in Kosovo. In 1999, in accordance with the Security Council resolution, the United Nations, through the UN Mission (UNMIK), began to manage the province<sup>1</sup>. At the same time, the Serbs still live in Kosovo forming a particular enclave without being persecuted. On 14-15 February 2012, they decided to reaffirm their non-subordination to the central Kosovo government, holding an advisory referendum. After the two days of voting, 75 % of all Serbs living in northern Kosovo voted "No" to the question: "Do you accept the institutions of the so-called Republic of Kosovo?" The OSCE and the UNMIK warned that the referendum had no validity and would have no legal consequences; it was predictably condemned by Kosovo. But it is noteworthy that Serbia called the referendum "completely unnecessary and meaningless".<sup>2</sup> This fact confirms that Serbs in Kosovo do not face harassment and persecution, which is guaranteed by the presence of international peacekeeping groups.<sup>3</sup> The situation with the Ukrainians and Crimean Tatars in Crimea is diametrically opposite. Moreover, if the facts of the persecution and harassment against them in the annexed peninsula are proven, the so-called violence against Russians, which was the reason for the annexation, did not get any evidence. The statements by Russian officials that draw a parallel between Kosovo and the Crimea, talking about some kind of "violence" in relation to the Crimeans by the Ukrainian authorities, are not based on any facts. The PACE resolution on the Crimean issue provides a clear statement on this point. The

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<sup>1</sup> Kosovo: The world's newest state. *The Economist*. <<http://www.economist.com/node/10727947>> (2014, June, 5).

<sup>2</sup> Northern Serbs Vote 'No' to Kosovo. *Balkan Insight*. <<http://www.balkaninsight.com/en/article/99-74-kosovo-serbs-say-no-to-pristina>> (2014, June, 5).

<sup>3</sup> Sterio, Milena. The Case of Kosovo: Self-Determination, Secession, and Statehood Under International Law. *Proceedings of the Annual Meeting (American Society of International Law)*. <<http://www.jstor.org/stable/10.5305/procanmeetasil.104.0361>> (2014, June, 5).

parliamentarians said that none of the arguments used by the Russian Federation to justify its actions hold true to facts and evidence. There was no ultra-right wing takeover of the central government in Kyiv, nor was there any imminent threat to the rights of the ethnic Russian minority in the country, including, or especially, in Crimea<sup>1</sup>.

Ivan Šimonović, UN Assistant Secretary-General for Human Rights stated that in Ukraine there has been no such violation of human rights which would require armed intervention of another country to protect the population's rights. Moreover, he noted that in the Crimea illegal arrests and harassments were recently conducted. He also reported about the illegal armed gangs "who were not natives of the region" and "remained unmarked."<sup>2</sup> At the same time, attempts to explain the actual RF interference in the affairs of Ukraine by the desire to prevent possible future human rights violations seem to be even more illogical. In particular, the Minister of Foreign Affairs Sergey Lavrov stated that the fact that everyone declares that there were no serious offenses or violations is caused by the additional measures taken with a view to preventing the repetition of what happened during the revolution in Kyiv.<sup>3</sup> That is, the official Moscow actually calls to ignore the absence of human rights violations in the Crimea by the Ukrainian authorities, inventing a fantastic scenario, which was prevented by the annexation of the peninsula. At the same time, Russia ignores human rights violations that are created by its own actions.

The head of the State Duma Committee for the CIS Affairs Leonid Slutsky said that Russia would not recognize the judgement of the European Court of Human Rights if the Court supported Ukraine's position on the annexation of the Crimea. He also said that if the ECHR supported Ukraine, it would be obvious that the court was no longer fair and impartial<sup>4</sup>. In our opinion, these facts indicate that the attempts to

<sup>1</sup> The illegal annexation of Crimea has no legal effect and is not recognised by the Council of Europe. *Council of Europe official site*. <<http://www.assembly.coe.int/nw/xml/News/News-View-EN.asp?newsid=4975&lang=2&cat=8>> (2014, June, 5).

<sup>2</sup> В Украине не зафиксировано нарушений прав человека, которые требуют военного вмешательства, – помощник генсека ООН. *Сайт iPress.ua*. <[http://ipress.ua/ru/news/v\\_ukrayne\\_ne\\_zafykyrovano\\_narushenyy\\_prav\\_cheloveka\\_kotorie\\_trebuyut\\_voennogo\\_vmeshatelstva\\_\\_pomoshchnyk\\_genseka\\_oon\\_54390.html](http://ipress.ua/ru/news/v_ukrayne_ne_zafykyrovano_narushenyy_prav_cheloveka_kotorie_trebuyut_voennogo_vmeshatelstva__pomoshchnyk_genseka_oon_54390.html)> (2014, June, 5).

<sup>3</sup> Лавров: Крым еще более особый случай, чем Косово. *Сайт деловой газеты «Взгляд»*. <<http://www.vz.ru/news/2014/3/14/677145.html>> (2014, June, 5).

<sup>4</sup> РФ не признает решение ЕСПЧ, поддерживающее Украину по вопросу Крыма. *Факты и комментарии*. <<http://fakty.ua/182716-rf-ne-priznaet-reshenie-espch-podderzhivayushee-ukrainu-po-voprosu-kryma>> (2014, June, 5).



justify the Russian annexation of the Crimea by protection of human rights are inconsistent and speculative.

It is also important that, as it was already noted, unlike the case of Crimea the one of Kosovo was considered by the International Court of Justice, which did not recognize the secession of Kosovo as violation of international law. On 26 March 2008, the Government of Serbia announced its plan to call on the International Court of Justice to rule on the declaration of Kosovo's secession. On 30 September 2008, in a trial vote, the Serbian initiative was backed by 120 member states. In the real vote, the United Nations General Assembly adopted this proposal as Resolution 63/3 on 8 October 2008 with 77 votes in favour, 6 votes against and 74 abstentions. The Court was asked to render an advisory opinion on the following question: "Is the unilateral declaration of independence by the Provisional Institutions of Self-Government of Kosovo in accordance with international law?" The court delivered its advisory opinion on 22 July 2010 and declared that "the adoption of the declaration of independence of the 17 February 2008 did not violate general international law because international law contains no prohibition on declarations of independence", nor did the adoption of the declaration of independence violate UN Security Council Resolution 1244, since this did not describe Kosovo's final status, nor had the Security Council reserved for itself the decision on final status<sup>1</sup>.

As for Crimea, neither Russia nor the self-proclaimed authorities of the Crimea, who repeatedly referred to the ICJ opinion, took the opportunity to address the ICJ or any other international institution that could be done in case of the desire to protect the rights of the Crimean population. Instead, the UN General Assembly was appealed by Ukraine, after which the General Assembly decided that the referendum and the subsequent decisions of the self-proclaimed Crimean authorities and the decision-makers of the Russian Federation are illegal, and the peninsula remains an integral part of Ukraine.

In the context of the ICJ advisory opinion it is important to highlight another important feature. The unilateral secession is neither prohibited nor an entitlement under international law. Jure Vidmar believes that "a declaration of independence may be given effectiveness through foreign military assistance. This is where neutrality of international law ends. International law is neutral only with respect to a declaration's unilateral character, but not in general, where territorial illegality is attached to the

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<sup>1</sup> Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo (Advisory Opinion) 2010 <<http://www.icj-cij.org/docket/files/141/15987.pdf>> (2014, June, 5).

situation”. In particular, the International Court of Justice stated in its advisory opinion that “the illegality attached to some other declarations of independence ... 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>1</sup>.

The abovementioned opinion is currently maintained on the theoretical and practical levels. In particular, the Western doctrine agrees with it with regard to the General Assembly resolution 56/83 on “Responsibility of States for internationally wrongful acts.” Paragraph 2 of Article 41 provides as follows: “No State shall recognize as lawful a situation created by a serious breach within the meaning of article 40, nor render aid or assistance in maintaining that situation”. Article 40 specifies the definition of the serious breach: “This chapter applies to the international responsibility which is entailed by a serious breach by a State of an obligation arising under a peremptory norm of general international law. A breach of such an obligation is serious if it involves a gross or systematic failure by the responsible State to fulfil the obligation”.<sup>2</sup> Thus the conclusion may be made that international law will be developed by prohibiting to recognize the state, whose formation is associated with the violation of peremptory norms. So the President’s Decree “On recognition of the Crimea”<sup>3</sup> has dubious character that will affect the status of the Treaty on the Adoption of the Republic of Crimea to Russia. It must be stressed that the creation of the state of Kosovo can only be explained by post-conflict legal settlement established by Resolution 1244, and the right of self-determination. Accordingly, any arguments on the legality or illegality of the previous NATO intervention do not affect the legality of the creation of the State. In Crimea, the situation is opposite, and the determining factor is the illegal interference of Russia<sup>4</sup>.

<sup>1</sup> Jure Vidmar. Crimea’s Referendum and Secession: Why it Resembles Northern Cyprus More than Kosovo. *Blog of the European Journal of International Law*. <<http://www.ejiltalk.org/crimeas-referendum-and-secession-why-it-resembles-northern-cyprus-more-than-kosovo>> (2014, June, 5).

<sup>2</sup> Talmon Stefan. The Duty Not to ‘Recognize as Lawful’ a Situation Created by the Illegal Use of Force or Other Serious Breaches of a *Jus Cogens* Obligation: An Obligation without Real Substance? <<http://users.ox.ac.uk/~sann2029/6.%20Talmon%2099-126.pdf>> (2014, June, 5).

<sup>3</sup> Подписан Указ о признании Республики Крым. *Администрация Президента РФ*. <<http://kremlin.ru/acts/20596>> (2014, June, 5).

<sup>4</sup> Jure Vidmar. International Legal Responses to Kosovo’s Declaration of Independence. *Vanderbilt Journal Of Transnational Law*. <[http://www.vanderbilt.edu/jotl/manage/wp-content/uploads/Vidmar-cr\\_final\\_final1.pdf](http://www.vanderbilt.edu/jotl/manage/wp-content/uploads/Vidmar-cr_final_final1.pdf)> (2014, June, 5)

It is also important that the international community for many years sought to solve the problems associated with the oppression of Albanians in Kosovo. The administration of the United Nations was introduced, numerous rounds of talks were held. The declaration of independence took place many years after the beginning of those efforts. On the other hand, the period from the beginning of the supposed “violation of the rights of Russians in the Crimea” to “self-determination” of Crimea took several weeks. In addition, the initial date of the referendum was changed for the earlier one, without any reasonable justification provided. The conclusion may be made that in case of the Crimea the possibilities of so-called “internal self-determination” were not fully used. Thus, taking into account the fact that the right of self-determination is getting a new interpretation and is considered as an act of national, cultural and economic autonomy within the state, not as an act of separation from the territory of the state or status of an independent state<sup>1</sup>, the events of the Crimea crisis cannot be justified by international law.

Another important key feature of the cases of Kosovo and Crimea is an aspect of indigenous peoples. Albanians in Kosovo (unlike the Russians in the Crimea) are, as well as Crimean Tatars, an indigenous people. The UN Declaration on the Rights of Indigenous Peoples states that indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development. According to Article 4 indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.

The opinion of the Crimean Tatars must have become critical in determining the status of Crimea. On March 20, 2014, the Verkhovna Rada of Ukraine adopted the Resolution on the Statement of the Verkhovna Rada of about the guarantees of the rights of the Crimean Tatar people as part of the Ukrainian State. The Statement provides for guaranteeing protection and realization of the inalienable right of the Crimean Tatar people to self-determination as part of a sovereign and independent Ukrainian State, the recognition of the Mejlis of the Crimean Tatar people, the executive body of Kurultay of Crimean Tatar people as a competent body of the Crimean Tatar people. It also expresses support for

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<sup>1</sup> Pentassuglia, G. (2002). *Minorities in International Law. An introductory study*. Council of Europe Publishing, 304.

the United Nations Declaration on the Rights of Indigenous Peoples<sup>1</sup>. At the same time, the Russian Federation demonstrates its double standards. During the process of separating the Crimea Russia held a meeting with representatives of the Crimean Tatars and declared the guarantees of their autonomy, respect for their language and cultural rights. In fact, after the occupation of the Crimea the opposite situation was formed. In particular, Mustafa Dzhemilev made a statement that the Crimean Tatars pending 23 years “got used to some level of freedom”, but now they were coming back to the situation, which is very similar to the Soviet Union, against which they had fought for many years, and “in some respects the current regime in Crimea is even worse than the Soviet one”. Office of the United Nations High Commissioner for Human Rights (OHCHR) has published a report on the situation regarding human rights in Ukraine, pending the visit to Ukraine of the UN Assistant Secretary General and the work of the Monitoring Mission for Human Rights in Ukraine, which indicated that there were increasing reports of on-going harassment towards Crimean Tatars, and other residents who did not support the “referendum”. Human rights concerns relate to citizenship, property and labour rights, access to health and education. Many Crimean Tatars and Ukrainians are forced to leave their homes.<sup>2</sup> John Dalhuisen, Europe and Central Asia Programme Director at Amnesty International said that “despite assurances made by the de facto Crimean authorities to protect the rights of Tatars, since the annexation of the peninsula by Russia in March this year, the Tatar community has faced increasing violence and discrimination,” and “the Russian authorities have allowed armed groups that have been behind some brutal attacks against the Tatars to operate freely in Crimea”.<sup>3</sup> The examples of harassment are claims of the Crimean authorities to release a part of the land on which Crimean Tatars live, for the needs of the Republic<sup>4</sup>, as well as imposing fines on Crimean Tatars who came to

<sup>1</sup> *Постанова про заяву Верховної Ради України щодо гарантії прав кримськотатарського народу у складі Української Держави 2014 (Верховна Рада України)*. <http://portal.rada.gov.ua>.

<sup>2</sup> В ООН визнали незаконність референдуму і утиски кримських татар та українців у Криму «Дзеркало тижня. Україна». <[http://dt.ua/UKRAINE/v-oon-viznali-nezakonnist-referendumu-i-utiski-krimskih-tatar-ta-ukrayinciv-u-krimu-141692\\_.html](http://dt.ua/UKRAINE/v-oon-viznali-nezakonnist-referendumu-i-utiski-krimskih-tatar-ta-ukrayinciv-u-krimu-141692_.html)> (2014, June, 5).

<sup>3</sup> Правозахисники кажуть про ризик утисків кримських татар. *BBC*. <[http://www.bbc.co.uk/ukrainian/news\\_in\\_brief/2014/05/140523\\_or\\_crimean\\_tatars.shtml](http://www.bbc.co.uk/ukrainian/news_in_brief/2014/05/140523_or_crimean_tatars.shtml)> (2014, June, 5).

<sup>4</sup> В Криму почались утиски татар: вимагають звільнити частину земель. *iPress.ua*. <[http://ipress.ua/news/v\\_krymu\\_pochalys\\_utysky\\_tatar\\_vymagayut\\_zvilnyty\\_chastynu\\_zemel\\_55022.html](http://ipress.ua/news/v_krymu_pochalys_utysky_tatar_vymagayut_zvilnyty_chastynu_zemel_55022.html)> (2014, June, 5).

the border of the autonomous republic to support their leader Mustafa Dzhemilev<sup>1</sup>, who was banned and prevented from entering his homeland. Thus, if in the case of Kosovo the group, which had a potential right to self-determination as a result of the separation was in pole position and indeed defended its rights, the indigenous people of Crimea is not only found to be in the worse conditions and circumstances, its opinion was generally rejected and ignored by the so-called “self-determination”.

Theory of international law also provides the important role to the motivation of the actions for self-determination. If a subject, who has the right to self-determination, exerts its efforts to create its own state, such action can be legitimate. However, if the subject by means of external support wants to join a third country, the situation does not comply with the principles of international law<sup>2</sup>. It is related to correlation between the principle of self-determination and the principle of territorial integrity of states that have no hierarchical subordination and in case of the proper interpretation and application do not contradict each other<sup>3</sup>.

Therefore, the cases of Kosovo and Crimea, although they have a number of common features, have far more differences. Moreover, neither Russia nor Ukraine recognized Kosovo’s independence, so any reference to this “precedent” is deemed to be unreasonable and inappropriate. In a written statement in the case against Kosovo formally submitted by the Russian Federation to the International Court of Justice in April 2009, it states “the right to self-determination cannot be construed as authorizing or encouraging any action that would lead to a partitioning or a partial or complete violation of the territorial integrity or political unity of sovereign and independent state.”<sup>4</sup> It is important to refer to the direct statement regarding the position of the President of Ukraine on the recognition of Kosovo’s independence: “Notwithstanding the decision of the international community within the framework of negotiations,

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<sup>1</sup> Окупаційна влада Криму наклала штрафи на кримських татар – Джемілев. 5 канал. <[www.5.ua/proekti/item/385098-okupatsiina-vlada-krymu-naklala-shtrafy-na-krymskykh-tatar-dzhemiliev](http://www.5.ua/proekti/item/385098-okupatsiina-vlada-krymu-naklala-shtrafy-na-krymskykh-tatar-dzhemiliev)> (2014, June, 5).

<sup>2</sup> Schwartz, Barry. Self-Determination. The Tyranny of Freedom. *American Psychologist*. <<http://www.lightforcenetwork.com/sites/default/files/Barry%20Schwartz%20-%20Self-Determination%20The%20Tyranny%20of%20Freedom.pdf>> (2014, June, 5).

<sup>3</sup> The ratio of the principle of self-determination and the principle of territorial integrity of the state. *Athirtyeight*. <<http://blog.athirtyeight.com/2014/05/the-ratio-of-principle-of-self.html>> (2014, June, 5).

<sup>4</sup> МЗС України вручено ноту представнику РФ в Україні. *МЗС України*. <<http://mfa.gov.ua/ua/press-center/comments/687-mzs-ukrajini-vrucheno-notu-predstavniku-rf-v-ukrajini>> (2014, June, 5).

Ukraine will consider the issue of sovereignty and independence of Kosovo as not a precedent for other conflicts. Such position has already been announced by a number of countries. We want to emphasize that the model of settlement of Kosovo's status is not and cannot be a precedent.”<sup>1</sup> Thus, Russia could not refer to the case of Kosovo as a precedent in its bilateral relations with Ukraine. And the Russian actions in Crimea constitute a breach of international law, and cannot be justified by so-called protection of “human rights” or “the right to self-determination”.

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<sup>1</sup> У питанні щодо статусу Косово Україна керується національними інтересами та міжнародним правом – Президент. *Прес-служба Президента України Віктора Ющенка*. <<http://www.president.gov.ua/news/9060.html>> (2014, June, 5).