

# The Precedence of Crimea and its Compliance with Public International Law: Legal Analysis of the Applicability of the Remedial Right to Secession and other Principles of Public International Law

---

OLENA GUZ

## Introduction

With the dissolution of the Soviet Union new independent countries emerged, but at the same time their independence brought them new challenges. Russians living in former USSR republics became national minorities in the new independent Post-Soviet states.<sup>1</sup> Two recent breakaway regions – South Ossetia and Abkhazia in 2008 and Crimea in 2014 demonstrate that the right to self-determination as well as the concept of responsibility to protect (hereinafter – R2P) are not clearly established in contemporary international law and could be used for manipulation by the kin-state in protecting its minorities.

Ukraine is a multinational country with a large Russian minority. Since its independence Ukraine has not faced tensions arising from ethnic conflicts. Crimea has always been seen as a potential area for possible conflict because the peninsula was densely populated by Russians alongside with Crimean Tatars, Ukrainians and other groups of different nationalities. Events of 2014 challenge international order. While the majority of countries and other international actors condemn the violation of international law by Russia and do not recognize Crimea as part of Russia, the Russian Federation and its supporters claim the right to secede because of the population of Crimea or because it means the protection of Russian-speaking communities abroad.

## The right to self-determination

While the whole territory of Ukraine is populated more or less by different nationalities, Ukrainians remain the majority among other nations and ethnicities. On the contrary, with regard to the population of Crimea it is difficult to determine which ethnic population is the majority group. According to a public opinion survey held on May 2013 residents of Crimea regardless of their passports consider themselves as the following: 40% – Russian, 24% – Crimean, 15% – Ukrainian, 15% - Crimean Tatar,

---

1 Shapovalova O. (2011): The role of Russian as a kin-state in protecting the Russian minority in Ukraine. In Kemp, W, Popovski, V, & Thakur, R (eds): *Blood and Borders : The Responsibility to Protect and the Problem of the Kin-State*, Tokyo, United Nations University Press, p. 168.

6% – other.<sup>2</sup> The second important issue raised in the survey is “In your opinion, what should be the status of Crimea?” 53% supported the status of Crimea within Ukraine as it was at the time, 23% – Crimea should be separated and given to Russia, 12% – Crimean Tatar autonomy within Ukraine, 2% – oblast (common region) of Ukraine.<sup>3</sup>

It should be noted that Crimea was a cultural autonomy within Ukraine, albeit until 1954 Crimea held common regional status (oblast) within the Soviet Union. With its status in 1954, taking into account the geographical location, close economic and cultural ties with Ukraine, Crimea was transferred (without any local exceptions) to the Ukrainian Soviet Socialist Republic (the USSR). After the proclamation of Ukraine independence the legal status of Crimea on the basis of the features of its historical development, the national and ethnic composition of the population and economic and socio-cultural factors Crimea became an autonomous republic within Ukraine.

One of arguments raised by Russia is the right to self-determination by the Crimean population. The concept of self-determination evolved significantly after the Second World War, although by that time it had not been established as a purely legal principle. Most scholars considered the concept of self-determination as a political doctrine.<sup>4</sup> Article 1(2) of the UN Charter refers to the principle of equal rights and self-determination of peoples. The General Assembly and the Security Council addressed the matter of self-determination in a series of resolutions, but the application of the right to self-determination gives rise to a lot of controversial issues and remains to be problematic. One of such issues originates from the notion of ‘all peoples’ because international law does not define what exactly the term ‘all peoples’ refer to. The right to self-determination and right to territorial integrity might be seen as contradictory concepts; however, a close link exists between the right to self-determination and territorial integrity.

It should be noted that initially the right to self-determination referred to the decolonization process and the nations suppressed by the European empires eventually were entitled to exercise their right to self-determination. Later on this principle was recognized as a collective right and became enshrined in numerous international treaties. For example, ICCPR and ICESCR include provisions about the right to self-determination “All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development”.

The right to self-determination is reflected on both external and internal levels. Internal self-determination aims at guaranteeing people’s participation in public and political life, access to governance and so forth. Although self-determination is a collective right, internal self-determination is ensured at the state level through individual rights – such as freedom of assembly, freedom of expression, the right to vote and so forth.

2 International Republican Institute, Baltic Surveys Ltd. The Gallup Organization, Rating Group Ukraine, *Public Opinion Survey Residents of the Autonomous Republic of Crimea*, May 16 – 30, 2013, p. 8, available at: [http://pdf.usaid.gov/pdf\\_docs/pnaec705.pdf](http://pdf.usaid.gov/pdf_docs/pnaec705.pdf) (accessed 8 December 2014).

3 Ibid, p. 17.

4 Shaw M. (2008): *International Law*. Cambridge, Cambridge University Press, 6<sup>th</sup> edition, p. 251.

The overall situation and preconditions should be briefly described prior to the so-called exercise of the right to self-determination by the Crimean population. At the beginning of 2014 unmarked soldiers without insignia carrying Russian equipment appeared in strategic points of the peninsula of Crimea. Putin did not recognize “the green little man” as regular forces of the Russian Federation. On the contrary, Putin claimed that those men belonged to the Ukrainian militia and bought their weapons and Russian equipment at the shop. It was not until April 17 when Putin acknowledged the presence of the Russian troops in Crimea for the first time, when governmental buildings were captured and Ukrainian flags were replaced with Russian. The new pro-Russia authorities were installed under military occupation.

On 16 March 2014 a referendum was held on the status of Crimea. It was organized by the pro-Russia Crimean authorities and there are numerous facts suggesting its illegality and inconsistency with international standards.

Firstly, the referendum was not “free and fair” as international law requires. The referendum was initiated by Russia and organized by non-state actors. Furthermore, the referendum was carried in the presence of the Russian troops overawing potential voters. The military intervention of Russia led to the overthrowing of the Supreme Council of Crimea and the introduction of a new pro-Russia Supreme Council of Crimea headed by Aksyonov, leader of the public political movement Russian Unity.

Secondly, the referendum was not in line with the Ukrainian legislation, in particular with the Constitution of Ukraine. Article 73 of the 1996 Constitution of Ukraine prescribes that “Exceptionally an all-Ukrainian referendum decides questions about the change of territory of Ukraine”. Thus, it means that the status of Crimea should have been decided by the votes of whole population of Ukraine and not only by those living in Crimea. Moreover, according to Article 134 of the Constitution of Ukraine “The Autonomous Republic Crimea is inalienable component part of Ukraine and within the limits of plenary powers certain by Constitution of Ukraine, decides the questions attributed to its knowing.” Article 137 of the Constitution sets forth matters within the competence of the Autonomous Republic Crimea. The question of the territorial changes does not fall within the jurisdiction of the Autonomous Republic Crimea, and therefore the referendum held on this issue constitutes a breach of the Constitution of Ukraine and laws. The Constitutional Court of Ukraine declared unconstitutional the Resolution of the Verkhovna Rada of the Autonomous Republic Crimea “On the holding of the all-Crimean referendum” dated March 6, 2014.<sup>5</sup>

To continue, the ballot contained two choices: first – ‘*Do you support the reunification of Crimea with Russia with all the rights of the federal subject of the Russian Federation?*’ and the second one – ‘*Do you support the restoration of the Constitution of the Republic of Crimea in 1992 and the status of the Crimea as part of Ukraine?*’<sup>6</sup>

5 Judgment of the Constitutional Court of Ukraine from 14 March 2014, case No. 1-13/2014, No. 2-rp/2014, available at: <http://www.ccu.gov.ua/doccatalog/document?id=242321>

6 Yuhas A. and Jalabi R., ‘Crimea’s referendum to leave Ukraine: how did we get there?’, *The Guardian*, 13 March 2014, <http://www.theguardian.com/world/2014/mar/13/crimea-referendum-explainer-ukraine-russia> (accessed 8 December 2014).

Hence, the so-called referendum did not consider other possible choices for the peninsula, e.g. independence. Also the referendum questions had been designed in such manner to confuse voters. The international mass media criticized the questions for being confusing and inconsistent on the matter, since the ballots were in Ukrainian, Russian and Crimean Tatar, but the translations differed, though.

According to Russian sources the turnout of the Crimean referendum was approximately 93%. The referendum results provided by Russia stated that 96.77% voters were in favor of joining Russia, and 2.51% supported the status of Crimea within Ukraine. Later the website of the 'President of Russia's Council on Civil Society and Human Rights' revealed that the turnout at the referendum was at most 30%, and only 15% voted for annexation. However, the information was quickly removed.<sup>7</sup>

Prior to holding of the referendum EU, UN, OSCE and the majority of countries stated that they would not recognize the outcome of the referendum and that the referendum undermines and threatens Ukraine's territorial integrity and the inviolability of borders. The referendum was carried with help of observers affiliated with far-right parties and without OSCE and EU monitoring.<sup>8</sup>

On 15 March 2014 the UN Security Council condemned the referendum in Crimea, however, Russia vetoed the draft resolution, and China, the ally of Russia, abstained. On 27 March 2014 the General Assembly adopted a resolution by 100 votes in favor (11 votes against and 58 abstentions) calling upon states, international organizations not to recognize the changes in the status of Crimea.<sup>9</sup> The resolution affirmed the territorial integrity, sovereignty and independence of Ukraine and declared the referendum in Crimea illegal.

Prior to the referendum in Crimea, on 28 February 2014 a Draft Federal Constitutional Law was accepted by the State Duma of the Russian Federation on Amending the Federal Constitutional Law on the Procedure of Admission to the Russian Federation and the Creation of a New Subject, which simplified the incorporation of new territories, regions, autonomous republics and so forth into the Russian Federation.<sup>10</sup>

7 Somin I. 'Russian government agency reveals fraudulent nature of the Crimean referendum results', *The Washington Post*, 6 May 2014, <http://www.washingtonpost.com/news/volokh-conspiracy/wp/2014/05/06/russian-government-agency-reveals-fraudulent-nature-of-the-crimean-referendum-results/> (accessed 8 December 2014).

8 Snyder T. 'Far-Right Forces are Influencing Russia's Actions in Crimea', *New Republic*, 16 March 2014, <http://www.newrepublic.com/article/117048/crimean-referendum-was-electoral-farce> (accessed 8 December 2014).

9 United Nations, *General Assembly Adopts Resolution Calling upon States Not to Recognize Changes in Status of Crimea Region*, 27 March 2014, available at: <http://www.un.org/press/en/2014/ga11493.doc.htm> (accessed 8 December 2014).

10 European Commission for Democracy Through Law (the Venice Commission), *Opinion no. 763/2014 on "Whether Draft Federal constitutional Law No. 462741-6 on amending the Federal constitutional Law of the Russian Federation on the procedure of admission to the Russian Federation and creation of a new subject within the Russian Federation is compatible with international law"* endorsed by the Venice Commission at its 98th Plenary Session (Venice, 21-22 March 2014), CDL-AD(2014)004, para. 4, available at: [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2014\)004-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2014)004-e) (accessed 8 December 2014).

The amendments to the law were intended to incorporate Crimea and this was also noted in the explanatory report to the bill. One of the most important aspects of these amendments is the deletion of the clause which requires a mutual accord between the Russian Federation and the foreign state and the conclusion of an international treaty between the two states. Draft Article 4 states that “when it is not possible to conclude an international treaty because of the absence of efficient sovereign state government in the foreign state, whose duty is to protect its citizens, observe their rights and freedoms, enabling actual permanent and peaceful exercise of state functions, the admission to the Russian Federation of a part of the foreign state in the capacity of a new subject may take place on the basis of a referendum conducted in accordance with the legislation of the foreign state in the territory of the relevant part of the foreign state, if the accession to the Russian Federation was approved, or on the basis of request of state authorities of the said part of the foreign state.”<sup>11</sup>

The Venice Commission highlights that the principle of territorial integrity is enshrined in numerous constitutions worldwide. What is more, territorial integrity under certain circumstances might serve as a legitimate reason for imposing restrictions upon human rights, for example, the freedom of speech, freedom of assembly and so forth.<sup>12</sup> Articles 8-11 of the European Convention on Human Rights also provide examples. A new entity may obtain its independence by reaching an agreement with its former controlling sovereign (for example, Burma and the United Kingdom agreement). It should be noted that when new states evolved the most important question was how the territory was acquired<sup>13</sup>, whereas in our modern world more attention is paid to recognition than to the origin of the legal title over the territory. Nevertheless, neither did Crimea become a new state nor did the pro-Russian Supreme Council of Crimea intend it so. Crimea is to be seen as a territory acquired by the Russian Federation in an unconstitutional manner.

Shaw lists the following modes of acquisition of territory by states: *terra nullius*, prescription, cession, accretion and subjugation (consent).<sup>14</sup> The Venice Commission in its opinion refers to cession as a notion that might be applicable in the instance of Crimea. However, the Venice Commission states that cession means “the renunciation made by one State in favor of another of the rights and title which the former may have to the territory in question” emphasizing mutual, freely reached accord between states.<sup>15</sup> Shaw refers to cession as the peaceful transfer of territory which mostly occurs after a post-war truce.<sup>16</sup> In order to be valid a cession requires the consent of the former sovereign<sup>17</sup>, while draft amendments to the federal law set the framework for the involuntary, unlawful cession of Crimea.

---

11 Ibid, para. 9

12 Ibid, para. 15

13 Shaw, *supra*, p. 493.

14 Ibid, p. 495.

15 The Venice Commission, *supra*, para. 17.

16 Shaw, *supra*, p. 499.

17 The Venice Commission, *supra*, para. 18.

Russia to evade responsibility for the occupation argued that Ukraine as a state lacked an effective government. However, the Venice Commission rejected this ground as the basis for cession because in contemporary international law territories have to be respected even when the state temporarily does not exercise the effective control over its territories. As the Venice Commission notes such states do not become *terra nullius*:<sup>18</sup>

“A transfer of territory from one state to the other without the valid consent of the government of the state whose territory is concerned is no lawful cession of territory, but rather amounts to an annexation of territory which is prohibited under international law. A transfer of territory under a military threat (manifest, for example, in troops concentrations along a state boundary, or in a stationing of troops in the relevant territory) is additionally tainted by the violation of the international prohibition of the threat (or the use) of force.”<sup>19</sup>

The Draft Federal Constitutional Law on amending the procedure of admission to the Russian Federation and creation of a new subject within the Russian Federation aimed at legalizing the annexation of Crimea. The Venice Commission defined above-mentioned draft law as incompatible with international law.

In order to be an effective tool of direct democracy referendum shall be in line with international law and standards. Most countries and international organizations called “the referendum” in Crimea an electoral farce. As Snyder highlights referendum neither can be held under military occupation nor contain two choices that have essentially the same meaning.<sup>20</sup> Numerous violations took place starting from the declaration of the holding of the referendum which was not compatible with international law and the Constitution of Ukraine.

The Russian Federation justifies its seizure of Crimea by claiming the right to self-determination as Russia had done in cases of Transnistria, South Ossetia and Abkhazia, Chechnya etc. This concept should be elaborated briefly to find out whether it is applicable in the Crimean question. As was mentioned above contemporary international law does not have a treaty definition of ‘peoples’. It is accepted that this definition refers to a separate group of individuals possessing the same traits such as – the same history, culture, traditions, language and who are willing to live together. The Venice Commission mentions that the right to self-determination does not appertain to national minorities within a state or other group of people<sup>21</sup>, although this view was challenged by some scholars.

On 17 March 2014 the Supreme Council of Crimea declared the independence of Crimea, even though the referendum did not offer the option of Crimean independence. On 18 March 2014 Crimea and Russia concluded a treaty on accession.

18 Ibid, para. 20.

19 Ibid, para. 22.

20 Snyder T. ‘Far-Right Forces are Influencing Russia’s Actions in Crimea’, *New Republic*, 16 March 2014, <http://www.newrepublic.com/article/117048/crimean-referendum-was-electoral-farce> (accessed 8 December 2014).

21 The Venice Commission, *supra*, para. 25.

As Walter underlines it is important to note that the pro-Russia Supreme Council of Crimea did not strive for independence, but for the incorporation into the Russian Federation. There are two distinct legal steps in the process of Crimea's incorporation into the Russian Federation arising out of the actions of Russia and non-state actors in Crimea: the first is the secession itself and creation of a new 'independent' state (as the Declaration of 17 March set forth), and the second is the incorporation of a new subject into the Russian Federation. Walter points out that this two-step theory cannot operate solely on the basis of the declaration of independence. He claims that a new state has to possess all the criteria of statehood prior to incorporation, which did not happen in the case of Crimea.<sup>22</sup> What actually happened is the immediate incorporation into Russia the next day after the proclamation of independence on the basis of a referendum where the question of independence had not even been raised. By way of explanation, a change of borders occurred without the consent of Ukraine, parent country of Crimea: Crimea was simply taken by Russia.

### **The right to remedial secession as part of self-determination**

Putin relies on the right to self-determination as one of the strongest arguments for the Crimean secession. However, the right to self-determination does not automatically entail the right to secession. Scholars and general practice overwhelmingly reject the right to secession as an element of the right to self-determination. As a corollary, Crimea cannot claim a right to secession because of self-determination.<sup>23</sup> Nevertheless, the right to remedial secession may arise out of self-determination. Certain conditions derived from the Canadian Supreme Court's decision on Quebec shall be fulfilled in order to claim remedial secession. The Supreme Court of Canada ruled that the right to unilateral secession as part of self-determination arises only in the following instances: "where 'a people' is governed as part of a colonial empire; where 'a people' is subject to alien subjugation, domination or exploitation; and possibly where 'a people' is denied any meaningful exercise of its right to self-determination within the states of which it forms a part."<sup>24</sup> Otherwise, peoples should exercise the right to self-determination within their existing state. The population of Crimea does not meet any of the criteria mentioned above: they neither lived in a colony, nor were they subject to exploitation. Furthermore, they were not denied meaningful exercise of their right to self-determination. Just the opposite, Crimea is granted an autonomous status within Ukraine unlike any other region; it has its parliament and Council of ministers, its Constitution and so forth.

---

22 Walter C. (2014): Postscript: Self-Determination, Secession, and the Crimean Crisis 2014. In Walter C., von Ungern-Sternberg A., Abushov K. (eds.): *Self-Determination and Secession in International Law*, Oxford University Press, p. 294.

23 Ibid, p. 306.

24 Supreme Court of Canada (20 August 1998), *Reference re Secession of Quebec*, [1998] 2 SCR 217: 25506, available at: <http://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1643/index.do> (accessed 8 December 2014).

In the case of Kosovo Russia stands for the territorial integrity of Serbia and sets highly restrictive conditions for remedial secession to be exercised: “The Russian Federation is of the view that the primary purpose of the ‘safeguard clause’ is to serve as a guarantee of territorial integrity of States. It is also true that the clause may be construed as authorizing secession under certain conditions. However, those conditions should be limited to truly extreme circumstances, such as an outright armed attack by the parent State, threatening the very existence of the people in question. Otherwise, all efforts should be taken in order to settle the tension between the parent State and the ethnic community concerned within the framework of the existing State.”<sup>25</sup>

The stance of the Russian Federation with regard to the remedial secession of Kosovo was reaffirmed in the instances of South Ossetia and Abkhazia, and eventually in the case of Crimea. The conditions put forward in the statement of Russia were not fulfilled by Ukraine: there was no “outright armed attack” or threatening the very existence of the Crimean population in question.

In the Kosovo Advisory Opinion the ICJ held that the illegality of resolutions, which condemned the declarations of independence, did not derive “from the unilateral character of the declarations of independence, but from the fact that they were, or would have been, connected with the unlawful use of force or other grave violations of norms of general international law, in particular those of a peremptory character (*jus cogens*).”<sup>26</sup> Therefore, it might be concluded that a unilateral declaration itself does not automatically become null and void and its illegality does not stem from the unilateral character as ICJ notes in the Kosovo Advisory Opinion. Military occupation, installation of pro-Russia Crimean authorities, human rights violations committed by Russian troops and pro-Russia authorities on the peninsula against Crimean Tatars and those who opposed Russia constitute breach of international law. Hence, unilateral declaration of independence and joining the Russian Federation cannot be regarded as lawful. While Kosovo relies on remedial secession, Crimea did not meet the most generous criteria for remedial secession. Therefore, the incorporation into Russia which presupposes the secession from Ukraine cannot be done against the will or consent of Ukraine.<sup>27</sup>

### Protection of Russian nationals

The scenario of Russian intervention in Georgia in 2008 was repeated in Ukraine in 2014 in the instance of Crimea. The Russian government headed by Putin used the same pretext – protection of Russian nationals in Crimea. Russian compatriots living abroad after the breakup of the Soviet Union became a tool for Russia to wield

25 Hilpold, P (ed.) (2012): *Kosovo and International Law: The ICJ Advisory Opinion of 22 July 2010*, Leiden, Brill, p. 60.

26 *Accordance with International Law of the Unilateral Declaration of Independence in respect of Kosovo (Advisory Opinion)* [2010] ICJ Rep, p. 403, para. 81.

27 Walter, supra, p. 307.



in its claims and politics, manipulating even international norms. Before the Russian occupation there was no legal evidence or submitted case at the ECtHR or other monitoring body regarding human rights violations of Russian nationals by Ukraine. PACE highlights that none of the arguments used by Russia are true or supported with evidence. The central government in Kyiv was not taken over by the far right, and there was any imminent threat to the rights of the ethnic Russian minority in the country including Crimea.<sup>28</sup>

It is the primary responsibility of the home-state to ensure and protect its national minorities and their human rights. Article 21 of the Framework Convention for the Protection of National Minorities stipulates that nothing in the Convention shall be interpreted as implying any right to engage in any activity or perform any act contrary to the fundamental principles of international law and in particular of the sovereign equality, territorial integrity and political independence of States.<sup>29</sup> Although the home state bears responsibility to secure human rights, the kin-state plays also an important role in ensuring human rights of its citizens abroad. However, such role is a subordinate one and shall be in line with international law. Besides, in 1997 Russia and Ukraine signed the Treaty on Friendship, Cooperation and Partnership between Ukraine and the Russian Federation, which entered into force in 1999. Article 2 of the abovementioned treaty sets out that in accord with the provisions of the UN Charter and the obligations of the Final Act of the Conference on Security and Cooperation in Europe, the High Contracting Parties respect the territorial integrity of each other and confirm the inviolability of existing borders between them.<sup>30</sup> The military intervention of Russia constitutes a breach of treaty and of the principle of international law – *pacta sunt servanda* set forth in Article 26 of the Vienna Convention on the Law of Treaties: every treaty in force is binding upon the parties to it and must be performed by them in good faith.<sup>31</sup>

A military intervention of a kin-state shall be authorized by the Security Council according to UN Charter and shall be exercised as the last resort if all other peaceful means have been exhausted. The responsibility to protect allows intervention to protect civilians from genocide, war crimes, ethnic cleansing and crimes against humanity and refers to the international community to undertake actions for protection. It is hardly ascribed to the kin-state.<sup>32</sup> The Russian Federation invokes the responsibility to

---

28 Council of Europe, Parliamentary Assembly, *Recent developments in Ukraine: threats to the functioning of democratic institutions*, Resolution (1988), 2014, para. 15, available at: <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=20873&lang=en> (accessed 8 December 2014).

29 Council of Europe, *Framework Convention for the Protection of National Minorities, H(1995)010*, Strasbourg, 1.II.1995, available at: <http://conventions.coe.int/Treaty/en/Treaties/html/157.htm> (accessed 8 December 2014).

30 Treaty of Friendship, Cooperation, and Partnership between Ukraine and the Russian Federation, 01.04.1999, available at [http://zakon1.rada.gov.ua/laws/show/643\\_006](http://zakon1.rada.gov.ua/laws/show/643_006)

31 United Nations, *Vienna Convention on the Law of Treaties*, 23 May 1969, United Nations, Treaty Series, vol. 1155, p. 331, available at: <http://www.refworld.org/docid/3ae6b3a10.html>

32 Milano E. (2011): The Conferral of Citizenship en masse by Kin-States: Creeping Annexation or Responsibility to Protect? In Palermo F. and Sabanadze N. (eds.): *National Minorities in Inter-State Relations*, Martinus Nijhoff Publishers, p. 151.

protect its nationals abroad. The conferral of Russian passports in Georgia occurred *en masse* before the events of August 2008, and the Russian Federation claimed that its actions were taken as responsibility to protect its nationals. However, R2P was not applicable in this instance because Georgia had not committed any of the four crimes listed above to apply R2P by the international community. Furthermore, other requirements should be met to apply R2P: international authorization for the use of force (Security Council resolution), the use of force should be proportional and the aim should be limited to preventing human suffering.<sup>33</sup> However, R2P might be used as a tool to manipulate and abuse since the Russian Federation invokes R2P to evade its own responsibility for the violation of international law. The Kremlin's definition of compatriot is a very inclusive one. The Russian Federation considers everyone a compatriot who is able to speak Russian, who shares a common history and affiliate themselves with Russia.

OSCE High Commissioner on National Minorities Knut Vollebaek in his statement emphasized that "...states should refrain from conferring citizenship *en masse* to residents of other states, which is in violation of the principles of sovereignty and good neighborly relations. The presence of one's citizens or 'ethnic kin' abroad must not be used as a justification for undermining the sovereignty and integrity of other states."<sup>34</sup> The kin-state shall protect its nationals if the country of residence fails to undertake necessary measures, and the kin-state can exercise such protection through diplomatic protection or the right to self-defense. It should be mentioned that all such measures must be in accordance with the international law.

Operations in Rwanda, the Congo, the Central African Republic and others prompted to rescue and evacuate nationals. They were not designed to establish a military presence in the country of residence, but to save nationals and ensure their returning home.<sup>35</sup> Therefore, in case of Crimea the Russian Federation cannot rely on the doctrine of protection of Russian nationals that entitles Russia to use force.

The Russian practice of conferring citizenship *en masse* in Ukraine and Georgia to speed up procedures is in opposition to the principle of sovereignty and friendly relations among states according to the Bolzano/Bozen Recommendations. Milano states that the conferral of citizenship *en masse* may amount to *de facto* annexation. When such policy of the kin-state is accompanied by a military presence aiming to control the territory, then it should be regarded as breach of the right to territorial integrity of the state of residence.<sup>36</sup>

After the occupation of Crimea the Russian Federation started to issue Russian passports to the residents of the peninsula. Thus, all residents of Crimea who held

33 Sabanadze N. (2011): States, Minorities and Regional Hegemons in the South Caucasus: Whose Responsibility to Protect? In Palermo F. and Sabanadze N. (eds.): *National Minorities in Inter-State Relations*, Martinus Nijhoff Publishers, p. 180.

34 OSCE High Commissioner issues statement on protection of minorities and citizens abroad, The Hague, 25 August 2008, available at: <http://www.osce.org/hcnm/50009> (accessed 8 December 2014).

35 Walter, *supra*, p. 309.

36 Milano E., 156.

Ukrainian citizenship had to declare their wish to maintain their Ukrainian citizenship within a one-month period, or become Russian citizens by default. However, those who wished to maintain their Ukrainian passports had to go through a complicated process producing various documents. Otherwise, they were left no choice, but to accept the Russian citizenship.<sup>37</sup>

### **Situation of the Crimean Tatar Community in Crimea**

After discussing the ‘protection’ of Russian communities on the peninsula, the question of the Crimean Tatars should also be covered. While most scholars touch upon the protection of Russian nationals by the Russian Federation in Crimea or South Ossetia and Abkhazia, they fail to elaborate on other ethnic/national minorities living there.

It is not easy to determine the status of the Crimean Tatars and decide whether they fall within the category of national minorities or whether they shall be regarded as indigenous people. The law that defines the status of Crimean Tatars as indigenous people put forward by Crimean Tatar leaders is still not adopted by the Parliament of Ukraine. However, Crimea was granted an autonomous status within Ukraine mainly because of the Crimean Tatars who consider Crimea as their homeland. The Crimean Tatars were deported to Siberia by the Soviet regime which remains a painful memory for them. Consequently, the Crimean Tatar community supports Ukraine and the integration with Ukraine rather than being part of Russia. However, Putin’s regime does not reckon with the position of Crimean Tatars.

Moreover, after the military occupation of Crimea the Crimean Tatars had to suffer the violation of their human rights by Putin’s regime. Thousands of Crimean Tatars have left Crimea since March 2014 and moved to Western or Central Ukraine. The Crimean Tatars decided to boycott the 16 March referendum due to its illegal character. Crimean Tatars and their leaders were concerned about persecution from Putin’s regime for their active position against Kremlin. In March Crimean Tatar leaders – Mustafa Dzhemilev and Refat Chubarov were banned from entering Crimea. In May Crimean Tatars were not allowed to commemorate the 70th anniversary of their exile by Stalin in the center of the capital – Simferopol as they had done it every year since the early 1990s.<sup>38</sup>

Numerous human rights violations took place against Crimean Tatars after Russia’s occupation of the peninsula, which is affirmed in the Declaration passed by the Parliamentary Assembly of the Council of Europe on 2 October 2014. Self-proclaimed pro-Russia authorities in Crimea are responsible for the unlawful detention of Mustafa Dzhemilev’s son, Hayser Dzhemilev, who was taken hostage to exercise additional control and pressure over Crimean Tatars and their leader, for unlawful searches in

---

37 Human Rights Watch, *Rights in Retreat: Abuses in Crimea*, November 2014, p. 28, available at: [http://www.hrw.org/sites/default/files/reports/crimea1114web\\_0.pdf](http://www.hrw.org/sites/default/files/reports/crimea1114web_0.pdf) (accessed 8 December 2014).

38 Unrepresented Nations and Peoples Organization: *Crimean Tatars: Russia’s Attempts to Destroy the Community Evokes Memories of 1940s*, 7 November 2014, <http://unpo.org/article/17678> (accessed 8 December 2014).

Crimean Tatars' homes and offices, groundless criminal proceedings, restrictions on the exercise of their rights including the right to peaceful assembly, to property and so forth.<sup>39</sup> In September the Mejlis was dissolved, the main Crimean Tatar library was closed down by self-proclaimed authorities in Crimea.<sup>40</sup>

In addition, the Human Rights Watch in its report 'Rights in retreat' established massive human rights violations with regard to Crimean Tatars and pro-Ukraine activists committed by pro-Russia authorities in Crimea. The Human Rights Watch reported at least 15 cases where Crimean Tatars or pro-Ukraine activists were forcibly disappeared, abducted or went missing on the peninsula since March, 2014.<sup>41</sup> The Human Rights Watch urges to disarm and disband self-defense units operating in Crimea since late February and which are involved in unlawful detention, abduction, ill-treatment and other crimes.<sup>42</sup> Furthermore, activity of such units has been legalized by the law 'On people's uprising' and 'On the national militia – the people's *druzhina*.' Also since Russia exercises an effective control over Crimea and incorporated it into its territories federal laws became active for Crimea. As a result, mass media and journalists face censorship and pressure from the self-proclaimed authority of Crimea for being critical about pro-Russia authorities. Many pro-Ukraine journalists have fled from Crimea to Ukraine.<sup>43</sup>

The report of the Advisory Committee of the Framework Convention for the Protection of National Minorities emphasizes that the Crimean Tatar minority is exposed to particular risks in Crimea. The Advisory Committee has particular concerns regarding their safety and access to rights.<sup>44</sup> Also the monitoring body expressed its concerns that the Law on the Principles of State Language Policy<sup>45</sup> was canceled, but it welcomes that there is no immediate threat in Ukraine to minorities and they are able to enjoy their human rights.

As the Venice Commission notes Ukraine is a party to the European Convention on Human Rights and the Framework Convention for the Protection of National Minorities, and Ukraine is obliged to guarantee human rights for national minorities including the Crimean Tatars and Russians.<sup>46</sup> Therefore, Ukraine bears the burden of

39 Council of Europe, Parliamentary Assembly, *Massive violations of the rights of Crimean Tatars in Crimea unlawfully occupied by the Russian Federation*, Written Declaration No. 582, Doc. 13623, 2014, available at: <http://assembly.coe.int/ASP/Doc/XrefViewPDF.asp?FileID=21281&Language=EN> (accessed 8 December 2014).

40 Unrepresented Nations and Peoples Organization, *Crimean Tatars: Russia's Attempts to Destroy the Community Evokes Memories of 1940s*, 7 November 2014, <http://unpo.org/article/17678> (accessed 8 December 2014).

41 Human Rights Watch, *Rights in Retreat: Abuses in Crimea*, November 2014, p. 8, available at: [http://www.hrw.org/sites/default/files/reports/crimea1114web\\_0.pdf](http://www.hrw.org/sites/default/files/reports/crimea1114web_0.pdf) (accessed 8 December 2014).

42 Ibid, p. 20.

43 Ibid, p. 24.

44 Council of Europe, Parliamentary Assembly, *Recent developments in Ukraine: threats to the functioning of democratic institutions*, Resolution (1988), 2014, para. 12, available at: <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=20873&lang=en> (accessed 8 December 2014).

45 Ibid, para. 11.

46 The Venice Commission, *supra*, para. 38.

responsibility, and Russia as the kin-state has a subordinate role. Supervising Ukraine's compliance with its obligations under treaties falls within the jurisdiction of the monitoring bodies – the Advisory Committee on the Framework Convention for the Protection of National Minorities, the European Court of Human Rights and so forth. The Russian Federation should address possible concerns regarding Ukraine's non-compliance with its obligations to protect Russian nationals within the monitoring mechanisms, but should not occupy a part of the country and act as supreme power.

## Conclusion

Acquisition of new territories in contemporary international law by the way of cession requires the consent or agreement of the parent state. In our case there was no agreement or consent by the government of Ukraine, therefore, Crimea is not acquired by Russia in a lawful way.

Many international actors consider Russia now as an occupying power since it exercises effective control in Crimea,<sup>47</sup> and Crimea is an occupied territory according to the 1949 Geneva Conventions. Many scholars note that the incorporation of Crimea into the Russian Federation was illegal and may therefore correctly be labeled an 'annexation.'<sup>48</sup> PACE in its report on 9 April 2014 condemns Russia and calls occupation of Crimea also annexation.<sup>49</sup>

The referendum held on 16 March 2014 took place under circumstances of military occupation, and it was organized by self-proclaimed authorities which constitute non-state actors. The referendum was not carried out in conformity with international law and has been recognized illegal by the international community in the UN General Assembly Resolution 68/262.

Such arguments as application by Russia R2P and protection of Russian nationals abroad are groundless and cannot serve as justification for annexation of Crimea. Other reason put forward by Kremlin is realization of the right to self-determination by population of Crimea. However, the right to self-determination does not automatically include the right to secession. In international law there are three possible cases in which the right to secession might be exercised by peoples. In those instances the right to secession is called remedial. Such instances include when a people reside in a colony, when a people is subject to alien subdual or when a people is denied any meaningful exercise of the right to self-determination. It should be noted that the third case is hotly debated among scholars. Crimea did not meet any of the criteria mentioned above.

---

47 Human Rights Watch, *supra*, p. 3

48 Walter, *supra*, p. 310.

49 Council of Europe, Parliamentary Assembly, *Recent developments in Ukraine: threats to the functioning of democratic institutions*, Resolution (1988), 2014, para. 12, available at: <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=20873&lang=en> (accessed 8 December 2014).

## Bibliography

### Primary Sources

- Council of Europe, *Framework Convention for the Protection of National Minorities*, H(1995)010, Strasbourg, 1.II.1995, available at: <http://conventions.coe.int/Treaty/en/Treaties/html/157.htm>
- Council of Europe, Parliamentary Assembly, *Massive violations of the rights of Crimean Tatars in Crimea unlawfully occupied by the Russian Federation*, Written Declaration No. 582, Doc. 13623, 2014, available at: <http://assembly.coe.int/ASP/Doc/XrefViewPDF.asp?FileID=21281&Language=EN>
- Council of Europe, Parliamentary Assembly, *Recent developments in Ukraine: threats to the functioning of democratic institutions*, Resolution (1988), 2014, available at: <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=20873&lang=en>
- European Commission for Democracy Through Law (the Venice Commission), *Opinion no. 763/2014 on "Whether Draft Federal constitutional Law No. 462741-6 on amending the Federal constitutional Law of the Russian Federation on the procedure of admission to the Russian Federation and creation of a new subject within the Russian Federation is compatible with international law" endorsed by the Venice Commission at its 98th Plenary Session (Venice, 21-22 March 2014)*, CDL-AD(2014)004, available at: [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2014\)004-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2014)004-e)
- Treaty of Friendship, Cooperation, and Partnership between Ukraine and the Russian Federation, 01.04.1999, [http://zakon1.rada.gov.ua/laws/show/643\\_006](http://zakon1.rada.gov.ua/laws/show/643_006)
- United Nations, *General Assembly Adopts Resolution Calling upon States Not to Recognize Changes in Status of Crimea Region*, 27 March 2014, available at: <http://www.un.org/press/en/2014/ga11493.doc.htm>
- United Nations, *Vienna Convention on the Law of Treaties*, 23 May 1969, United Nations, Treaty Series, vol. 1155, p. 331, available at: <http://www.refworld.org/docid/3ae6b3a10.html>
- Unrepresented Nations and Peoples Organization, *Crimean Tatars: Russia's Attempts to Destroy the Community Evokes Memories of 1940s*, 7 November 2014, <http://unpo.org/article/17678>

### Case-law

- Accordance with International Law of the Unilateral Declaration of Independence in respect of Kosovo (Advisory Opinion)* [2010] ICJ Rep, p. 403.
- Judgment of the Constitutional Court of Ukraine from 14 March 2014, case No. 1-13/2014, No. 2-rp/2014, (available at: <http://www.ccu.gov.ua/doccatalog/document?id=242321>).

Supreme Court of Canada (20 August 1998), *Reference re Secession of Quebec*, [1998] 2 SCR 217: 25506, (available at: <http://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1643/index.do>).

## ***Secondary Sources***

### ***Books***

- Hilpold, P (ed.) (2012): *Kosovo and International Law: The ICJ Advisory Opinion of 22 July 2010*, Lediem, Brill.
- Milano E. (2011): The Conferral of Citizenship en masse by Kin-States: Creeping Annexation or Responsibility to Protect? In Palermo F. and Sabanadze N. (eds.): *National Minorities in Inter-State Relations*, Martinus Nijhoff Publishers.
- Sabanadze N. (2011): States, Minorities and Regional Hegemons in the South Caucasus: Whose Responsibility to Protect? In Palermo F. and Sabanadze N. (eds.): *National Minorities in Inter-State Relations*, Martinus Nijhoff Publishers.
- Shapovalova O. (2011): The role of Russian as a kin-state in protecting the Russian minority in Ukraine. In Kemp, W. P., Popovski, V., Thakur, R. (eds.): *Blood and Borders: The Responsibility to Protect and the Problem of the Kin-State*, Tokyo, United Nations University Press.
- Shaw M. (2008): *International Law*. Cambridge University Press, 6<sup>th</sup> edition.
- Walter C. (2014): Postscript: Self-Determination, Secession, and the Crimean Crisis 2014. In Walter C., von Ungern-Sternberg A., Abushov K. (eds.): *Self-Determination and Secession in International Law*, Oxford, Oxford University Press.

### ***Internet sources***

- Human Rights Watch, *Rights in Retreat: Abuses in Crimea*, November 2014 (available at: [http://www.hrw.org/sites/default/files/reports/crimea1114web\\_0.pdf](http://www.hrw.org/sites/default/files/reports/crimea1114web_0.pdf)).
- International Republican Institute, Baltic Surveys Ltd. The Gallup Organization, Rating Group Ukraine, *Public Opinion Survey Residents of the Autonomous Republic of Crimea*, May 16–30, 2013 (available at: [http://pdf.usaid.gov/pdf\\_docs/pnaec705.pdf](http://pdf.usaid.gov/pdf_docs/pnaec705.pdf)).
- OSCE High Commissioner issues statement on protection of minorities and citizens abroad, The Hague, 25 August 2008 (available at: <http://www.osce.org/hcnm/50009>).
- Snyder T. 'Far-Right Forces are Influencing Russia's Actions in Crimea', *New Republic*, 16 March 2014, (available at <http://www.newrepublic.com/article/117048/crimean-referendum-was-electoral-farce>).

Somin I. 'Russian government agency reveals fraudulent nature of the Crimean referendum results,' *The Washington Post*, 6 May 2014, (available at <http://www.washingtonpost.com/news/volokh-conspiracy/wp/2014/05/06/russian-government-agency-reveals-fraudulent-nature-of-the-crimean-referendum-results/>).

Yuhas A. and Jalabi R., 'Crimea's referendum to leave Ukraine: how did we get there?' *The Guardian*, 13 March 2014, (available at <http://www.theguardian.com/world/2014/mar/13/crimea-referendum-explainer-ukraine-russia>).