

Crimea's Annexation by Russia – Contradictions of the New Russian Doctrine of International Law

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Abstract	167
I. Introduction	167
II. Status of Crimea under the USSR	168
III. International Documents Guaranteeing Ukraine's Territorial Integrity in Russian-Ukrainian Relations	170
IV. Russia's Inconsistency in Territorial Issues (Violation of Estoppel)	175
V. Russian Doctrine of International Law on the Right to Self-Determination and Principle of Territorial Integrity	176
VI. Russia's Arguments Aimed at the Justification of Crimea's Annexation	182
1. Crimea's Annexation and the Right to Self-Determination	183
2. The Argument of <i>Coup d'État</i>	186
3. Humanitarian Intervention and Intervention by Invitation	189
VII. Conclusion	194

Abstract

Crimea's annexation by Russia violated a whole range of the fundamental principles of international law and treaties guaranteeing Ukraine's territorial integrity, inviolability of borders and security. This paper analyses the Crimean crisis in the light of the principles of contemporary international law, as well as in the light of the Russian doctrine of international law. This analysis shows that the arguments put forward by Russia are untenable and in contradiction with the previous Russian doctrinal approaches towards the principles of self-determination and territorial integrity.

I. Introduction

Crimea's annexation by Russia in 2014 marks a serious crisis of contemporary international law and of the world security system. In fact, the annexation has challenged the system of contemporary international law.

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Against this background the present paper has a threefold purpose: firstly, it will explain the status of Crimea under the Union of Soviet Socialist Republics (USSR) and present the international conventions between Russia and Ukraine imposing upon Russia obligations to respect Ukraine's territorial integrity and inviolability of its borders (II.-III.). The paper then shows that the current direction of Russia's policies and the attempts to justify them under international law contradict previous Russian state practice and the established legal doctrine in Russia (IV.-V.). In a last step, the paper takes a look at Russian attempts to justify the annexation of Crimea (VI.).

II. Status of Crimea under the USSR

Before 1991, i.e. before the moment of the USSR's dissolution as a subject of international law, Ukraine was a state and Crimea formed an integral part of its territory. In other words, even before the USSR's disintegration, Crimea's status as part of Ukraine's territory should have been respected from the perspective of international law.

From the outset it should be recalled that the USSR by its legal nature was a subject of international law. It formed a federation, albeit a rather specific kind of federation, which was referred to in the Soviet legal literature as a "soft federation". This meant that not only was the USSR a sovereign state and subject of international law but also its component Soviet republics had the same legal nature. As recognized in the fundamental Soviet "Course of International Law": "In the Soviet Union sovereign are both the federation as a whole (the Union of SSR) and its component union republics".¹ For example, the Ukrainian Soviet Socialist Republic (Ukrainian SSR) and the Belorussian Soviet Socialist Republic were member states and even founding members of the United Nations (UN). According to the UN Charter, membership is only open to sovereign states.²

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 "the Union republic is a sovereign Soviet socialist state". Article 80 of this Constitution envisaged the right of the

¹ Kurs mezhdunarodnogo prava. V 7 t. T. 1. Poniatie, predmet i sistema mezhdunarodnogo prava, *Y. A. Baskin/N. B. Krylov/D. B. Levin et al.*, in: R. A. Mullerson/G. I. Tunkin (ed.), Nauka, Moskva 1989, 168.

² It can be argued, of course, that the Ukrainian SSR was admitted to the UN "for political reasons", but this does not have impact upon its official legal status as a subject of international law and sovereign state.

Soviet republics to enter into relations with foreign states, to conclude international treaties and exchange diplomatic and consular representatives with them, and to participate in the activities of international organizations.

The USSR was created by the Union Treaty of 1922 and was dissolved in 1991 by the Belavezha Accords (8.12.1991), according to which the USSR had ceased to exist as “a subject of international law” and as a “geopolitical reality”.³ 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 USSR's dissolution. 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. The Ukrainian SSR was party to a number of international treaties and member of some international organizations. Under Article 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 its borders with other Union republics could only be changed by the mutual agreement of the correspondent Soviet republics, which was subject to confirmation by the USSR.

It may be argued that Ukraine's status as a sovereign state under the USSR, as well as its constitutional right to withdraw from the USSR, had formal, rather than real character. Nevertheless, without this status and constitutional right, Ukraine would not have been 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 an international treaty (Union Treaty of 1922). Under the laws of international treaties, Ukraine therefore had the right to withdraw from that treaty.

One of the myths promoted by Russia with respect to Crimea's transfer to Ukraine became apparent by Russia's president using the expression “Khrushchev's gift to Ukraine”, as if it was a unilateral ungrounded move, a sort of a whim of the Soviet leader. Furthermore, it was also argued that Russia's and Crimea's population allegedly did not consent to the transfer of Crimea to Ukraine.

However, Crimea was transferred to Ukraine in accordance with the Soviet constitutional law of that time. On 19.2.1954, the Presidium of the Supreme Council of the USSR took into consideration economic, cultural and geographical factors, as well as official positions of the Russian Soviet Federative Socialist Republic (Russian SFSR/RSFSR) and Ukrainian Soviet Socialist Republic (Ukrainian SSR) and adopted an edict on the transfer of the Crimean oblast from the Russian SFSR to the Ukrainian SSR. On 26.4.1954,

³ Belavezha Accords, 8.12.1991, <<http://www.rusarchives.ru/statehood/10-12-soglashenie-sng.shtml>>.

the Supreme Council of the USSR adopted the law “On the Transfer of the Crimean Oblast from the RSFSR to the Ukrainian SSR” in accordance with Soviet legislation.

Russia’s argument that the Russian SFSR had not given its consent to Crimea’s transfer proves false, since on 2.6.1954, at the fifth session of the Supreme Council of the RSFSR, the delegates unanimously voted in favour of bringing the Constitution of the RSFSR in line with the Constitution of the USSR. In effect, this meant Russia’s consent to Crimea becoming part of Ukraine. In other words, the change of Art. 14 of the Constitution of the RSFSR and the removal of the Crimean oblast provides evidence for Russia’s consent to the transfer. Under the law of international treaties, Russia’s consent to transfer Crimea to Ukraine and Ukraine’s acceptance may be considered an international agreement.

The legal status of Crimea as an integral part of Ukraine’s territory was then 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 mentioned as a “city of republican subordination” in the Ukrainian SSR.

Had Crimea been transferred to Ukraine in violation of the Soviet law, the question inevitably arises: Why has Russia during the period of the USSR and the 23 years after its disintegration, including 14 years of *Putin* being in power as Russia’s president and prime-minister, never officially raised this issue? Moreover, Russia has always officially supported Ukraine’s territorial integrity.

It must also be taken into consideration that in the December referendum of 1991, held on the issue of Ukraine’s proclamation of independence, 54 % of the valid votes were in favour of Ukraine’s independence.⁴

III. International Documents Guaranteeing Ukraine’s Territorial Integrity in Russian-Ukrainian Relations

The first international treaty between Ukraine and Russia, guaranteeing the territorial integrity of Ukraine and inviolability of its borders was concluded at Kiev on 19.11.1990.⁵ Article 6 of this Treaty stipulated: “The High

⁴ До 15-ї річниці Всеукраїнського референдуму Документи з фондів ЦДАВО України. (ukrainisch, Dokument aus dem Staatsarchiv der Ukraine), <http://www.archives.gov.ua/Sections/15r-V_Ref/index.php?11>.

⁵ Treaty between the Ukrainian Soviet Socialist Republic and the Russian Soviet Federal Socialist Republic, 19.11.1990, <http://www.zakon.nau.ua/doc/?code=643_011>.

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 the USSR borders.”

After the USSR's dissolution within the framework of the Commonwealth of Independent States (CIS), a number of agreements were concluded, which mention the principles of territorial integrity and inviolability of borders of the former Soviet republics. Among these agreements are: the Almaty Declaration of 21.12.1991; the Agreement on Councils of Heads of State and Government (30.12.1991);⁶ the Declaration on Observance of the Sovereignty, Territorial Integrity and Immunity of Borders of the States-Members of the Commonwealth of Independent States (15.4.1994).

The Russian Supreme Soviet tried to declare Sevastopol a Russian city on 9.7.1993. Ukraine reacted immediately and appealed to the UN Security Council. Referring to the Russian-Ukrainian Treaty of 19.11.1990, the UN Security Council denounced the declaration, since both parties to the treaty had consented to the territorial integrity of each other within their current borders.⁷ In a letter dated 19.7.1993 addressed to the President of the Security Council, the representative of the Russian Federation transmitted the text of a statement, issued on 11 July 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, in Crimea and in Sevastopol. In a decision the Security Council stated:

“The representative of the Russian Federation emphasized that the decree adopted on 9.7.1993 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 Conference on Security and Cooperation in Europe (CSCE). Regarding its relations with Ukraine, the Russian Federation would

⁶ It is worth noting that the right to self-determination figures in this Agreement as an inalienable right of the CIS member states, rather than of peoples as such.

⁷ See *T. Langstrom*, *Transformation in Russia and International Law*, 2003, 260.

continue to be guided by its bilateral treaties and agreements and in particular those concerning respect for each other's sovereignty and territorial integrity."⁸

In the related presidential statement, the Security Council pointed out:

"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 at Kiev 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."⁹

Despite the Security Council's presidential statement, Ukrainian politicians were concerned that such an attempt to put forward territorial claims to Ukraine's territory on the part of Russia might be repeated in the future. That is why they were looking for 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.

When the issue of the nuclear arsenal in the territory of Ukraine arose and Ukraine was asked to abandon this arsenal, Ukraine's leadership asked for reliable guarantees of its territorial integrity, sovereignty and security. On 14.1.1994, in Moscow, the presidents of Russia and the United States (US) had officially informed the then Ukrainian president *L. Kravchuk* that Russia and the US were ready to provide Ukraine with guarantees of its security. In the trilateral Declaration of Russia, the US and Ukraine it was provided that, as soon as Strategic Arms Reduction Treaty I (START-I) entered into force, and Ukraine became a party to the Treaty on the Non-proliferation of Nuclear Weapons as a non-nuclear state, Russia and the US would confirm their obligation, in accordance with the principles of the CSCE Final Act, and would respect the independence and sovereignty, as well as existing borders of the state-participants in the CSCE, recognizing that changes to the borders may be performed only peacefully and by agreement.¹⁰

⁸ UN Security Council, Complaint by Ukraine regarding the Decree of the Supreme Soviet of the Russian Federation concerning Sevastopol, in: *Repertoire of the Practice of the Security Council*, Supplement 1993-1995, Vol. I, 2011, 958 et seq.

⁹ UN Security Council Presidential Statement, UN Doc. S/26118 (1993), 20.7.1993.

¹⁰ Trilateral Declaration of the Presidents of Ukraine, the USA and Russia, 14.1.1994, <http://www.zakon4.rada.gov.ua/laws/show/998_300>.

During the ratification of START-I and the Lisbon protocol of 18.11.1993, Ukraine's parliament ("*Verkhovna Rada*") adopted the Decision ("*postanova*") that Ukraine, as the owner of the nuclear arsenal in its territory, would abandon this arsenal

"on condition of receiving reliable guarantees of its national security, in which the nuclear powers will undertake obligations not to use nuclear weapons or ordinary armed forces against Ukraine, 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".¹¹

The Trilateral Declaration and the said Decision of the *Verkhovna Rada* became the basis of the Budapest Memorandum on Security Guarantees of 5.12.1994.¹² In this Memorandum, Russia, the US and the United Kingdom (UK) confirmed, in recognition of Ukraine becoming party to the Treaty on the Non-Proliferation of Nuclear Weapons and its abandoning of the 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.

It is interesting to note that in April 1997 a round-table discussion was organized by the Moscow Association of International Law. Its central topic was "The Problem Sevastopol". Only a few participants 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 in 1948. Nevertheless, the statement of professor *O. N. Khlestov* that it would signify "the final surrender of Russian pretensions" regarding Sevastopol, if the city was leased from Ukraine, was widely approved.¹³

¹¹ Verkhovna Rada, Ratification of the Agreement between the USSR and the USA on the Reduction and Limitation of Strategic Offensive Arms, signed in Moscow on 31.7.1991 and the Protocol thereto, signed in Lisbon on behalf of Ukraine on 23.5.1992, 18.11.1993, <<http://www.zakon4.rada.gov.ua/laws/show/3624-12>>.

¹² Sometimes this Memorandum is referred to as "the Budapest Memorandum on Security Assurances".

¹³ *E. S. Krivchikova*, *Kruglyi stol v MGIMO po Sevastopolii*, *Moscow Journal of International Law*, No. 3 (1997), 137 et seq., at 140.

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 status of Crimea as part of Ukraine's territory was already beyond question. Besides, according to the Constitution of Ukraine of 1978 (Article 77) Sevastopol was a city of "republican subordination", that means a Ukrainian, not Russian city.

On 31.5.1997 Ukraine and Russia concluded the "Treaty on Friendship, Cooperation and Partnership between the Russian Federation and Ukraine", the so called "Big Treaty", which put an end to any possible territorial claims by Russia to Ukraine. Doubts were expressed about this Treaty in the Ukrainian parliament, but the key argument which managed to put all these doubts and concerns to rest was that this Treaty conclusively guaranteed that Russia lost any legal opportunity to challenge the territorial integrity of Ukraine.

Article 2 of the Treaty stipulated:

"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 shall respect each other's integrity and reaffirm the inviolability of the borders existing between them."¹⁴

In the Russian doctrine of international law the status of Crimea as an integral part of Ukraine's territory was, generally speaking, widely supported. A proof of this thesis can be found in *P. P. Kremnev's* – a Russian professor's – monograph "The Dissolution of the USSR: international legal problems" (Moscow, 2005). The monograph was published under the aegis of the 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. Professor *Kremnev* wrote in his monograph that Ukraine from 25.4.2004 had received in regard to Crimea "fully-fledged and already undeniable (*jus contra omnes*) legal rights from the stances of both international and internal state law".¹⁵

Regarding Crimea's status under the "Big Treaty" of 1997 *Kremnev* maintained:

"After the fully-fledged introduction into force of the Treaty, on the basis of its 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

¹⁴ Budapest Memorandum, signed 5.12.1994.

¹⁵ *P. P. Kremnev*, *Raspad SSSR: mezhdunarodno-pravovyye problemy*, Zertsalo-M, Moskva 2005, 91.

Crimea (including Sevastopol), and Russia at the same time loses the possibility to present any legally grounded claims to this territory.”¹⁶

In a word, herein professor *Kremnev* explicitly recognizes two crucial facts: 1) Ukraine has undeniable legal rights (*ius contra omnes*) to Crimea from the point of view of both international and national law; 2) Russia has lost once and for all the 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 UN Security Council's decision.

IV. 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*).¹⁷ As such, it belongs to the sources of international law. To put the matter simply, the principle of estoppel obliges states not to contradict themselves.¹⁸ This principle, taken from Anglo-Saxon legal culture, is also known in other legal systems (in German law 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).¹⁹

By annexing Crimea, Russia has violated the principle of estoppel. First of all, it displayed obvious inconsistency in territorial issues after the USSR's demise. During the existence of the USSR several territorial transfers took place, including transfers of certain historical Ukrainian territories to Russia. For example, Ukraine transferred part of its territories bordering with Smolensk, Kursk, Belgorod and Voronezh oblasts to Russia. In 1924, the big city Taganrog with the surrounding area, inhabited predominantly by Ukrainian population, was transferred to the Russian Rostov oblast. The Shakhtin area in Donbas and Starodubshyna were also transferred to Russia. Altogether, Ukrainian historical territories with 1.2 million inhabitants

¹⁶ P. P. Kremnev (note 15), 77.

¹⁷ See T. Cottier /J. P. Müller, Estoppel, MPEPIL (online ed.), April 2007, para. 2.

¹⁸ W. Czaplinski/A. Wyrozumska, Prawo międzynarodowe publiczne. Zagadnienia systemowe (2 wydanie), Wydawnictwo C. H. Beck, Warszawa 2004, 102.

¹⁹ W. Czaplinski/A. Wyrozumska (note 18).

were transferred to Russia. Under the USSR, 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 also instructive.²⁰ 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 were legitimate according to the official Soviet position because they were unanimously approved by the competent Supreme Soviets. After regaining its independence, the Parliament of Estonia declared these decisions null and void. It argued that Estonia was annexed by the USSR in violation of international law. Estonia's position was categorically rejected by Russia. Referring to its recognition of Estonia's independence on 24.8.1991, Russia claimed that the border had to remain as it was. Effectively, it made reference to the *uti possidetis* principle. Furthermore, Estonia's insistence on the Tartu frontiers was considered to be contradictory to the principles of the CSCE Final Act and to threaten the stability of the Baltic region.²¹

As we can see from this case, Russia behaves inconsistently and is in breach of the principle of estoppel. On the one hand, it insists on the border with Estonia from 24.8.1991, on the other hand, it denies that its border with Ukraine, including Crimea, from the same date should remain. 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 favour of the *uti possidetis* principle, whereas in the case of Crimea it does not adhere to this principle.

V. Russian Doctrine of International Law on the Right to Self-Determination and Principle of Territorial Integrity

Among decisions of the Russian Constitutional Court we can find several important judgments revealing Russia's international legal position on the issue of relationship between the right to self-determination and the princi-

²⁰ See *T. Langstrom* (note 7), 256.

²¹ *T. Langstrom* (note 7), 256; see also *Diplomaticheski Vestnik* 1994, No. 13-14, at 52 and 71.

ple of territorial integrity. For example, in 1995, in connection with the war in Chechnya, the Russian Constitutional Court had issued a decree 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.²² This decree *inter alia* envisages the following points: 1) The Russian Constitution does not permit to unilaterally withdraw a component unit from the federation; 2) The constitutional system of the state is based on its integrity; 3) State integrity is a significant prerequisite for the equality of all citizens irrespective of where on the territory of the state they reside; 4) The constitutional aim to preserve Russia's territorial integrity corresponds to generally acknowledged international norms relating to the right of people to self-determination.

In its decree the Constitutional Court had also made reference to the UN Friendly Relations Declaration of 1970. It deduced that the right of self-determination shall not be understood

“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”.²³

Another important decree by the Russian Constitutional Court was issued in the Case Concerning Sovereignty of Tatarstan (13.3.1992). It dealt with the question whether certain legislative acts of the Republic of Tatarstan, including a referendum concerning the future status of the republic, were in accordance with the constitution. The following question was given at the referendum: “Do you agree that the republic of Tatarstan is a sovereign state, subject of international law, that establishes its relations with the Russian Federation and other republics on the basis of equal treaties? Yes or no.”²⁴

In its decision on this case the Russian Constitutional Court came to the conclusion 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. The court underlined its position by relating to a number of CSCE documents from 1975 to 1990 and other

²² For the text of this decree see <http://www.lawrussia.ru/texts/legal_383/doc383a317x940.htm>; see also *T. Langstrom* (note 7), 416 et seq.

²³ Declaration on Principles of International Law Concerning Friendly Relations and Cooperation among States in Accordance with the Charter of the United Nations, A/RES/25/2625, 24.10.1970.

²⁴ For the text of this decree see <<http://www.base.consultant.ru/cons/cgi/online.cgi?req=doc;base=ARB;n=5280>>; see *T. Langstrom* (note 7), 402 et seq.

“international legal acts”. As a result, the Tatarstan decree on holding a referendum was found to be in contravention with Russia’s constitution and thus ineffective.

The Russian specialist on international law professor *G. B. Starushenko* points out in connection with these decisions of Russia’s Constitutional Court:

“The constitution of the Russian Federation of 1993, while recognizing the right to self-determination, excludes its realization in the form of withdrawal from the Federation. As a matter of fact, the right to withdraw from the state is not contained in any existing constitution of the almost two hundred states and nowadays is not supported by the UN. The world takes for granted the possibility and necessity to secure the observation of the national and social rights of peoples within the borders of the existing states.”²⁵

The former judge of the Russian Constitutional Court *O. I. Tiunov*, referring to the Court’s decision on Tatarstan (13.3.1992), 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 the principle of respect for human rights.²⁶

According to the Russian professor *I. P. Blischenko*, self-determination of nations should not take place at the expense of other nations living in the same territory; if this happens, it should be qualified as an international crime and the issue of international responsibility, including criminal responsibility, of those persons involved in such politics should be raised, irrespective of their official position.²⁷

Regarding the right to secession, the Russian professor of international law *S. V. Chernichenko* is of the opinion that this “right” is not a necessary element of the right to self-determination. By contrast, the legality of secession depends on the consent of the state from which secession shall take place.²⁸

It is also rather interesting to consider the Russian doctrine’s approach to the right to self-determination as expressed in the textbook on international law, published under the aegis of the Russian Association of international

²⁵ *G. B. Starushenko*, Samoopredelenie kak pravovaia osnova predotvraschenia konfliktov i zaschity prav cheloveka, <<http://www.memo.ru/hr/referats/selfdet/Chapter5.htm>>.

²⁶ *O. I. Tiunov*, *Mezhdunarodnoe pravo*. Uchebnikdlivuzov, “Norma”, Moskva 2005, 85 et seq.

²⁷ *I. P. Blischenko*, *Mezhdunarodno-pravovye problem gosudarstv, vkhodiaschikh v SNG*, *Moscow Journal of International Law*, No. 1 (1997), 5.

²⁸ *S. V. Chernichenko*, *Teoria mezhdunarodnogo prava*. Tom II. Starye i novye teoreticheskie problemy, Izdatel’stvo “NIMP”, Moskva 1999, 186.

law with the preface by the 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 should not be realized from the separatist stance to the detriment of the territorial integrity and political unity of the state.”²⁹

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 the principles of equality and self-determination of peoples are not observed, where the whole people is not being represented in the organs of power and where certain ethno-territorial parts of the state are subjected to discrimination”.³⁰

They also note that in recent years the threat of abuse of this principle has become a reality. In this connection, it is argued that “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.”³¹

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).”³²

In conclusion, the authors of the textbook express the opinion that the peoples living in the territory of a given state cannot realize the right to self-determination without the 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 diminishing of the legal rights and interests of other peoples. That is why the people's realization of the right to self-determination should only be realized in correspondence with the freely expressed will of the state or states in question, taking into consideration legal rights and interests of the other peoples, living in this or neighbouring territories, as well as with the due account of the other fundamental principles of international law.”³³

²⁹ V. I. Kuznetsov/B.R. Tuzumukhamedov (eds.), *Mezhdunarodnoe pravo: uchebnik*, 2nd ed., “Norma”, Moskva 2007, 214.

³⁰ V.I. Kuznetsov/B.R. Tuzumukhamedov (note 29), 215.

³¹ V.I. Kuznetsov/B.R. Tuzumukhamedov (note 29), 215.

³² V.I. Kuznetsov/B.R. Tuzumukhamedov (note 29), 216.

³³ V.I. Kuznetsov/B.R. Tuzumukhamedov (note 29), 216.

The issue of self-determination is also dealt with in the doctoral thesis of the Russian professor of international law *N. V. Ostroukhov*. In *Ostroukhov's* view “external self-determination”, i.e. secession, can be legal only when 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.³⁴ He maintains that:

“The principle of self-determination should not be interpreted as encouraging partial or complete violation of territorial integrity”, that 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.”³⁵

At the same time, this author denounces separatism by stating:

“Separatism should be viewed as an illegal phenomenon if it is based upon contradicting the international law aspiration and corresponding activities of a population of the given territory to secede from a state or to join the other state.”³⁶

The professor of the Diplomatic Academy of Russia *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 references to the principle of self-determination with a view of undermining territorial integrity and unity of sovereign state and national unity’. From the point of view of contemporary international law the most important aspect in the principle of self-determination of peoples is to secure conditions for its free development in any form which is chosen by the people. If territorial self-determination of the peoples is coupled with serious international contradictions and conflicts, and not with the voluntary peaceful expression of the will by the whole people of the state then the achievement of political sovereignty independence contradicts international law.”³⁷

³⁴ *N. V. Ostroukhov*, Territorial’naia tselostnost’ gosudarstv v sovremennom mezhdunarodnom prave i ee obespechenie v Rossiyskoi Federatsii i na postsovetskom prostranstve, Avtoreferat dissertatsii na soiskanie uchenoi stepeni doktora iuridicheskikh nauk, Moskva 2010, 10 et seq.

³⁵ *N. V. Ostroukhov* (note 34), 11.

³⁶ *N. V. Ostroukhov* (note 34), 44.

³⁷ *A. A. Moiseev*, Suverenitet gosudarstva v mezhdunarodnom prave, Vostok-Zapad, Moskva 2009, 50.

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

Regarding Russian doctrine of international law after Crimea's annexation, there are relatively few legal arguments aimed at the justification of this move by Russia. Perhaps, the most “original” and peculiar of these arguments is the one expressed in the open letter by the Russian Association of International Law addressed to the Executive Council of the Association of International Law regarding the so-called “peaceful annexation” of Crimea by Ukraine in 1991. This document, signed on behalf of the Russian Association of International Law by its president professor *A. Y. Kapustin*, is worth quoting:

“The fact that during the Soviet period back in 1954 Crimea was transferred from the Russian Federation to the Ukrainian Soviet republic did not have any international legal impact. It was merely a matter of administrative business. The Crimea remained in the same state, namely in the USSR with a capital in Moscow, which was at the same time the capital of Russia. The year 1991 did witness the peaceful annexation of the Crimea by a new-born state of Ukraine, which had international legal consequences.”³⁸

First of all, there is no such a thing as “peaceful annexation” in international law, as it is a contradiction in terms. By definition, an annexation means the forcible acquisition of a state's territory by another state.³⁹ Second, the transfer of Crimea to Ukraine from Russia was a transfer of the territory of one sovereign state to another, because under the USSR's Constitution, as well as under the constitutions of the Ukrainian SSR and Russian SFSR, both Soviet republics were sovereign states. Additionally, statehood of Ukraine was proved by its membership in the UN as one of its founding members. For this reason, Crimea's transfer cannot be considered some kind of “administrative business”, and it inevitably had an “international legal impact”. This international legal impact of Crimea's transfer to Ukraine was confirmed by a number of international treaties and agreements regarding the territorial integrity of Ukraine and inviolability of its borders concluded with Russia and within the framework of the CIS. Third, after 1991 Russia had never officially made an issue of Crimea's “peaceful

³⁸ Circular Letter to the Executive Council of the International Law Association, June 2014, <<http://www.ilarb.ru/html/news/2014/5062014.pdf>>.

³⁹ See *R. Hofmann*, Annexation, MPEPIL (online ed.), February 2013, para. 1.

annexation” by Ukraine. Quite the contrary, officially it has always supported Ukraine’s territorial integrity and Crimea’s status as part of Ukraine’s territory.

At the same time the phrase “the peaceful annexation of the Crimea by a new-born state of Ukraine, which had international legal consequences” is inappropriate: 1) Ukraine could not be considered a “new-born state” in 1991, since it emerged as a sovereign state in 1917; 2) this statement suggests that the so-called “peaceful annexation” still “had international legal consequences”, whereby implying that in any case Crimea’s status as part of Ukraine’s territory is legal under international law.

VI. 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, *V. Putin*. Later these arguments were used and elaborated by Russian international lawyers, who tend to be apologetic rather than critical with respect to *Putin’s* argumentation.

The peculiar feature of Russian legal argumentation striving to justify Crimea’s annexation is that there is not enough international legal argumentation as such, and Russian lawyers are inclined to put at the centre of their analyses those matters that belong to the domain of internal matters of Ukraine, to its internal politics.

At the same time Russian scholars in the field of international law, when it comes to Crimea’s annexation, 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 regarding Russia’s practice of struggle against “separatism”. As the Estonian researcher of the Russian doctrine of international law, professor *L. 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.”⁴⁰

⁴⁰ *L. Mälksoo*, *Crimea and (the Lack of) Continuity in Russian Approaches to International Law*, 28.3.2014, <<http://www.ejiltalk.org>>.

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

"[A]s it declared 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?"⁴¹

First of all, Russia's president does not acknowledge quite an obvious fact, known to every lawyer familiar with the Soviet constitutional law: Under both the USSR's Constitution and the Constitution of the Ukrainian SSR, Ukraine, being officially a sovereign state, had a sovereign right to freely withdraw (secede) from the USSR, whereas Crimea never had such a right under either the USSR's Constitution or the Ukrainian SSR's Constitution. Additionally, Ukraine had the right to withdraw from the Union Treaty 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 a separate people, neither by Ukraine nor by Russia. 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 the 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") with the majority of population of other state (nation), does not have the right to self-determination.⁴² Referring to the case of Cyprus, pro-

⁴¹ *V. Putin*, Address by President of the Russian Federation, 18.3.2014, <<http://www.kremlin.ru>>.

⁴² *S. V. Chernichenko* (note 28), 174 et seq., 184.

fessor *Chernichenko* stresses that “The right to self-determination belongs to the whole people of Cyprus”.⁴³ 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”.⁴⁴

Extrapolating the legal reasoning of professor *Chernichenko* on the situation of Crimea, it is quite obvious that the population of Crimea of Russian ethnic origin does not have a right to self-determination, i.e. a right to 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 may not undermine the territorial integrity of an existing 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 to secede as dangerous separatism, which should be combated by national and international legal means.

Sixth, the so-called “referendum” in Crimea was unconstitutional according to the Ukrainian constitution⁴⁵ and was nothing but a sham. This referendum was conducted hastily and in record time, and, which was acknowledged by President *Putin* when holding this “referendum”: “Crimean self-defence forces were of course backed by Russian servicemen.” This fact alone is enough to not recognize the “referendum”, since its holding ostensibly violates the principles of the non-use of force in international relations and non-interference with internal affairs.

Russian international legal literature mentions as one fundamental requirement of the legality of a plebiscite the withdrawal of foreign troops from the “self-determining territory”. Additionally, it recognizes that the authority must lie in the hands of democratically elected organs, representing the local inhabitants. The possibility of the free expression of will in a referendum depends upon the fulfilment of these requirement.⁴⁶

⁴³ S. V. *Chernichenko* (note 28), 184.

⁴⁴ S. V. *Chernichenko* (note 28), 184 et seq.

⁴⁵ At the plenary meeting of the Constitutional Court of Ukraine on 14.3.2014 the decision of the Supreme Council of the Autonomous Republic of Crimea to hold a referendum was found to be in contradiction to the Ukrainian Constitution.

⁴⁶ L. I. *Volovova*, *Plebistsit v mezhdunarodnom prave*, “*Mezhdunarodnye otnoshenia*”, Moskva 1971, 38.

It is noteworthy that in Russian legal doctrine the subject matters of a plebiscite, in contradistinction to a referendum, are primarily territorial issues. According to the 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;⁴⁷ 2) a plebiscite is often held under the supervision of the UN or international commission;⁴⁸ 3) a plebiscite should be well prepared and organized; 4) the term of preparation for holding the plebiscite should be no less than three months;⁴⁹ 5) before holding the plebiscite the evacuation of all foreign troops from the territory where the plebiscite will take place should be completed;⁵⁰ 6) the commissions for holding the plebiscite must represent different political parties and representatives of the public on an equal basis.⁵¹ 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 conditions established in the law”; and its results are only legally valid when the absolute majority of the citizens, meeting the requirements of the law, took part in it.⁵² As we can see, the “referendum” in Crimea did not meet all these requirements put forward in the Russian doctrine of international law.

It is interesting to note that when talking about the principle of non-intervention of states into internal affairs, Russian authors underline that the obligations of states under this principle include non-interference with issues such as the form of governance, the holding of referenda and plebiscites.⁵³ Discussing changes of states’ territories with the use of plebiscites, Russian authors maintain that under contemporary international law any territorial changes are only legal with the consent of the states involved.⁵⁴

Lastly, the international community as represented by the UN, the Council of Europe and the Organization for Security and Co-operation in Europe (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. Under the guise of the “referendum” Russian troops without military insig-

⁴⁷ *L. I. Volovova* (note 46), 54.

⁴⁸ *L. I. Volovova* (note 46), 54.

⁴⁹ *L. I. Volovova* (note 46), 122.

⁵⁰ *L. I. Volovova* (note 46), 123.

⁵¹ *L. I. Volovova* (note 46), 123.

⁵² *L. I. Volovova* (note 46), 139.

⁵³ *K. A. Bekyashev* (ed.), *Mezhdunarodnoe publichnoe pravo*, Uchebnik (4th ed.), Prospekt, Moskva 2005, 84.

⁵⁴ *K. A. Bekyashev* (note 53), 449.

nia (so called “little green men”) first occupied Crimea and then it was annexed by Russia.

2. The Argument of *Coup d’État*

One of the key arguments of Russian politicians and lawyers aimed at a justification of Crimea’s annexation is that in Ukraine in February 2014 an illegal *coup d’état* had taken place,⁵⁵ as a result of which, arguably, the Ukrainian state collapsed and the Crimean population, in fear of a violation of its rights, acquired the right to secede from Ukraine.

The argument of the *coup d’état* was also used by the Association of Lawyers of Russian Federation in its “Statement Concerning the Situation in Ukraine and Legitimacy of Conducting the All-Crimean Referendum on the Status of Crimea on March 16, 2014”, which was issued on 18.3.2014.

This argument was formulated in the 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 no doubt that the cause of the tragic events in Ukraine was the forceful change of government in Kiev that occurred outside the constitutional framework as a result of illegal actions of radical elements in the Maidan movement whose participants largely comprise the current government in Kiev. An unconstitutional coup has been committed, accompanied by forceful seizure of government bodies, illegal actions towards Ukraine’s Constitutional Court, and illegitimate countering of legitimate demands of law enforcement officers on the part of the armed ‘Maidanians’. Removal from office of Ukrainian President proclaimed 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 only that should only be exercised according to the procedure set forth in the Ukrainian Constitution.”⁵⁶

⁵⁵ In his interview on 4.3.2014, Russia’s president was very categorical in this respect: “First of all, my assessment of what happened in Kiev and in Ukraine in general. There can only be one assessment: This was an anti-constitutional takeover, an armed seizure of power.” *V. Putin*, Vladimir Putin Answered Journalists’ Questions on the Situation in Ukraine, Kremlin Press Conference, 4.3.2014, <<http://www.kremlin.ru>>.

⁵⁶ Statement of the Association of Lawyers of Russian Federation Concerning the Situation in Ukraine and Legitimacy of Conducting the All-Crimean Referendum on the Status of Crimea on 16.3.2014, 18.3.2014, <<http://www.alrf.ru/blog/zayavlenie-ayur-po-ukraine-i-obshhekrayskomu-referendumu>>.

It is clear from this text that for the Russian Association of Lawyers, the central argument justifying Crimea's annexation is the *coup d'état* in Ukraine. At the same time, the Association is trying to play the role of the Ukrainian Constitutional Court with this statement, judging whether or not the change of government in Kiev "occurred outside the constitutional framework" and what "fits in any legal framework" in Ukraine and what does not. Furthermore, 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 sovereign equality of states it is up to the Ukrainian legal system rather than 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 recalling that when in October 1993, Russia's president *B. 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*, signifying 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 non defensive war or such other aggressive action, cannot claim any legal rights to the land unlawfully obtained".⁵⁷ Put 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 d'Aspremont* notes: "The coup d'état cannot be considered an internationally wrongful act, and no state incurs international responsibility."⁵⁸

Second, 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.

⁵⁷ Ex Injuria Jus Non Oritur Law & Legal Definitions, <<http://www.definitions.uslegal.com>>.

⁵⁸ *J. d'Aspremont*, Responsibility for Coups d'État in International Law, *Tul. J. Int'l & Comp. L.* 18 (2009-2010), 451, 470.

As *H. 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.”⁵⁹

Third, it is up to the state where the *coup d'état* occurred, rather than to a foreign state, to judge what exactly happened from a legal point of view.

D. Cassel notes in this respect:

“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.”⁶⁰

Interestingly enough, during and after the events in Kiev, Russia did not sever diplomatic relations with Ukraine, although it temporarily suspended high level political contact with the representatives of the new Ukrainian government. This fact can be construed as meaning that legally Russia itself did not consider events in Ukraine an “illegal *coup d'état*”. It could even be argued that for Russian officials it was merely part of a political rhetoric without legal consequences.

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

“Revolutions, civil wars, state *coups d'état* – these are the normal ways of emergence of the new governments which need recognition. International law does not intervene into internal struggles, which lead to a change of government

⁵⁹ *H. Kelsen*, *Principles of International Law* (2nd ed.), 1966, 387.

⁶⁰ *D. Cassel*, *Honduras: Coup d'État in Constitutional Clothing?*, *American Society of International Law Insight* 13 (2009), Issue 9, <<http://www.asil.org>>.

in a state-subject of international law. That is why the government, which effectively and independently exercises power, is considered to be the representative of a state in international relations. The recognizing state considers the given foreign government to be the organ which independently exercises power on the territory of its state and represents this state in international relations.”⁶¹

This *inter alia* implies that in its relations with the new foreign governments Russia should be guided by the principle of effectiveness of these governments. When faced with an uncertainty over whom to consider the legitimate representative of Ukraine in international relations – V. Yanukovich, who had lost effective control over Ukraine and escaped abroad, or the Ukrainian government which effectively exercised power in Ukraine – Russia should have recognized the new government as the representative of Ukraine.

It cannot be argued that as a result of a “*coup d'état*” or “revolution” Ukraine ceased its existence as a state, even temporarily. That is even recognized by some Russian scholars. For example, professor A. A. Moiseev, talking about political events in Kiev, acknowledges: “Without any doubt, Ukraine, due to sovereignty, the source of which is its people, did not disappear as a subject of international law ...”⁶² For this reason it would be wrong to argue that because of a “temporary disappearance” of Ukraine as a subject of international law the population of Crimea obtained the right to secede.

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

3. 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”.

⁶¹ Kurs mezhdunarodnogo prava. V 7 t. T. 3. Osnovnye instituty mezhdunarodnogo prava (N. A. Ushakov [ed.]), Nauka, Moskva 1990, 109.

⁶² A. A. Moiseev, O nekotorykh mezhdunarodno-pravovykh pozitsiyakh po krymskomu voprosu, Vestnik Diplomaticheskoi akademii MID Rossii. Mezhdunarodnoe pravo, 2014/1, 15.

In his interview president *Putin* said:

“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.”⁶³

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, the Russian Minister for foreign affairs *I. Ivanov* declared in his speech “Rule of Law in International Relations – A Guarantee of the Comprehensive Strategic Stability and Security in XXI Century” (2.11.2000):

“We should not rule out that the use of different doctrines of ‘humanitarian intervention’ can destabilize international order to the point which 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 of force without permission of the UN Security Council becomes entrenched, then ‘humanitarian baton’ might end up in the hands of anyone.”⁶⁴

Denouncing the concept of humanitarian intervention *I. Ivanov* notes that this concept “in advance presupposes inequality and arbitrariness in relations between states”.⁶⁵

Of great interest with respect to Russia’s opposition to the concept of humanitarian intervention and “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 the telling title “Carte-Blanche. There is no Alternative to the Resolutions of the UN Security Council.

⁶³ *V. Putin* (note 55).

⁶⁴ *I. S. Ivanov*, Verkhovenstvo prava v mezhdunarodnykh otnosheniyakh – zalog vseobimlitshei strategicheskoi stabil’nosti i bezopasnosti v XXI veke, *Moscow Journal of International Law*, No. 1 (2001), 7.

⁶⁵ *I. S. Ivanov* (note 64), 7.

Humanitarian Intervention Undermines Rule-of-Law”.⁶⁶ In his article professor *Moiseev*, referring to the UN Charter in connection with the events in Syria, argues:

“[I]nternational law establishes norms, according to which the use of armed forces is allowed only in the case of self-defence when the armed attack took place, as well as if the international community, and not a separate state or group of states, establishes 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 its framework it is the UN Security Council that is competent to establish the facts of crimes and to take decisions on the possible use of force.”⁶⁷

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 its legal insolvency to the world community. Until now the international community is going through the consequences of irresponsible ‘humanitarian interventions’, which deteriorated internal conflicts, having allowed to flourish terrorism and extremism, having caused new waves of violence and making civilian population even more vulnerable.”⁶⁸

Decisively rejecting the concept of “responsibility to protect” as illegal under international law and as a new name 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 obviation 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”.⁶⁹

In an attempt to justify Crimea’s annexation Russia has also relied on the possibility of violations of human rights of the local population of Crimea. It is interesting to note that when *V. 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

⁶⁶ A. A. *Moiseev*, Kart-Blansh, Resheniyam Soveta Bezopasnosti OON net al'ternativy. Gumanitarnaia interventsia podryvaet verkhovenstvo prava, Nezavisimaia Gazeta (5.9.2013), <http://www.ng.ru/world/2013-09-05/3_kartblansh.html>.

⁶⁷ A. A. *Moiseev* (note 66).

⁶⁸ A. A. *Moiseev* (note 66).

⁶⁹ A. A. *Moiseev* (note 66).

human rights of the Crimean population, had there been any tangible threat to these rights. In other words, had there been any signs of the violation of human rights in Crimea, Russia, instead of resorting to force, should have turned to such international organizations as the UN, the Council of Europe, the European Convention on Human Rights (ECHR) and OSCE, of which it is a member. 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. Indeed, the violations started only after Russia invaded and annexed Crimea. Of special concern to the international community are now violations of the rights of Crimean Tatars by the Russian occupation authorities in Crimea.

As mentioned above, Russia also justifies its actions by reference to the concept of “intervention by invitation”, i.e. the appeal of Ukraine’s president *V. Yanukovich* to the Russian president to use force within Ukraine. It is noteworthy that by the time of that appeal, *Yanukovich* had already left the territory of Ukraine and escaped to Russia. Russia faces two crucial problems regarding this “appeal”: 1) Under the Ukrainian Constitution *Yanukovich* had no power to “invite” a foreign Army to Ukraine without permission of the *Verkhovna Rada*.⁷⁰ Moreover, in the light of Ukrainian criminal law such an “appeal” could be viewed as high treason.⁷¹ 2) By the time of making such an “appeal” to Russia, *Yanukovich* 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, non-interference in the internal affairs of a state and non-use of force in international relations.

The Russian doctrine of international law has always 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-

⁷⁰ 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 on to the territory of Ukraine”.

⁷¹ 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.”

determination, limiting the rights of peoples to choose ways of their development.”⁷²

At the same time, Russian doctrine of international law did not completely rule out 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 it 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”.⁷³

The reason why the Russian doctrine of international law has always been critical of interventions and interferences into internal affairs of states lies in its emphasis upon the principle of non-interference with 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 change of the social system of the other state by means of violence, and also should not “interfere into internal struggle in the other state”.⁷⁴

It is worthwhile to quote at this juncture the “Course of International Law” due to 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 internal and external affairs of the other 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.”⁷⁵

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

⁷² G. V. Ignatenko et al., *Kurs mezhdunarodnogo prava*. V 7 t. T. 2. Osnovnye printsipy mezhdunarodnogo prava, Nauka, Moskva 1989, 80.

⁷³ G. V. Ignatenko et al. (note 72), 80.

⁷⁴ G. V. Ignatenko et al. (note 72), 143.

⁷⁵ G. V. Ignatenko et al. (note 72), 143.

VII. Conclusion

Crimea's annexation by Russia is an obvious and flagrant violation of a whole range of norms and principles of international law, beginning with the UN Charter and ending with bilateral international treaties concluded between Russia and Ukraine. This annexation stands in sharp contrast to the Russian doctrine of international law with respect to such principles as territorial integrity and self-determination. The arguments which were put forward by Russian politicians and legal scholars in an attempt to justify Russia's annexation do not look convincing in the light of the whole previous legal argumentation of Russia.