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COMPARISONS ARE ODIUS. INTERNATIONAL LEGAL PRECEDENTS MISUSED BY RUSSIAN LEGAL SCHOLARSHIP TO JUSTIFY THE SEIZURE OF CRIMEA

The author analyses historical examples that the Russian legal scholarship provides to justify the seizure of Crimea by the Russian Federation in February-March 2014 and explain the process as the 'reunification'. Special attention is drawn to the Kosovo case, the demise of the USSR and achievement of independence by Ukraine in 1991, the Aaland Islands case and the Quebec case are examined together with other 'precedents'. An author thoroughly considers the arguments used by the Russian side in its attempt to prove that in the course of the 'secession' from Ukraine and 'accession' to the Russian Federation in 2014 the 'Crimean people' exercised the generally recognized principle of equal rights and self-determination of peoples in the same manner as the subjects in the cited cases. The argument of Russian scholars are analyzed against the background of the factual evidence and the issue of their international law sufficiency is considered. The author qualifies the actions of the Russian Federation and draws relevant conclusions.

Keywords: *Crimea, the Russian Federation, secession, justification, case, independence, argument, self-determination, Ukraine.*

In the course of the annexation of Crimea in February-March 2014, Russian Federation faced the heavy resistance of the world community. The positions of states, international organisations, the European Union were reflected in a number of decisions and resolutions; the most significant act is the United Nations General Assembly Resolution 68/262 'Territorial integrity of Ukraine'.

The General Assembly Resolution confirmed the commitment to the principle of territorial integrity of Ukraine within its internationally recognized borders and underscored the illegality of the so-called 'Crimean referendum' of 16 March 2014, and of other Russia's actions aimed at the annexation of the Crimean peninsula. The EU, USA, Canada, Australia and a number of other states imposed targeted financial sanctions and travel bans on those who have contributed to pursuing of Russia's aggressive plans in respect of Ukraine's sovereignty.

Therefore, the Russian Federation has realized there is an urgent need to take decisive actions. One of the important aspects of its foreign policy is the justification of actions regarding the Crimea from the international law standpoint (there is an aim to prove there has been 'Crimea's "secession" from Ukraine and "accession" to the Russian Federation') in the eyes of Russia's population, the international community, including foreign politicians and political commentators, international legal scholars and random foreign citizens. Although Russia has always pursued aggressive informational policy during the conflicts with other states throughout the 1990s – 2010s, noteworthy is that now this policy is being implemented not only by political leaders, diplomats or state-controlled media but also by legal scholars, whereas as the logic goes, they should come up with dispassionate scientific opinions and conclusions.

Russia brings up quite weird approaches to back up its position in respect of Crimea; sometimes authors even refer to a new 'Crimean law', which has recently emerged. However, the key arguments relate to the principle of equal rights and self-determination of peoples as generally recognized principles of international law. The 'secession' of Crimea from Ukraine is based on the mentioned principle and Crimea 'acceded' to Russia as an independent state. Not surprisingly the Russian Federation and its scholarship invoke a wide range of 'historical' arguments bringing up similar examples while analysing the case of Crimean to prove the legality of this process under international law. It's often noted that the events in Crimea are similar to cases of recognition of self-determination of peoples through secession by international community, i. e. the Kosovo case, the collapse of the USSR and the achieve-

ment of independence by Ukraine in 1991, the Aaland Islands case, the Quebec case and other (events on the island of Mayotte, the Falkland Islands, Puerto Rico, Gibraltar, Scotland, the unification of Germany, referendum in South Sudan). Although such allegations may seem rather unconvincing from the international law perspective, all of them should be properly analysed with the application of science-based approaches. The relevant Russian legal doctrine includes works by A. Vilkov, A. Ibragimov, N. Kopytkova, P. Kremnyov, S. Marochkin, R. Nikolayenko, V. Tomsinov, V. Tolstykh, G. Yatsenko, V. Zorkin and other scholars. It's self-evident however that one should pay attention to the achievements of foreign scholars in international law: T. Christakis, Th. D. Grant, L. Mälksoo, A. Peters, J. Vidmar, Ch. Walter and others.

1. The Kosovo case.

Kosovo has been a *cause célèbre* among the historical cases referred to by Russia, its diplomats and scholars to justify the legality of Russian actions in February-March 2014. For example, it is mentioned in the recitals of the 'Declaration of Independence of the Republic of Crimea' adopted by the Russian-controlled authorities of the peninsula on 11 March 2014. It mentions that 'the International Court of Justice confirmed the fact that a unilateral declaration of independence by a part of a state does not violate any rules of international law' [1].

The statement of the Ministry of Foreign Affairs of the Russian Federation ('MFA of Russia') issued on the same day mentions: 'In its advisory opinion of 22 July 2010 on Kosovo issued following the question sent by Serbia and backed up by the UN General Assembly, the International Court of Justice confirmed the fact that a unilateral declaration of independence by a part of a state does not violate any rule of international law. The same conclusion had been clearly expressed in the course of proceedings before the International Court before the adoption of the advisory opinion, in particular in written and oral pleadings by official representatives of the USA, Great Britain, France, Germany, Austria, Denmark and other Western states' [2].

On 17 November 2014, referring to the aforementioned example one more time, V. Putin stated that 'the International Court clarified an extremely important issue relating to self-determination, a people residing in the territory is not obliged to ask for an opinion of the central government of the state it forms a part at the moment'; 'no permission of the central government is required to hold the necessary procedures in the exercise of self-determination'; 'Russia did not commit any breach of international law' [3].

In 'The legal justification of the position of the Russian Federation in respect of Crimea and Ukraine', the same idea is worded in the following way: 'In its advisory opinion on Kosovo, the International Court of Justice did not establish any limitations relating to declaring independence outside of the colonial context ... The Court has not been asked to give an opinion on whether the declaration of independence is in accordance with any rule of domestic law but only whether it is in accordance with international law. The Court can respond to that question by reference to international law without the need to enquire into any system of domestic law.

Therefore, the question whether the process of the secession of Crimea from Ukraine and its accession to the Russian Federation has been in accordance with the Constitution of Ukraine does not affect finding it to be in accordance with international law. Hence in order to find the declaration of independence of Crimea and the related process in the form of a referendum void and illegal, it is necessary to determine the existence of a specific prohibition of such actions under international law. The Court found that "international law contained no prohibition of declarations of independence" [4].

A lot of Russian scholars refer to a different attitude of the West to the cases of Kosovo and Crimea (while they believe these cases are legally similar), for example, A. Vilkov, A. Ibragimov, S. Marochkin, R. Nikolayenko, V. Tomsinov, V. Tolstykh and others [5, 6, 7, 8, 9, 10]. N. Kopytkova, for example, assures: 'No one can name at least one universal treaty obliging compliance with national legislation in the exercise of the right to self-determination. On the contrary, the advisory opinion of the International Court of Justice delivered in 2010 set the precedent according to which peoples can decide their fate at a local referendum, without asking the population of the state for permission to secede.

Following the request of the UN General Assembly in accordance with Article 65 of the UN Charter, the International Court had to answer the question: "Is the unilateral declaration of independence by the Provisional Institutions of Self-Government of Kosovo in accordance with international law?" The International Court held that "the adoption of that declaration did not violate any applicable rule of international law". Therefore, the International Court of Justice legalised the priority of the self-determination of peoples over the principles of inviolability of borders and territorial integrity of states' [11].

In general, Russia's appeal to the example of Kosovo seems really inappropriate and inconsistent. During the whole period of the proceedings before the International Court of Justice (ICJ) in the Kosovo case ('Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo'), following the delivery of the opinion, and even following the events in Crimea, Russia has been denying the legality of Kosovo's secession. For instance, in the statement of the Russian MFA of 17 February 2008 it is noted that 'Kosovo's Provisional Institutions of Self-Government declared a unilateral proclamation of independence of the province, thus violating the sovereignty of the Republic of Serbia, the Charter of the United Nations, UNSCR 1244, the principles of the Helsinki Final Act, Kosovo's Constitutional Framework and the high-level Contact Group accords. Russia fully supports the reaction of the Serbian leadership to the events in Kosovo and their just demands to restore the territorial integrity of the country. We expect the UN Mission in Kosovo and NATO-led Kosovo Force will take immediate action to fulfil their mandates as authorized by the Security Council, including voiding the decisions of Pristina's self-governing

institutions and adopting severe administrative measures against them. Russia calls for the immediate convocation of an emergency UN Security Council meeting to examine the situation and take resolute and effective measures for a return to the political settlement process in accordance with the provisions of UNSCR 1244' [12].

The Russian Federation strongly and consistently opposed to Kosovo's declaration of independence in its statement submitted to the International Court of Justice in April 2009 [13]. In February 2008, at an informal summit of the CIS V. Putin opined that 'the Kosovo precedent is a dangerous one. In fact, it undermines the whole system of international relations which has been built not for decades but for centuries'[14]. On 16 October 2014, Putin confirmed that the Russian position had not changed and Russia continued proving Kosovo's secession from Serbia to be internationally illegal [15].

However, it is self-evident that Kosovo's example differs a lot from the case of Crimea in many respects, which makes it impossible for Russia to rely on it in justifying its actions. There has been scholarship on these issues elaborated on the principal differences: the existence of Kosovo's indigenous people (Kosovo Albanians – Kosovars) striving for self-determination; the (Serbian) government oppressed them, which resulted in the armed conflict in 1997–1999; many years of vain efforts by the international community to solve the conflict; the exhaustion of possibilities for 'internal self-determination'; as a result of self-determination the indigenous people of Kosovo really improved its situation and secured its rights (in the so-called 'self-determination' of Crimea, the opinion of the Crimean Tatars was disregarded and subsequently they underwent repressions); Kosovo was not annexed by another state [16]. The mentioned circumstances have nothing in common with the case of Crimea.

Such conclusions find the support of foreign scholars. For example, R. J. Delahunty states that the ethnic Albanian population in Kosovo, which formed the overwhelming majority of its inhabitants, underwent severe and prolonged abuses on the part of Serbia. It might also be the case with the Kurdish population of Iraq, which may eventually opt to secede from that country, even if the Iraqi government does not consent. However, the ethnic Russian population of Crimea has not experienced anything of the above-mentioned. Accordingly, even if international law recognized a right to remedial secession under specific circumstances, Crimea would not be the case [17].

Moreover, the Kosovo example is irrelevant against the background of the very contents of the ICJ advisory opinion. The latter found that Kosovo's declaration of independence did not contradict international law because international law did not contain any prohibitions of such acts (para 84). However, the Court noted that debates regarding the extent of the right of self-determination and the existence of any right of remedial secession would go beyond the scope of the question posed by the General Assembly (para 83) [18].

After a thorough analysis of the advisory opinion, M. Hartwig noted *inter alia* that a unilateral declaration of independence is *per se* of little value because it does not automatically make a state an entity with a territory. The creation of a state completely depends on actual circumstances and conditions, which in fact were not considered by the ICJ [19]. A. Peters, J. Vidmar and others stick to this opinion. There is no other interpretation suggested by any highly-qualified scholar [20,21].

Giving a specific answer to the specific question, the ICJ did not pronounce on the international legality of the 'process of self-determination,' 'set of procedures of self-

determination,' 'a people's exercise of self-determination,' i.e. the actual secession of Kosovo from Serbia in general and all such questions which Russia refers to. Therefore, any Russian references to the Kosovo case are completely baseless from any standpoint – factual, legal, position of the Court and Russia's own position.

The parallels between the Kosovo case and the situation of Crimea are drawn by T. Christakis, among others, who reaches the important conclusions: "The argument that international law "does not prohibit secession in principle" admits a notable exception insofar as a secession must be considered unlawful when it results from a breach of a fundamental rule of international law. This was clearly acknowledged by the ICJ in its 2010 advisory opinion on Kosovo. The Court added an important proviso to its position that "general international law contains no applicable prohibitions of declarations of independence". Rulings in a number of historical cases in which the UN Security Council and/or General Assembly had characterized attempted secessions as "invalid" or "unlawful", the Court emphasized that: "the illegality attached to the declarations of independence thus stemmed not from the unilateral character of these declarations as such, but from the fact that they were, or would have been, connected with the unlawful use of force or other egregious violations of norms of general international law, in particular those of a peremptory character (*jus cogens*)".

This position of the Court is important as it put to rest G. Jellinek's old idea that secession and the process of formation of a new state is a 'mere fact' and by definition escapes the ambit of law. Practice shows that it is in connection with the violation of two mandatory norms of international law that the international community declined to consider as "states" entities that were created in the context of those violations: 1) norm the right of self-determination; 2) the prohibition of aggression'. T. Christakis concludes that in the Crimean case both of these *jus cogens* norms were violated [22].

2. The extinction of the USSR and the attainment of independence by Ukraine in 1991

Among other cases, the representatives of the Russian Federation pay special attention to the dissolution of the USSR and the proclamation of independence of Ukraine in 1991. The reason is quite obvious: the goal is to refer to the case, which directly touches upon Ukraine, thus trying to rebut arguments and back up its actions. 'The legal position of the Russian Federation in respect of Crimea and Ukraine reads as follows: "It is a well-known fact that in 1945 there were only 55 Member States of the United Nations, now there are 193. The majority of these states emerged exercising the right to self-determination. The latest example of such exercise is the secession of the South Sudan (*for this case see infra para 5*). The assertion that the right to self-determination in the form of secession exists only within the colonial context is not supported by practice either. In the 1990s, a whole range of new states, including Ukraine emerged in Eastern Europe and the Soviet Union. No one denied the right of the peoples of Eastern Europe to self-determination, whereas the EU states confirmed its applicability in that context in the abovementioned Guidelines on the Recognition of New States in Eastern Europe and in the Soviet Union. This right was enshrined in the Conference on Security and Co-Operation in Europe Final Act ('CSCE') of 1975 – the document applicable in Europe in the first place' [23].

The following should be noted regarding the abovementioned thesis. It is true that the right of peoples to self-determination has not been denied before and is not denied at the moment. At the same time, the Russian side

delicately shuns the fact that the real issue is the conformity of the process of self-determination of a territory with international law, in its recognition by the international community. And this makes the whole difference between the examples adduced by Russia and the real events in Crimea in 2014. The former were proceeding in accordance with international law and thus were recognised as such by the international community, the latter were not.

Mentioning the independence of Ukraine, Russia forgets that the effective 1977 Constitution (in fact, just as all previous Soviet constitutions) directly provided for the right to free secession from the Union (Art. 72), while the existence of the Soviet Union was seized by the Agreement Establishing the Commonwealth of Independent States of 8 December 1991 in which the Founding States of the USSR (Russia, Belarus and Ukraine) acknowledged that the USSR ceased to exist as an international legal person and geopolitical reality. The process of the Soviet Union's disintegration and the emergence of 'new states' were in complete accordance with international law while the latter states were recognised by the international community [24, 25].

As noted by Th. D. Grant the States that emerged in the territory of the former USSR in the meantime concluded legal instruments relating to their boundaries, territory and mutual relations: 'Two multilateral instruments were central to the transition to independence – the [above-mentioned] Agreement Establishing the Commonwealth of Independent States signed at Minsk on December 8, 1991 ("Minsk Agreement"), and the Alma-Ata Declaration of December 21, 1991...

Article 5 of the Minsk Agreement reads as follows: "The High Contracting Parties acknowledge and respect each other's territorial integrity and the inviolability of existing borders within the Commonwealth". Article 11 made clear that national jurisdiction was to be limited by the new national boundaries: "Application of the laws of third States, including the former Union of Soviet Socialist Republics, shall not be permitted in the territories of the signatory States".

The three Minsk Agreement parties, plus Azerbaijan, Armenia, Kazakhstan, Kyrgyzstan, Moldova, Tajikistan, Turkmenistan, and Uzbekistan, adopted the Alma-Ata Declaration three weeks later. The Declaration in its preamble indicates that the States 'recogniz[e] and respect [...] each other's territorial integrity and the inviolability of existing borders.' The States confirmed their 'attachment to cooperation in the establishment and development of a common European space and Europe-wide and Eurasian markets.' As well as the Minsk Agreement the Declaration also indicated that 'with the establishment of the Commonwealth of Independent States, the Union of Soviet Socialist Republics ceases to exist'.

The Russian Federation thus in both the tripartite and general treaties between former USSR republics affirmed the territorial settlement for Ukraine. There was no qualification in either instrument to suggest any exception or unsettled territorial question' [26]. This proves that the break-up of the Soviet Union complied with the letter and spirit of international law as well as the constitutional legislation of USSR.

It is important that unlike the Constitution of the USSR, the Ukraine's 1996 Constitution (just like Russia's 1993 Constitution) does not provide for a free exit for Ukraine's regions including the Autonomous Republic of Crimea.

Pursuant to Art. 73 of the Ukrainian Constitution alterations to the territory of Ukraine shall be resolved exclusively by the All-Ukrainian referendum. At the same time, Crimea is known to have a special status under the Ukrainian Constitution (Title X) and laws among the other administrative and territorial units of Ukraine: it is an autonomous republic (the Autonomous Republic of Crimea, ARC), the authorities

of which enjoy considerable powers [27]. Russian language and culture during the period of 1991 – 2014 were not oppressed in the peninsula at all but totally dominated in the public and private spheres and nothing changed within the period from the change of government in Ukraine on 22–23 February 2014 till the 'decision on the Crimea's sovereignty' dated 11 March 2014 (the 'Declaration of Independence of Crimea') [28].

Putin's statements on any 'violations of the rights of the Russian-speaking population in Crimea', 'attempts to deprive the Russians of their own language, subdue them to forced assimilation', contained in his 'Crimea speech' of 18 March 2014 and reproduced by Russian politicians, journalists and scholars, are nothing but lies and are not supported by any fact. A bright example is 'White Book on violations of human rights and the rule of law in Ukraine (November 2013 – March 2014)' prepared by the Russian Ministry of Foreign Affairs [29, 30]. The 'White Book' was supposed to collect the necessary evidence of numerous facts of all those serious accusations against the 'Maidan' and the new government who infringed upon the legitimate rights of Crimeans. Instead, the document simply reproduced alleged threats of the nationalists against the Crimeans without naming a single source of such threats; the document contains three (!) references to local 'events', without any specifics and factual base [31].

This is equally true for all other accusations against Ukraine and its authorities. It concerns 'actions, violating the equality and self-determination of peoples with regard to the Crimeans,' already for the simple reason that the rules of Ukraine's Constitution providing for the broad autonomy of Crimea were neither abrogated nor violated, whereas the residents of the peninsula continued to be represented in the central government by people's deputies in the Verkhovna Rada of Ukraine elected both in the Crimean majority constituencies and via the proportional electoral system. None of them lost his or her seat [32].

At the same time, the above does not exclude discussions on possible alterations in the status of the ARC, which, nevertheless, must be conducted exclusively within the framework of Ukrainian Constitution, laws and rules of international law.

Noting that the 1993 Constitution of the Russian Federation prohibits secession of the federal units, we should stress that the Russian Constitutional Court is consistent on this in its judgments. In considering the case of the Altai Republic, the Court determined in its Judgement of 7 June 2000 No. 10-P (№10-П) that the Constitution of the Russian Federation provides for no other holder of sovereignty and source of state power but the multi-ethnic people of Russia and, hence, excludes the existence of two levels of sovereign power within a single system of government each enjoying sovereignty and independence, does not permit sovereignty for either republics or any other units of the Russian Federation [33]. In its Judgement No. 3-P (№3-П) of 13 March 1992 in the case of the Republic of Tatarstan, the Russian Constitutional Court stated that any action aimed at undermining the territorial unity of the sovereign federal state and the national unity of its peoples are thus harmful to the constitutional order of the Russian Federation and inconsistent with international rules on human rights and rights of peoples [34]. The same idea is reflected in a number of other judgments of the Constitutional Court of Russia.

In the article-by-article commentary to the Constitution edited by V. Zorkin, head of Russia's Constitutional Court, the prohibition of secession is linked to the manner of obtaining their status by the federal constituents: they got it through the Federal Constitution and not through expressing their will by concluding an agreement [35]. In this re-

gard, a reference is made to subpara. 2.1, para. 4 of the rationale of the abovementioned judgment of Russia's Constitutional Court of 7 June 2000 No. 10-P (№10-П). Pursuant to this judgement the Constitution tolerates no other sovereignty but the sovereignty of the Russian Federation [36]. The Russian publicists have also strongly advocated the priority of territorial integrity over self-determination until the events of 2014 [37]. The events in Chechnya in the 1990s are illustrative, since under international law the Chechen people has the right to external self-determination. Nevertheless, Russia has consistently violated this right despite its actual recognition of the independence of the Chechen Republic and signing the Khasavyurt Accord in 1996; despite the grave and widespread violations of human rights by Russia in Chechnya acknowledged by competent organisations (in this connection the Council of Europe even suspended Russia's membership in the organisation) [38, 39, 40].

So should it be logical to profess an approach for Crimea which is opposite to the one professed for other sovereign and independent states? Russians deny the right to secession to the constituents of the Russian Federation but insist the Autonomous Republic of Crimea is entitled thereto.

The analysis of the facts and rules of international law, the circumstances of the demise of the USSR and the achievement of independence by Ukraine in 1991 prove that these processes have nothing to do with the Crimean case.

3. The Aaland Islands case

In an attempt to justify Russia's actions in Crimea in 2014 Russian politicians, diplomats and legal scholars sometimes refer to the Aaland Islands case. There seems to be no need to remind that international law has significantly developed since the decision in the abovementioned case, which took place almost a century ago.

In his monograph V. Tomsinov (as well as other Russian scholars) does not take into consideration the fact that the factual background and international legal rules of the Aaland Islands case differ completely from the case of Crimea [41].

Before the coup in 1917 the Aaland Islands were part of Finland, which was part of the Russian Empire, inhabited by Finnish Swedes. The referendum on the status of islands was conducted in June 1919 and 95.48% of residents voted in favor of secession from Finland and integration with Sweden; however the parliament of Finland adopted an Act on the autonomy of the Aaland Islands [42]. It was not accepted by the population of the archipelago, which led to the so-called 'Aaland crisis'. The Council of the League of Nations entrusted the International Commission of Jurists with the task of giving an advisory opinion upon the legal aspects of the Aaland Islands question; the crisis culminated in signing of the Aaland Convention on June 24, 1921, providing for demilitarization of the archipelago, its remaining part of Finland, but with a wide autonomy status. On June 27, 1921, Sweden and Finland agreed to the Aaland Islands Settlement – a peace treaty on the status of the islands [43, 44].

Obviously, if comparisons are made with the above situation, Crimea must be recognised as a part of Ukraine, therefore some Russian scholars prefer to focus on the thesis of the International Commission of Jurists of 1920 that the dispute should be considered with taking into account not only the Finnish origin of Islands in the days of the empire but also the events that occurred when Finland still had not acquired the character of a state that had shaped completely. The author in his turn assumes that statehood of Ukraine has not yet shaped as well, just as Finland in 1920, "forgetting" that in the case of Aaland Islands the International Commission of Jurists pointed

out that to definitely constitute a sovereign state a 'stable political organization' needs to be created (it is not lost even in case of a military coup) and be 'strong enough to assert themselves throughout the territories of the State without the assistance of foreign troops', defining in such a way criteria which Ukraine could not but satisfy [45]. Because of the actions of the Russian military and self-defence forces of Crimea (recognized by V.Putin and proved by other facts), the self-proclaimed independent state has not yet fulfilled any of the requirements. Therefore, any analogy between the Aaland Islands case and the Crimean case are groundless.

4. The Quebec case

This case is also rather popular among Russian politicians and scholars. Analysing its applicability to the Crimean situation two points should be noted. Firstly, the case was decided by the Supreme Court of Canada – a judicial body of the 'parent state', which already makes the background of the case inapplicable to the Crimean case. Secondly, the Court indicated in the judgment of 1998: 'The recognized sources of international law establish that the right to self-determination of a people is normally fulfilled through *internal* self-determination – a people's pursuit of its political, economic, social and cultural development within the framework of an existing state. A right to *external* self-determination (which in this case potentially takes the form of the assertion of a right to unilateral secession) arises in only the most extreme of cases and, even then, under carefully defined circumstances. ... As will be seen, international law expects that the right to self-determination will be exercised by peoples within the framework of existing sovereign states and consistently with the maintenance of the territorial integrity of those states.' [46] Therefore, the point clarified in the case of Quebec is opposite to what Russian scholars purport to prove.

Even if we disregard the difference of the facts, it is obvious that references to the 1919 referendum in the Aaland Islands and the judgment of the Supreme Court of Canada in the Quebec case of 1998 exemplify attempts to apply subsidiary means for the determination of the rules of law. In cases when there is a clear and special rule governing the issue, it enjoys priority over any subsidiary sources. There were violations of bilateral treaties between Russia and Ukraine and between governments of the two states in the Crimean case (first of all, Art. 2 of the Treaty of Friendship, Cooperation and Partnership Between Ukraine and the Russian Federation of 1997 (the 'Big Treaty'), Arts. 1 and 2 of the Treaty Between the Russian Federation and Ukraine on the Russian-Ukrainian State Border of 2003), of numerous multilateral agreements (Art. 5 of the Agreement Establishing the Commonwealth of Independent States of 1991, para [46, 47, 48]. 2 of the Memorandum on Security Assurances in connection with Ukraine's accession to the Treaty on the Non-Proliferation of Nuclear Weapons of 1968) and peremptory rules of general international law (primarily those enshrined in the UN Charter) [49, 50]. Therefore, all Russian attempts to legalise its actions in Crimea through references to the mentioned 'historical precedents' are untenable.

However, there are alternative approaches in the Russian scholarship, which may be considered rare exceptions. For instance, the above mentioned and some other flaws of Tomsinov's allegations are noted by P. Kremnyov, Doctor Juris and Professor of Moscow State University named after M.V. Lomonosov in his review 'The concept of "Crimean law" doctrine and international law regarding secession of Crimea from Ukraine' of the article by V. Tomsinov "'Crimean Law" or the legal basis for the reunification of Crimea with Russia' [51, 52].

The contents of that article is essentially similar to that of Tomsinov's monograph 'Crimean Law or Legal Grounds for the Reunification of the Crimea with Russia' – the first Russian monograph aspiring to be a comprehensive study of the Crimean conflict and containing the most detail analysis of relevant issues (this is why so much attention in our article is paid to that monograph).

Kremnyov's work is interesting and indicative given the fact that the author generally analyzes some key aspects of approaches inherent in the Russian legal doctrine regarding the 'Crimean issue' in 2014-2015. First, P. Kremnyov draws attention to the fact that the legal status of the Crimean peninsula in no way can be considered uncertain: 'The ratification of the 1997 'Big Treaty' is related to the violation of the constitutional law by both sides, which created international legal grounds to challenge the validity of this treaty, and hence the status of Crimea as part of Ukraine. However, Russia has not done it. Moreover, the Treaty on the Russian-Ukrainian border was signed in 2003 and on April 25, 2004, it entered into force. Pursuant to the Treaty defined border line (Art. 2 of Annexes 1 and 2) the Crimean peninsula is considered part of Ukraine. From the standpoint of international and domestic law, this means that from this time (regardless of the validity of 1997 "Big Treaty"), Ukraine has gained complete and indisputable title to Crimea, including the city of Sevastopol. Incidentally, the Ukrainian side is well aware of this circumstance, which is admitted in many of respective scientific and legal publications' [53].

The author does not explain why he considers the ratification of the 'Big Treaty' illegal, however, and beyond that he clearly justifies why recognition of Crimea as part of Ukraine is a treaty obligation of the Russian Federation.

Second, considering the request for advisory opinion from the ICJ in the Kosovo case P. Kremnyov indicates that the findings of the Court are highly authoritative in nature, but do not have the binding force. In essence, they are a subsidiary means for the Court's adjudication in case of absence of the necessary rule of international law.

As for the content of the advisory opinion, the author admits: 'The Court avoided assessing the legality or illegality of secession of Kosovo based on the declaration of independence ... He pointed out that disputes on the right to self-determination and remedial secession "are affecting the right to secede from the state ... that are beyond the scope of the question posed by the General Assembly"' [54]. This approach, as already noted, is generally accepted by the international law doctrine – the ICJ did not recognize the legality of Kosovo's separation from Serbia.

Thirdly, Kremnyov notes that all Tomsinov's examples – the Aaland Islands referendums of 1917 and 1919; the decision of the Supreme Court of Canada on Quebec of 1998 may be used as subsidiary means to ascertain the legal rule and, therefore, are irrelevant as this is the case of violation of a peremptory rule of international law [55].

Fourth, the author's statement that 'justification of the legality of the right of peoples to self-determination including secession at the expense of the territorial integrity of the state, that imperative principles of general international law should be built on the basis of arguments that contain specific principles and rules with the same imperative nature' can be considered a key one [56]. In addition, it is noted that international legal stance of Russia itself until recently, including the ICJ's consideration the declaration of independence of Kosovo, was grounded on a consistent and firm upholding of the principle of territorial integrity of states (apparently it's recent drastic changes in the stance may be explained by the necessity to justify the annexation of Crimea) [57].

This analysis is not comprehensive; nevertheless, we have a unique and noteworthy example of unbiased analysis of the key points advocated by the Russian doctrine as well as Russian high-ranked officials (V. Putin himself repeatedly refers to the Kosovo case) by a respected scholar published in a leading Russian scientific journal. In fact, the author's personal view on these issues also deserves attention, which will probably be considered in further publications.

5. Other 'precedents'

Russian officials demonstrate the willingness to refer to many other 'examples' to justify its actions concerning 'reunification' with Crimea. For instance, in April 2014 Minister of Foreign Affairs of the Russian Federation S. Lavrov published an article on the website of the British newspaper 'The Guardian', stating that 'Attempts by those who staged the secession of Kosovo from Serbia and of Mayotte from the Comoros to question the free will of Crimeans cannot be viewed as anything but a flagrant display of double standards'[58]. In February at the 51st Munich Security Conference, he drew a justifying parallel and stated that 'Germany's reunification was conducted without any referendum, and we actively supported this [59]. Events in South Sudan, Puerto Rico, as well as Czechoslovakia, Gibraltar and Falklands are also quite often mentioned by Russians in this context [60, 61, 62].

The example of Germany is absurd for obvious reasons. For many decades before its voluntary reunification with the Federal Republic of Germany, the German Democratic Republic had been an independent state and could not be prohibited to reunify from the standpoint of international law. As far as Czechoslovakia is concerned, two parts of the state (the Czech Republic and the Slovak Republic) just took a coordinated decision to dissolve; the respective law was adopted by the Czechoslovak parliament in 1992 and took effect on 1 January 1993 [63].

The Mayotte example cannot be applied to the Crimean case, as it is a single example of anti-colonial self-determination when the UN stuck to the priority of the territorial integrity principle. It should be reminded that the Island of Mayotte, being a part of the Comoro Islands (a colonial possession according to Chapter XI of the UN Charter), expressed its desire to remain a part of France when the Comoro Islands got independence in 1975. Based upon the principle of territorial integrity, the UN General Assembly opposed to the desire of the population of the island. This example proves that the UN applied the principle of self-determination exclusively to the existing colonial territories, which is not the case of Crimea. The Organisation has never saluted the self-identification of groups of populations within states as 'peoples'. Crimea is not a territory in light of the purposes of Chapter XI of the UN Charter, therefore, the Mayotte precedent cannot be applied in this regard.

It is extremely difficult to figure out how the situations with South Sudan, Puerto Rico, Gibraltar and Falklands could be applied to the case of the annexation of Crimea. From the legal point of view, all of them are radically different from the situation at hand in this or that respect. For instance, the particular feature of the South Sudanese case is that the referendum on independence held in 2011 was conducted in the framework of the Naivasha Agreement concluded between the central government of Sudan and the Sudan People's Liberation Movement [64]. Puerto Rico has been an unincorporated territory of the United States since 1988. In 2012 a referendum (in accordance with Puerto Rican law) to determine whether the island desired to join the USA as a state was held. The examples of Gibraltar and Falklands are examples of referendums permitted by the British government. They have no similarities with the Crimean situation whatsoever [65]. It ought to be noted though

that in its 'Legal justification...' Russia itself points out the fundamental differences in terms of international law between the cases of Mayotte and Falklands situations, on the one hand, and Crimea, on the other [66].

The Russian scholar G. Yatsenko finds it appropriate to refer to the referendum in Scotland: 'The voting for the secession of Crimea from Ukraine resulted in a number of extremely negative statements by the European states which condemned this civic impulse and refused to recognize the legality of this action (although foreign observers remarked that it was held in accordance with international democratic principles and noted the high turnout – above 80 per cent). However, there is a drastically different picture with the referendum on the independence of Scotland: the international community respected the decision of the Scotsmen. One would think that we have two regions desiring independence from their parent states and relying upon the right of peoples to self-determination, but while in the first case this desire contradicts international law, in the second – it is a democratic act. Therefore, similar events are assessed differently indicating the policy of double-standard [67]. The differences between the Scotland and Crimea are manifest. First of all, no state had conducted a military operation to occupy ('reintegrate') Scotland before the referendum took place. At the same time, this is exactly what Russia has done with Crimea, and it even does not deny it anymore [68]. In addition, the referendum in Scotland, unlike the one in Crimea, was agreed with the 'parent state' (the United Kingdom of Great Britain and the Northern Ireland) and was conducted in compliance with the law and democratic standards [69].

In this regard, it should once again be reminded that Russia itself in its Constitution and legislation does not recognise the right of its constituent parts to secede from the federation whether through a referendum or else like [70]. The Constitutional Court of the Russian Federation in its judgements confirmed that unilateral secession of any constituent from the federation is prohibited [71].

In general, the analysis of all these 'examples' leads to the conclusion that Russians do not really care to bring up relevant and meaningful arguments. This impression is shaped by numerous official statements where historical examples of territorial changes without even slightest resemblances to the Crimean situation have been made. Furthermore, it proves that there are no examples that Russia could rely on to advocate its position in respect of Crimea.

Therefore, it is self-evident that in February–March 2014 Russia committed the annexation of Crimea (forcible acquisition of one state's territory by another state) because the Russian Armed Forces were used to seize the peninsula. On 17 April 2014, Putin admitted the use of the Russian troops 'to secure the self-determination of the people of Crimea' and – on 24 October 2014 – 'to block Ukrainian military units deployed in Crimea' [72, 73]. In the interview for the film 'Crimea. The Way Home' presented on 15 March 2015, Putin confessed that on 22 February 2014 (i.e. long before any 'self-determination', and even before the decision of the Crimean parliament to hold a referendum) he initiated the power operation and 'work of security agencies to return Crimea to Russia', and the defence and security organs promptly started executing this command [74]. These confessions are also confirmed by other data, including those of Russian authorities and state media (besides, the Verkhovna Rada of the Crimean Autonomous Republic was seized and members of the parliament were compelled to vote for the secession from Ukraine) [75].

The international legal analysis allows arriving at the conclusion that all Russia's historical references – either official or scholarly – to justify what happened in Crimea in

February-March 2014 are flawed in respect of factual, historical and legal backgrounds. The list of Russia's irrelevant examples includes the collapse of the USSR and Yugoslavia, the dissolution of Czechoslovakia, the reunification of Germany, the Kosovo case, the Aaland Islands case, the case of the island of Mayotte, Falklands, Puerto Rico, Gibraltar, Scotland, South Sudan, etc.

Russia's reference to the Kosovo case is really inappropriate and inconsistent. During the whole period of the ICJ proceedings (before and following the rendering of the advisory opinion), even after the 2014 events in Crimea, Russia was denying the legality of Kosovo's secession. Moreover, the Kosovo case differs from the Crimean one in many respects. The principal differences are the following: the existence of the indigenous people (the Albanians of Kosovo – Kosovars), who exercises the right to self-determination; state authority (in the case of Kosovars – Serbia) oppressed the people, which resulted in the military conflict of 1997-1999; perennial unsuccessful efforts of the international community to resolve the conflict; exhaustion of possibilities of 'internal self-determination'; in the case of Kosovo the indigenous people was in the pole position, and genuinely defended their rights; indigenous people's of Crimea opinion was ignored when the so-called 'self-determination' was exercised, and Kosovo was not annexed by another state. Nothing of the mentioned circumstances could relate to the case of Crimea.

In the Kosovo case giving an answer to a specific question the ICJ did not assess compliance of the 'process of self-determination', 'complex procedures of self-determination', 'decision of the people for self-determination' with international law, i.e. all acts to separate Kosovo from Serbia, to which Russia refers. The diverging attitudes of the Russian scholarship to the principles of equality and self-determination of Chechnya and Kosovo, on the one hand, and of Crimea, on the other, are also notable.

Another example is the collapse of the Soviet Union and independence of Ukraine, which are not relevant because these processes were in accordance with international law and the Constitution of the USSR, and were recognized by the world community. Unlike the Soviet Constitution, the Constitution of Ukraine (just like Russia's Constitution) does not permit free exit for Ukraine's regions including the Autonomous Republic of Crimea, at the same latter enjoys wide autonomy.

If to make comparisons of the factual background of the Aaland Islands case with the Crimean situation, Crimea, first of all, has to be recognised as a part of Ukraine. Under the Aaland Islands Convention and the 1921 'Aaland Treaty', the archipelago was demilitarised and returned to Finland with a broad autonomy. The allegations that Ukraine's 'statehood is not yet complete' just like the case of Finland in 1920 are ridiculous because unlike the 'Republic of the Crimea' Ukraine meets the criteria for the statehood coined in the Aaland case. Because of the actions of the Russian military and self-defence forces of Crimea the self-proclaimed independent state has never fulfilled any of the requirements.

The Quebec case cannot be brought up to back up the line of arguments regarding Crimea because the former situation was remitted to the Supreme Court of Canada, a judicial body of the 'parent state', which already makes this example inappropriate. Moreover, the Court stressed that a right to external self-determination (which in this case potentially takes the form of the assertion of a right to a unilateral secession) arises under the most extreme circumstances and, still be carefully considered. Russia has never proven any 'extreme circumstances in the Crimean case'.

All other examples mentioned by the Russian leadership and scholars (the island of Mayotte, the Falkland Islands, Puerto Rico, Gibraltar, Scotland, the unification of Germany, dissolution of Czechoslovakia, referendum in South Sudan) stand in stark contrast to the Crimean case from the international law perspective as well as from the standpoint of factual background. We should also note that those who refer to the Aland case, Quebec case and other historical 'examples' disregard the rules of international agreements under which Russia recognized Crimea as an integral part of Ukraine (Agreement Establishing the Commonwealth of Independent States of 1991, the 'Treaty of Friendship, Cooperation and Partnership Between Ukraine and the Russian Federation of 1997, Treaty between Ukraine and Russia on the Russian-Ukrainian State Border of 2003) and peremptory rules of general international law (especially those enshrined in the UN Charter) violated by Russia in February-March 2014.

Generally speaking, Russia's arguments may be taken as evidence that this state is trying to present as many examples (precedents) as possible, but care little about their relevance and the validity of respective conclusions. It is commonplace for the Russian scholarship to thoughtlessly replicate the official position without any re-examining of the facts. The analysis of researches proves that respective rules of international law are wrenched out of the context, misinterpreted, misrepresented or distorted. Subsidiary means of establishing international legal rules are applied in cases where clear and unambiguous legal provisions in force should be invoked, e. g. provisions of treaties between Ukraine and Russia. Almost all Russian researchers share the same position ('the events of 2014 are the reunification of Crimea and the Russian Federation'), repeating the same 'mistakes' and demonstrating in author's humble opinion not a very high scientific level.

Therefore, publications on the 'historical analogues' of the Crimean case may be qualified as a corpus of propaganda texts purporting to advocate the Russian Federation's conduct and targeted at local and foreign audiences. They should also provide Russia's 'partners' among politicians and journalists in the West with argumentation necessary for the justification of Russia's actions and rebuttal to Ukraine and the Western states.

The events in Crimea in February–April 2014 prove that the Crimean 'authorities' were controlled by the Russian military and security services, the Russian Federation committed an act of aggression against Ukraine to occupy a part of its territory and, as it is qualified in international law, to annex the territory of another state.

References

1. Декларация о независимости Автономной Республики Крым и г. Севастополя, Пресс-центр Верховного Совета АРК, 11 March 2014, p. 2.
2. Заявление МИД Российской Федерации о принятии Декларации о независимости Автономной Республики Крым и г. Севастополя, Пресс-служба МИД России, 11 March 2014, p. 2.
3. 'Путин: реакция Запада на референдум в Крыму неадекватна, так как игнорирует случай Косово' ТАСС, 17 November 2014.
4. Правовые обоснования позиции России по Крыму и Украине, Министерство иностранных дел Российской Федерации, 27 October 2014, pp. 5, 7.
5. Вилков А., 'Трактовки "справедливости" и "несправедливости" и их использование в современных политических процессах', *Изв. Саратов. ун-та. Нов. сер. Сер. Социология. Политология*, 2015, Vol. 15, No. 2, pp. 64–72.
6. Ибрагимов А., 'Воссоединение Крыма и Севастополя с Российской Федерацией в призме международного права и мировой политики', *Юридический вестник ДГУ*, 2014, Vol. 4, pp. 75–77.
7. Марочкин С., 'Взаимодействие правовых систем как общий вектор развития (отношение международного сообщества к принципу верховенства права: намерения и реальность)', *Российский юридический журнал*, 2014, Vol. 5 (98), pp. 15–25.
8. Николаенко Р., 'Косовский прецедент во взаимоотношениях ведущих держав Запада и России: история и современность', *Голос мивушего. Кубанский исторический журнал*, 2014, Vo. 1–2.

9. Томсинов В., 'Крымское право или Юридические основания воссоединения Крыма с Россией', *Зерцало-М*, 2015, p.132.
10. Толстых В., 'Воссоединение Крыма с Россией: правовые квалификации', *Евразийский юридический журнал*, 2014, Vol. 5 (72), pp. 40–46.
11. Копыткова Н., 'О праве народов на самоопределение и территориальной целостности государств', *Приоритетные направления развития правовой системы общества: материалы V Международной научно-практической конференции (Гомель, 15–16 мая 2014 года)*, Гомель: ПГУ им. Ф. Скорины, 2014, pp.255–260, <http://repo.gsu.by/handle/123456789/981> (accessed on 23 January 2016).
12. Заявление МИД России по Косово, Министерство иностранных дел Российской Федерации, 17 February 2008, p. 2.
13. Written Statement of the Russian Federation to the International Court of Justice, Ambassador of the Russian Federation to the Kingdom of Netherlands, 16 April 2009, pp. 28–30.
14. Путин: независимость Косово повлечет непредсказуемые последствия, *РИА Новости*, <http://ria.ru/politics/20080222/99907461.html> (accessed on 23 January 2016).
15. Путин: позиция России по Косову остается "принципиальной", *Радио Свобода* <http://www.svoboda.org/content/article/26640933.html> (accessed on 23 January 2016).
16. Задорожний О., *Порівняльна характеристика випадків Косово та Криму: міжнародно-правовий аналіз, в Українська Революція гідності, аерсія РФ і міжнародне право*, Київ: К. І. С., 2014, pp. 531–548.
17. Delahunty R., 'The Crimean Crisis', *University of St. Thomas Journal of Law and Public Policy, Legal Studies Research Paper*, 2014, pp. 14–39.
18. Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion, I. C. J. Reports. – 2010. – P. 403.
19. Hartwig M., 'Das Gutachten des Internationalen Gerichtshofs zur Unabhängigkeitserklärung des Kosovo: Vorgeschichte und "Urteils" kritik', *Osteuropa-Recht*, 2012, Vol. 11.
20. Peters A., *Statehood After 1989: 'Effectivités' Between Legality and Virtuality*, Select Proceedings in J. Crawford (ed.), *The European Society of International Law*, 2012, Vol. 3, p. 179.
21. Vidmar J., 'Territorial Integrity and the Law of Statehood', *George Washington International Law Review*, 2012, Vol. 44, pp. 107–140.
22. Christakis T., 'Self-Determination, Territorial Integrity and Fait Accompli in the Case of Crimea', *ZaöRV/Heidelberg JIL*, 2015, Vol. 75 (1), p. 91.
23. Правовые обоснования позиции России по Крыму и Украине, Министерство иностранных дел Российской Федерации, 27 October 2014, p. 1.
24. Конституция (Основной Закон) Союза Советских Социалистических Республик (Принята на внеочередной седьмой сессии Верховного Совета СССР девятого созыва 7 октября 1977 г.), *Очерк истории Советской Конституции*, Moscow: Политиздат, 1987.
25. Угода про створення Співдружності Незалежних Держав від 8.12.1991 р., Офіційний сайт Верховної Ради України, http://zakon2.rada.gov.ua/laws/show/997_077 (accessed on 23 January 2016).
26. Grant Th. D., *Aggression against Ukraine. Territory, Responsibility, and International Law*, Palgrave, 2015, p. 107.
27. Конституція України, прийнята на п'ятій сесії Верховної Ради України 28 червня 1996 року (із змінами, внесеними Законами України від 8 грудня 2004 року N 2222-IV, від 1 лютого 2011 року N 2952-VI, від 19 вересня 2013 року N 586-VII, від 21 лютого 2014 року N 742-VII), Офіційне інтернет-представництво президента України, <http://www.president.gov.ua/content/constitution.html> (accessed on 22 January 2016).
28. Крымская политика РФ – политика ад хок, *Council for foreign and security policy*, January 2010, p. 9.
29. Обращение Президента Российской Федерации от 18.03.2014 г., Пресс-служба Президента Российской Федерации, 2014, p. 4.
30. Белая книга нарушений прав человека и принципа верховенства права на Украине (ноябрь 2013 – март 2014), Министерство иностранных дел Российской Федерации, 2014, p. 81.
31. Ibidem, pp. 16, 17, 19.
32. Толстых В., op.cit., p. 43.
33. Постановление Конституционного Суда Российской Федерации от 7 июня 2000 г. №10-П по делу о проверке конституционности отдельных положений Конституции Республики Алтай и Федерального закона "Об общих принципах организации законодательных (представительных) и исполнительных органов государственной власти субъектов Российской Федерации", *Российская газета*, 11 June 2000.
34. Постановление Конституционного Суда от 13 марта 1992 года N 3-П по делу о проверке конституционности Декларации о государственном суверенитете Татарской ССР от 30 августа 1990 года и ряда законодательных актов Республики Татарстан о проведении референдума, Ведомости Съезда народных депутатов Российской Федерации и Верховного Совета Российской Федерации, 26 March 1992, para. 271.
35. Комментарий к Конституции Российской Федерации (под ред. В. Д. Зорькина, Л. В. Лазарева), *Эксмо*, 2010, p. 455.
36. Постановление Конституционного Суда Российской Федерации от 7 июня 2000 г. № 10-П по делу о проверке конституционности отдельных положений Конституции Республики Алтай и Федерального закона "Об общих принципах организации законодательных (представительных) и исполнительных органов государственной власти субъектов Российской Федерации", *Российская газета*, 4 October 2003.
37. Романов В., 'Принцип самоопределения и территориальная целостность государств', *Дипломатический вестник*, September 2000;
- Н. Остроухов, 'Территориальная целостность государств и её обеспечение: теоретико-правовые и международно-правовые измерения', *Вестник РУДН, серия "Юридические науки"*, 2013, Vol. 3; Е. Холина, 'Формы и критерии признания государств', *Проблемы в российском законодательстве. Юридический журнал*, 2012, Vol. 3.
38. Явкин Н., 'Проблема обеспечения единства и территориальной целостности государства в условиях борьбы народов за самоопределение', Автореф. дисс. к. ю. н., МГУ им. Н. Огарева, 2004, p. 2; Н. Явкин, 'Проблема обеспечения единства и территориальной целостности государства в условиях борьбы народов за самоопределение', Автореф. дисс. к. ю. н., МГУ им. Н. Огарева, 2004, p. 2; Л. Лазутин, *Равноправие и самоопределение народов/Международное право*, Moscow: Инфра-М, 2002, p. 123; Р. Тимошев, 'Право наций на самоопределение и современные межнациональные конфликты', *Армия и общество*, 2008, Vol. 3.
39. Resolution 1201 (1999) Conflict in Chechnya, *Official Gazette of the Council of Europe*, November 1999.
40. Recommendation 1444 (2000) Conflict in Chechnya, *Official Gazette of the Council of Europe*, January 2000.
41. Томсинов, op.cit., pp. 11 – 13.
42. Castellino J., *International Law and Self-Determination: The Interplay of the Politics of Territorial Possession With Formulations of Post-Colonial National Identity*, Leiden: Martinus Nijhoff Publishers, 2000, p. 19.
43. Report Presented to the Council of the League of Nations by the Commission of Rapporteurs, League of Nations Council Doc 21/68/106, 1921, p. 14.
44. Hannikainen L., 'The Continued Validity of the Demilitarised and Neutralised Status of the Aaland Islands', *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht*, 1994, Vol. 54, p. 618.
45. Report of the International Committee of Jurists entrusted by the Council of the League of Nations with the task of giving an advisory opinion upon the legal aspects of the Aaland Islands question, Special Supplement, 1920, Vo.3, pp. 6–9.
46. Reference re secession of Quebec (1998) 2 S. C. R. 217, paras. 122, 126.
47. Договір про дружбу, співробітництво і партнерство між Україною і Російською Федерацією від 31.05.1997 р., Офіційний вісник України, Vol. 20, 4 June 1999, p. 518.
48. Договір між Україною і Російською Федерацією про українсько-російський державний кордон від 28.01.2003 р., Офіційний вісник України, 18 June 2004.
49. Соглашение о создании Содружества Независимых Государств, *Содружество (информационный вестник СНГ)*, Vol. 1, 1992.
50. Меморандум про гарантії безпеки у зв'язку з приєднанням України до Договору про нерозповсюдження ядерної зброї від 5.12.1994 р., *Зібрання чинних міжнародних договорів України*, 2004, Vol. 4, Книга 2, p. 603.
51. Charter of the United Nations, UN official site, <http://treaties.un.org/doc/Publication/CTC/uncharter.pdf> (accessed on 23 January 2016).
52. Крємнєв П., 'Концепція "крымского права" и доктрина международного права применительно к сецессии Крыма из состава Украины', *Вестник Московского университета*, Сер. 11. Право, 2015, Vol. 3, pp. 143–149.
53. Томсинов В., "'Крымское право" или юридические основания для воссоединения Крыма с Россией', *Вестн. Моск. ун-та*, Сер. 11, Право, 2014, Vol. 5, pp. 3–32.
54. Крємнєв П., op.cit., p. 144.
55. Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, International Court of Justice, Advisory Opinion of 22 July 2010, para. 83.
56. Крємнєв П., op.cit., p. 147.
57. Ibidem, pp.148–149.
58. Written Statement of the Russian Federation, International Court of Justice, 16 April 2009, pp. 26, 30, 32.
59. Lavrov S., 'It's not Russia that is destabilising Ukraine. The west has been needlessly whipping up tension – if we don't co-operate soon, chaos may take hold', *The Guardian*, 7 April 2014.
60. Rogin J., 'Europeans Laugh as Lavrov Talks Ukraine', *Bloomberg View*, 7 February 2015.
61. Правовые обоснования, op.cit., p. 1.
62. Люлько Л., 'Почему Пуэрто-Рико можно, а Крыму нельзя?', *Pravda*, 11 March 2014.
63. Пушков А., 'У Крыма больше оснований быть частью РФ, чем у Фолклендских островов – Британиа', *Russia Today*, 22 March 2015.
64. Ústavný zákon č. 542/1992 Zb. o zániku Českej a Slovenskej Federatívnej Republiky, Čl. 3 ods. 2.
65. McDoom O., South Sudan votes for independence: vote report, *Reuters*, 7 February 2011.
66. Гарсия Л., 'Сравнение с известными: Почему Крым – не Косово и уместность сравнений с точки зрения международного права', *Юридическая практика*, 2014, Vol. 20 (856).
67. Правовые обоснования позиции России по Крыму и Украине, Министерство иностранных дел Российской Федерации, 27 October 2014, p. 5, 7.
68. Яценко Г., 'В. Политика двойных стандартов: Украинский кризис и образование "Исламского государства"', *Актуальные проблемы современных международных отношений*, pp. 151 – 156.
69. Путин: в Крым для разоружения украинских частей были направлены силы ГРУ, ТАСС, 15 March 2015.

70. Шешукова Г., Проблемы войны и мира в теории и практике международных отношений, *Труды Оренбургского института (филиала) МГЮА*, 2014, vol. 21, pp. 14-21.

71. Белафина Ю., 'Проблема сецессии в Российской Федерации', *Право и жизнь*, 1999, vol. 24.

72. Постановление Конституционного Суда РФ от 13 марта 1992 г. "По делу о проверке конституционности Декларации о государственном суверенитете Татарской ССР от 30 августа 1990 года, *ор.сit*.

73. Путин: наши военные "встали за спиной" самообороны Крыма, *Русской службы ВВС*, 17 April 2014.

74. Заседание Международного дискуссионного клуба 'Валдай', Официальный сайт Президента России, <http://kremlin.ru/transcripts/46860>, (accessed on 23 January 2016).

75. Путин: в Крым для разоружения украинских частей были направлены силы ГРУ, *ор.сit*.

76. Птичкин С., 'Вежливые люди получили свой День', *Российская газета*, 27 February 2015; И. Петров, 'У "вежливых людей" появится свой праздничный день', *Российская газета*, 3 October 2014; Гиркин: Мы насильно согнали депутатов Крыма голосовать за отделение от Украины, *Украинформ*, 25 January 2015; Адмирал Касатонов заявил, что НАТО не успела год назад отследить блокировку украинских частей, *Московский комсомолец*, 13 March 2015; Игорь Гиркин Стрелков – Мы насильно согнали депутатов Крыма голосовать за отделение от Украины, <https://www.youtube.com/watch?v=hPSUUNgoQk> (accessed on 22 January 2016).

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ОДИОЗНІ ПОРІВНЯННЯ.

НЕПРАВОМІРНЕ ЗАСТОСУВАННЯ МІЖНАРОДНИХ ПРАВОВИХ ПРЕЦЕДЕНТІВ РОСІЙСЬКИМИ ВЧЕНИМИ-ПРАВОВИДЦЯМИ ДЛЯ ВИПРАВДАННЯ ЗАХОПЛЕННЯ КРИМУ

Автор аналізує історичні приклади, які використовуються російськими вченими-правознавцями для виправдання захоплення Криму Російською Федерацією в лютому-березні 2014 року і пояснення цього процесу як "возз'єднання". Особливу увагу приділено випадку Косова, розпаду СРСР і здобуттю незалежності Україною в 1991 році, випадкам Аландських островів і Квебека, які вивчаються разом з іншими "прецедентами". Автор детально розглядає аргументи, що наводяться російською стороною в її спробі довести, що в ході "сецесії" з України і "приєднання" до Російської Федерації у 2014 році "кримчани" здійснили загальновідомий принцип рівних прав і самовизначення народів таким же чином, як у наведених випадках. На підставі фактичного матеріалу аналізуються аргументи російських вчених, і розглядається питання про їх обґрунтованість з точки зору міжнародного права. Автор кваліфікує дії Російської Федерації та робить відповідні висновки.

Ключові слова: Крим, Росія, сецесія, обґрунтування, випадок, незалежність, аргумент, самовизначення, Україна.

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ОДИОЗНЫЕ СРАВНЕНИЯ.

НЕПРАВОМЕРНОЕ ПРИМЕНЕНИЕ МЕЖДУНАРОДНЫХ ПРАВОВЫХ ПРЕЦЕДЕНТОВ РОССИЙСКИМИ УЧЕНЫМИ-ПРАВОВЕДАМИ ДЛЯ ОПРАВДАНИЯ ЗАХВАТА КРЫМА

Автор анализирует исторические примеры, которые используются российскими учеными-правоведами для оправдания захвата Крыма Российской Федерацией в феврале-марте 2014 года и объяснения этого процесса как "воссоединения". Особое внимание обращено к случаю Косова, распаду СССР и обретению независимости Украиной в 1991 году, случаям Аландских островов и Квебека, которые изучаются вместе с другими "прецедентами". Автор подробно рассматривает аргументы, используемые российской стороной в ее попытке доказать, что в ходе "сецессии" из Украины и "присоединения" к Российской Федерации в 2014 году "крымчане" осуществили общепризнанный принцип равных прав и самоопределения народов таким же образом, как в приведенных случаях. На основании фактического материала анализируются аргументы российских ученых, и рассматривается вопрос об их обоснованности с точки зрения международного права. Автор квалифицирует действия Российской Федерации и делает соответствующие выводы.

Ключевые слова: Крым, Россия, сецессия, обоснование, случай, независимость, аргумент, самоопределение, Украина.

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ПРАВОВА ПРИРОДА КОНВЕРТАЦІЇ ЦІННИХ ПАПЕРІВ

Стаття присвячена аналізу теоретичних питань, пов'язаних з правовою кваліфікацією конвертації цінних паперів. Автор статті досліджує поширені в науковій літературі погляди щодо трактування конвертації як правочину міни, одностороннього правочину, новації та відступного. На підставі ґрунтового аналізу нормативного масиву та сутності процесу конвертації автор виявляє недоліки зазначених доктринальних підходів та пропонує своє концептуальне бачення правової природи конвертації цінних паперів.

Ключові слова: цінні папери, конвертація, акції, односторонній правочин, новація, реорганізація.

Емісійні цінні папери уособлюють зобов'язання, яке існує між зобов'язаною за ними особою (емітентом) та уповноваженою особою (власником). Таке зобов'язання може називатися трансформацій, коли один чи декілька цінних паперів конвертуються в один чи декілька цінних паперів іншого виду (типу) чи з іншим обсягом прав або з іншою номінальною вартістю. Конвертуватися можуть, зокрема, привілейовані акції певного класу у прості акції товариства, у привілейовані акції іншого класу або інші цінні папери; конвертація є наслідком консолідації та дроблення акцій; конвертація цінних паперів супроводжує процеси реорганізації товариств та відбувається при злитті, приєднанні, поділі, перетворенні, виділі, коли акції товариства, що припиняється, конвертуються в акції новоствореного (новостворених) акціонерного товариства. Акціонерне товариство може випускати т.зв.

конвертовані облігації, проспект емісії яких може передбачати можливість їх конвертації в акції товариства.

Правова природа конвертації цінних паперів в наш час залишається недостатньо розробленою на доктринальному рівні, а поодинокі спроби трактувати дане поняття в контексті класичного вчення про цінні папери слід визнати неоднозначними та суперечливими. Зокрема, дане питання порушувалося у роботах А.Ю. Синенко, Є.А. Клінової, В.В. Заборовського, І.В. Ігнатова та П.В. Філімошина, А. Бабаєва тощо. Інколи можна зустріти твердження, що "сучасна теорія не може повністю та однозначно пояснити правову природу конвертації" [1, с. 141]. Актуальність дослідження правової природи конвертації цінних паперів полягає у необхідності забезпечення максимального захисту прав та інтересів їх власників (зокрема, міноритарних акціонерів) при проведенні такої операції від можливих зловживань з боку емітента.