

The Kosovo Precedent in the Secession and Recognition of Crimea

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Abstract

Crimea's secession from Ukraine and its annexation to the Russian Federation invoked Kosovo precedent, in its declaration of independence, as an argument for secession. The territorial referendum in the Autonomous Republic of Crimea, only five days after the declaration of independence, was an attempt to justify the secession based on the right to self-determination of the people of Crimea. It is overwhelmingly considered illegal and its outcome has not been accepted and recognized by states, regional and international organizations. The comparative elements of statehood and secession between Kosovo and Crimea are reflected through analyzing the declarations of independence, international recognition and Russia's role as a third-state factor in external self-determination. Essential distinctions are highlighted. Kosovo is widely acknowledged and accepted a *sui generis* case. Its declaration of independence came as result of a long monitored comprehensive process; not to legitimize the right for self-determination but as the final option for stability and peace in the region. Crimea seceded in violation of international law through the use of force. While Kosovo is a democratic, multi-ethnic new state and recognized by 107 states, the secession of Crimea and its annexation to the Russian Federation is considered illegal and endangers the existing international order.

Key Words: Crimea, Declaration of Independence, Kosovo, Recognition, Secession.

1. Introduction

The parliament of the Autonomous Republic of Crimea and the Sevastopol City Council adopted the declaration of independence on 11 March 2014. This declaration was made explicitly subject to a positive referendum on joining Russia,¹ to be held only six days later. The results of the 16th March referendum were in favor of Crimea's secession from Ukraine, and its reunification with the Russian Federation. The Russian presidential decree of recognizing Crimea as an independent state was followed by the signature and ratification of the interstate treaty for reuniting the Crimean Republic with the Russian Federation, adding a new constituent unit into the Federation.²

¹ Declaration of Independence of the Autonomous Republic of Crimea and Sevastopol:

"We, the members of the parliament of the Autonomous Republic of Crimea and the Sevastopol City Council, with regard to the charter of the United Nations and a whole range of other international documents and taking into consideration the confirmation of the status of Kosovo by the United Nations International Court of Justice on July, 22, 2010, which says that unilateral declaration of independence by a part of the country doesn't violate any international norms, make this decision jointly:

1. If a decision to become part of Russia is made at the referendum of the March 16, 2014, Crimea including the Autonomous Republic of Crimea and the city of Sevastopol will be announced an independent and sovereign state with a republican order.
2. Republic of Crimea will be a democratic, laic and multinational state, with an obligation to maintain peace, international and intersectorian consent in its territory.
3. If the referendum brings the respective results, Republic of Crimea as an independent and sovereign state will turn to the Russian Federation with the proposition to accept the Republic of Crimea on the basis of a respective interstate treaty into the Russian Federation as a new constituent entity of the Russian Federation.';

Declaration approved by the Resolution of the Supreme Council of the Autonomous Republic of Crimea at the extraordinary plenary session on March 11, 2014 (signed by the Chairman of the Supreme Council of the Autonomous Republic of Crimea Vladimir Konstantinov) and by the Decision of the Sevastopol City Council at the extraordinary plenary session on March 11, 2014 (signed by the Chairman of the Sevastopol city council Yury Doynikov)."

See Walter Ch. and Von Ungern-Sternberg A. and Abushov, K., (2014), "*Self-Determination and Secession in International Law*", Oxford University Press, p. 297.

² "Russia takes Crimea back", Available from:

http://english.pravda.ru/russia/politics/18-03-2014/127129-russia_crimea_unite-0/, [Accessed 10 May, 2015]

While the Russian Federation has never recognized Kosovo, the latter's declaration of independence has been used by the Russian Federation not only as a legal argument for Crimea's succession but also as a primary justification for the recognition of Abkhazia's declaration of independence, after its interference in Georgia in 2008. Former President Medvedev stated that it "would be impossible, after [Kosovo], to tell the Abkhazians and Ossetians (and dozens of other groups around the world) that what was good for the Kosovo Albanians was not good for them. In international relations, you cannot have one rule for some and another rule for others."³

In terms of international relations, Kosovo is considered a *sui-generis* case. Kosovo declared its independence in 2007, after a long-internationally-monitored comprehensive process. Its independence came after a long process of decision-making. It began with the temporary suspension of exercise of Serbia's authority flowing from its continuous sovereignty over the territory of Kosovo and the presence of the United Nations Mission in Kosovo and NATO, based on UNSC resolution 1244 (1999). It was the decision of the United Nations Security Council and the UN Secretary General to appoint a Special Envoy on the Future Status of Kosovo. Its Comprehensive Proposal on the future status of Kosovo, which became part of the constitution of Kosovo, provided the creation of a multiethnic state. Therefore Kosovo is not declared and recognized as independent based only on its right for self-determination but as the final and only option for stability and peace in the region.

The annexation of Crimea by the Russian Federation is considered in violation of the sovereignty and territorial integrity of Ukraine.⁴ Russian diplomacy, assuming that the international community will not remain indifferent, attempted to legitimize this action by invoking precedents of the past - the non-recognized Kosovo's declaration of independence. Russia claimed that there cannot be two standards in the imposed rules for the self-determination of peoples and in the implementation of this principle of the UN Charter.

Does the Kosovo's declaration of independence, cited in Crimea's declaration of independence, serve as a legal argument to legitimize

³ Medvedev D., (2008), "Why I had to Recognize Georgia's Breakaway Regions," *Financial Times*, Aug. 26, Available from: <http://www.ft.com/intl/cms/s/0/9c7ad792-7395-11dd-8a66-0000779fd18c.html#axzz3SC8QFFMf>, [Accessed on 11 May, 2015]

⁴ United Nations General Assembly Resolution, (2014), "Territorial integrity of Ukraine", document A/68/L.39, New York.

Crimea's secession from Ukraine and its annexation by the Russian Federation?! The two cases look very similar based on the principal of self-determination. The right to self-determination is one of the main principles, but not the purpose of the United Nations Charter. In addition to Article 1 (2), Article 55 of the UN Charter proves the legal character of the right of self-determination by describing this right as a principle, as opposed to merely a political programme.⁵ If the principle of self-determination is necessary to the creation of the new state, it is not sufficient for its legitimacy. The Friendly Relations Declaration of UN General Assembly, although not binding *per se*, defines the criteria to exercise the right to self-determination.⁶ To maintain the balance of the international system and to preserve it from anarchy, United Nations Security Council (now on referred as UNSC) is the only august body which decides case by case on the recognition of new states. Its decision is based not only in the satisfaction of Montevideo criteria but also to be firmly consistent in exercising its primary responsibility to maintain international peace and security. The recognition of new states by the UNSC is the most important step on the legitimacy of that process. Its decision is based primarily in the consensus of states involved in the conflict.

The secessions of Crimea and Kosovo are assessed through analyzing the processes that led to and followed their declarations of independence, the recognition of these entities by states, regional and international organizations, and the special role of third-state factors in the external self-determination of Crimea.

2. Declarations of Independence in Crimea and Kosovo

While there is no applicable prohibition of declarations of independence according to state practice and in general international law, the prohibition of unilateral declarations of independence is implicit in the principle of territorial integrity. The scope of this principle is confined to the sphere of relations between states.

⁵ Simma B., (2002), *"The Charter of the United Nations; A commentary"*, New York: Oxford University Press, 2nd Edition, p. 49.

⁶ United Nations General Assembly Resolution, (1970), *"Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations"*, document A/RES/25/2625, New York.

The declaration of independence of Crimea, adopted from the parliament of the Autonomous Republic of Crimea and the Sevastopol City Council - with 78 votes in favor from the overall 100 members of parliament - was not a mere declaration of the will of the people for self-determination but included arguments to justify and legitimize its secession through using the precedent of Kosovo's declaration of independence. It stated that *"We, the members of the parliament of the Autonomous Republic of Crimea and the Sevastopol City Council, with regard to the charter of the United Nations and a whole range of other international documents and taking into consideration the confirmation of the status of Kosovo by the United Nations International Court of Justice on July, 22, 2010, which says that unilateral declaration of independence by a part of the country doesn't violate any international norms, make this decision jointly."*⁷

The declaration was made explicitly subject to a positive referendum on joining Russia. It was announced 5 days before Election Day, in terms of an invasion by Russian forces and under weapons pressure. While the territorial referendum is the main legal act that defines the will of people to self-determination, to be a legitimate one, it needs to be free and fair under international standards; otherwise it cannot constitute a basis in international law for the sought territorial change.⁸ It needs to respect some procedural criteria and specific guidelines in order to be considered legitimate, including the proper timing for such a process⁹ and above all it requires the consensus of the respective governmental authority that holds the political sovereignty. Despite having the status of Autonomous Republic, Crimea was an integral constituent part of Ukraine.¹⁰ However

⁷ See Walter Ch., (note 1).

⁸ Peters A., (2014), "Sense and Nonsense of Territorial Referendums in Ukraine and Why the 16 March Referendum in Crimea does not Justify Crimea's Alteration of Territorial Status under International Law," *European Journal of International Law Analysis*. Available from: <http://www.ejiltalk.org/sense-and-nonsense-of-territorial-referendums-in-ukraine-and-why-the-16-march-referendum-in-crimea-does-not-justify-crimeas-alteration-of-territorial-status-under-international-law/>, [Accessed on 11 May, 2015]

⁹ Council of Europe, Parliamentary Assembly Recommendation 1704 (2005), "Referendums: Toward Good practices in Europe", and Venice Commission, (2009) "Code of Good Practice on Referendums, Guidelines on the holding of referendums, (CDL-AD(2007)008Rev).

¹⁰ Despite the fact that Ukrainian Constitution clearly recognizes the authority of the Autonomous Republic of Crimea to organize and hold local referendums (Article 138/2), it (Crimea) is an integral constituent part of Ukraine and shall resolve issues relegated to its authority within the frame of its reference, determined by the Constitution of Ukraine

the referendum in Crimea was held without the consensus of Ukrainian authorities and in full violation of the Ukraine constitution, which clearly defines the succession of its territories through a popular referendum and with the approval of the sovereign authority.¹¹ The Venice Commission also concluded that “The Ukrainian constitution prohibits any local referendum which would alter the territory of Ukraine and that the decision to call a local referendum in Crimea is not covered by the authority devolved to the authorities of the Autonomous Republic of Crimea”.¹²

In addition to a democratic decision-making process on territorial questions, some of the most important and arguably hard international legal standards regarding the referendum process are, peacefulness; universal, equal, free and secret suffrage; framework conditions of freedom of media and neutrality of the authorities; and an international observation.¹³ Importantly, holding a free and fair referendum is necessary, but not a sufficient condition for a territorial realignment to be accepted as lawful by international law.¹⁴ The referendum in Crimea was a non-transparent process, held in the absence of international observers. The ballot paper had no meaningful alternatives. Voters had two choices: to support reunification of Crimea with Russia as a subject of the Russian

(Article 134). The constitution of Autonomous Republic of Crimea clearly spells out that the conformity of statutory acts of the Supreme Rada of the Autonomous Republic of Crimea to the Constitution of Ukraine shall be solved by the Constitutional Court of Ukraine, pursuant to the Constitution of Ukraine.

The Bulletin of the Supreme Rada of Ukraine (VVR), (1999), “*Law of Ukraine, On Approval of the Constitution of the Autonomous Republic of Crimea*,” No. 5-6, Art. 43, As amended by the Law of Ukraine dated 19 March 2009, numbered 1167-VI. Available from: <http://www.rada.crimea.ua/en/bases-of-activity/konstituciya-ARK> [Accessed on 12/05/2015]

¹¹ Article 135 of the Ukrainian Constitution provides that ‘*regulatory legal acts of the Verkhovna Rada of the Autonomous Republic of Crimea and decisions of the Council of Ministers of the Autonomous Republic of Crimea shall not contradict the Constitution and laws of Ukraine and shall be adopted in accordance with and in pursuance of the Constitution of Ukraine, laws of Ukraine, acts of the President of Ukraine and the Cabinet of Ministers of Ukraine*. Available from: <http://www.president.gov.ua/en/content/chapter01.html> [Accessed on 22/06/2014].

¹² Venice Commission, (2014), “*Opinion on “Whether the decision taken by the Supreme Council of the Autonomous Republic of Crimea in Ukraine to organize a referendum on becoming a constituent territory of the Russian Federation or restoring Crimea’s 1992 constitution is compatible with constitutional principles”*”, Opinion no. 762/2014, para.15, Venice.

¹³ See Peters A., (note 8).

¹⁴ *Ibid.*

Federation, or to support the restoration of the 1992 Crimean constitution and the status of Crimea as a part of Ukraine.¹⁵ The Crimean constitution of 6 May 1992 offers wider competences to the parliament of Crimea, including the sovereign right to establish relations with other countries, thus Crimean voters had no option but joining Russia.¹⁶

The referendum of independence in Crimea is held in absence of free public debate, and with credible reports of intimidation. The result of the referendum, 97 % in favor of the secession from Ukraine and reunification with Russia, is considerably extreme with the results of opinion polls conducted in February 2014, indicating that only 41 % of Ukrainian voters supported the region's incorporation into Russia.¹⁷

The referendum in Crimea is held based on the right to self-determination of the people of Crimea. But the right to self-determination is closely related to some specific human rights, such as freedom of expression, freedom of association and the right to free and genuine elections and it comes to further the general diffusion of democracy.¹⁸ In the case of Crimea, despite Russian claims, the situation in the ground demonstrates no evidence of suppression or abuse by Ukrainian authorities in exercising such rights by Crimean citizens. The right of secession accepted by the international law needs some specific condition to be materialized, such as the occurrence of Human Rights abuses, endangering the prospects of survival of retrospective groups.¹⁹ In the case of Crimea we cannot identify such preconditions that necessitated the right of people for self-determination, therefore its secession from Ukraine.

The case of Kosovo is quite different. Despite additional elements of a wider autonomy granted by the Constitution of 1974 of Federal Republic of

¹⁵ "Crimea referendum: What does the ballot paper say?", *BBC News Europe* (2014), Available from <http://www.bbc.com/news/world-europe-26514797>, [Accessed on 12/03/2015]

¹⁶ Balmforth R., (2014), "No room for 'Nyet' in Ukraine's Crimea vote to join Russia," *Online Reuters Edition*, 11 March. Available from: <http://www.reuters.com/article/2014/03/11/us-ukraine-crisis-referendum-idUSBREA2A1GR20140311>, [Accessed on 12/05/2015]

¹⁷ UK government's response to points made by President Putin in his address to the Russian Parliament on 17 March 2014. Available from: <https://www.gov.uk/government/news/in-response-to-president-putins-address-to-the-russian-parliament>, [Last access on 09/05/2015]

¹⁸ Hilpold P. (2009), "The Kosovo Case and International Law: Looking for Applicable Theories", *Chinese Journal of International Law*, Vol. 8, No. 1, pg. 47-61.

¹⁹ *Ibid.*

Yugoslavia, Kosovo was not accepted and recognized as a constituting element of the Federation with the right to succession. Based on this legal point of view, Kosovo was not considered by the Badinter Commission as a separate entity entitled to secede from Yugoslavia and not included in its opinions, despite the overwhelming results of the referendum in favor of the independence from Former Yugoslavia in 1991.²⁰ The opinions of Badinter Commission were of utmost importance because they defined the criteria, the right of secession as well as the basis for discussion and compromise. The escalation of Kosovo conflict, because of the suppression caused to the Albanian civilian population by the Yugoslav authorities, raised awareness of the public opinion and the international community. In 1998 OSCE mission in Kosovo gathered undisputed facts on human rights and humanitarian law violations on a staggering scale, often committed with extreme and appalling violence.²¹ The delicate and sensitive situation in the region and the escalation of the conflict constituted the basis for including the case of Kosovo in the agenda of the United Nations Security Council, through adopting several resolutions and taking action based on Chapter VII of UN Charter considering “the situation in Kosovo as critical to peace and security in the region”.²² UN Security Council continued to monitor the situation in Kosovo, together with other international organizations (OSCE, NATO, etc) until the military intervention of NATO to prevent the spread of humanitarian catastrophe into the region. The resolution 1244 (1999) constitutes the ultimate UNSC resolution which gives an end to the humanitarian catastrophe in Kosovo caused by the holders of political sovereignty, and decides the creation of a United Nations Interim Administration Mission in Kosovo to monitor the transitional period toward the final political settlement of Kosovo.²³

The presence of international institutions in Kosovo, since the end of the conflict in 1999, to administrate the province and free from Serbian political sovereignty, contributed to the creation of a new multi-ethnic and

²⁰ Malcolm N., (1998), *Kosovo; A short History*, New York: New York University Press, pg. 347.

²¹ OSCE Office for Democratic Institutions and Human Rights, (1999), “*Kosovo As Seen, As Told; The human rights findings of the OSCE Kosovo Verification Mission*”, Available from: <http://www.osce.org/odihr/17772?download=true> [Last access on 12/05/2015]

²² United Nations Security Council Resolutions 1160 (1998), 1199 (1998), 1203 (1998), 1239 (1998), New York.

²³ United Nations Security Council Resolution 1244 (1999), 10 June 1999, New York.

democratic state. The option of unification with another country was never considered as possible by the international community. Furthermore, the 1991 referendum for independence has never been recognized as legitimate by the international community and accepted as the basis for the recognition of Kosovo's independence.

With reference to the advisory opinion of International Court of Justice on Kosovo (22 July 2010), which is invoked to justify Crimea's secession, ICJ ruled that the declaration of independence of Kosovo adopted on 17 February 2008 did not violate international law.²⁴ Kosovo, unlike Crimea - part of Ukraine and under its political sovereignty - was not under the sovereignty of Serbia, but under the international civil and security presence for more than a decade. UNSC resolution 1244 (1999) decided that the international civil presence, will facilitate a political process designed to determine Kosovo's future status, taking into account the Rambouillet Accords²⁵, and in a final stage, overseeing the transfer of authority from Kosovo's provisional institutions to institutions established under a political settlement.²⁶

3. International Recognition of New Entities

Recognition of new entities as states is not a necessary element to define the criteria of its ability for statehood. The capacity to enter into relations with other states is one of the qualifications that a state should possess to be a person of international law.²⁷ While the political existence of the state is independent of recognition by the other states, its international recognition legitimizes the state to be part of the international system, with respective rights and obligations. The recognition of states by international law is based on conditions and limitations that serve to defend the international system from chaos and preserve international peace and stability. Conditions and limitations of state's recognition have varied in time and synthesize the best experience to preserve the international system. After the Montevideo Convention on the rights and duties of states, the

²⁴ *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*, Advisory Opinion, I.C.J. Reports 2010, p. 403.

²⁵ Rambouillet Accords, United Nations' document S/1999/648, New York.

²⁶ United Nations Security Council (1999), Resolution 1244 (1999), 10 June, New York.

²⁷ *Montevideo Convention on the right and duties of states*, 26 December 1933, 165 League of Nations Treaty Series, 19 (1933).

European Community 'Declaration on Yugoslavia and the Guidelines on the Recognition of the New States in Eastern Europe and in the Soviet Union', defined the criteria for the recognition of new states after the end of the Cold War.²⁸ The Guidelines describe the candidates for recognition as those new states which 'have constituted themselves on a democratic basis, have accepted the appropriate international obligations and have committed themselves in good faith to a peaceful process and to negotiations'. The Guidelines define also the following requirements: - respect for the provisions of the Charter of the United Nations and the commitments subscribed to in the Final Act of Helsinki and in the Charter of Paris, especially with regard to the rule of law, democracy and human rights - guarantees for the rights of ethnic and national groups and minorities in accordance with the commitments subscribed to in the framework of the CSCE - respect for the inviolability of all frontiers which can only be changed by peaceful means and by common agreement - acceptance of all relevant commitments with regard to disarmament and nuclear non-proliferation as well as to security and regional stability - commitment to settle by agreement, including where appropriate by recourse to arbitration, all questions concerning state succession and regional disputes. The Guidelines conclude with the warning that the EC countries 'will not recognize entities which are the result of aggression' and, cryptically, that they would take account of the effects of recognition on neighboring states.²⁹ The 1991 declaration dealt with the republics with well established territories, which requested to be out of the large configurations. The only case in Europe in the classical sense of a new entity is Kosovo.

Crimea and Kosovo were autonomous regions part of the republics respectively under the USSR and Former Yugoslavia. While Crimea was granted the unique status of Autonomous Republic within Ukraine with the 1996 Ukraine Constitution, the long and bloody process of the dissolution of Yugoslavia influenced a different path to independence and statehood for Kosovo.

The process of accepting Kosovo's independence went through several stages, which are assessed and supported by the international community.

²⁸ European Community, (1992), "Declaration On Yugoslavia And On The Guidelines On The Recognition Of New States", *International Legal Materials*, 31, pg. 1485.

²⁹ Rich R., (1993), "Recognition of States: The Collapse of Yugoslavia and the Soviet Union," *European Journal of International Law*, Vol. 4. pg 36-65.

In terms of international relations, Kosovo is considered a *sui generis* case. The political solution of Kosovo came as a result of the humanitarian intervention by the international community to prevent the humanitarian catastrophe caused by repression and ethnic cleansing committed by Federal Yugoslav authorities against the Albanian civilian population of Kosovo.

Secondly, the case of Kosovo was monitored by the international community, the Security Council members and the Contact Group, which have defined the process and provided the necessary solution to ensure peace and stability in the region. This process is led and facilitated by the Contact Group, with three basic conditions to be respected: No return to Serbian sovereignty; No partition of Kosovo territories; No unification with other territories.³⁰ These were the three basic negotiating principles which guided efforts of President Ahtisaari, Special Envoy of the Secretary-General of the United Nations, on the future status of Kosovo. Its Comprehensive Proposal for the Kosovo Status Settlement, which offered the best viable long-lasting solution for Kosovo and the stability of the region,³¹ was threatened by veto from the Russian Federation. The proposal got the support of all other members of the Security Council as a fair and proper solution. Today, Kosovo has been recognized by 107 states³² and is in the process of Stabilization and Association with European Union³³. The implementation of the First Agreement of principles governing the normalization of relations between Kosovo and Serbia, reached in the EU-

³⁰ "The settlement of Kosovo's status should strengthen regional security and stability. Thus, it will ensure that Kosovo does not return to the pre-March 1999 situation. Any solution that is unilateral or results from the use of force would be unacceptable. There will be no changes in the current territory of Kosovo, i.e. no partition of Kosovo and no union of Kosovo with any country or part of any country. The territorial integrity and internal stability of regional neighbors will be fully respected."

United Nations Security Council, (2005), "*Guiding principles of the Contact Group for a settlement of the status of Kosovo*", document S/2005/709, New York.

³¹ United Nations Security Council, (2007) "*Comprehensive Proposal for the Kosovo Status Settlement*", document S/2007/168/Add.1, New York.

³² As of July 2, 2014, Togo is the 107th state to recognize Kosovo as an independent and sovereign state. Available from: <http://www.mfa-ks.net/?page=2,4,2381>, [Accessed 2 July, 2014]

³³ European Union in Kosovo / European Union Special Representative from Kosovo (2014), "*Stabilization and Association Agreement negotiations successfully completed*". Available from: http://eeas.europa.eu/delegations/kosovo/press_corner/all_news/news/2014/20140502_03_en.htm, [Accessed 1 July, 2014]

facilitated Dialogue led by the High Representative of European Union for Foreign Affairs and Security Policy (Catherine Ashton), will lead towards stability in the region and creates future premises to promoting regional cooperation and peace in the Balkans.³⁴

The referendum for independence and Crimea's right to return to the Russian Federation was rejected by 13 members of the UN Security Council and abstained by China. In the absence of a UN Security Council resolution to block the referendum of Crimea (because of the veto of the Russian Federation), the UN General Assembly adopted - with 100 votes in favor, 11 against and 58 abstentions - the resolution "The territorial integrity of Ukraine", recognizing the commitment of UN Member States to the sovereignty, political independence and territorial integrity of Ukraine, within its internationally recognized boundaries. The resolution emphasizes that "the referendum held in the Autonomous Republic of Crimea and Sevastopol city on 16th March 2014, is not valid and cannot be the basis for changing the status of the Republic". It also demands from the countries, international organizations and specialized agencies not to recognize any alteration of the status of this republic and of Sevastopol city, based on the referendum "and to refrain from any action or dealing that might be interpreted as recognizing any such altered status."³⁵

4. Third-State Role in External Self-Determination of Crimea

The Russian Federation never accepted the peaceful dissolution of the former Soviet Union. President Putin considered it as '*a major geopolitical disaster of the century*'.³⁶ After years of very difficult transition, Russian Federation got its momentum to rise as a regional power. All its scenarios as regional power required a new reconfiguration of the former Soviet Union. This was influenced also by the fact that most of the former republics of USSR expressed their tendencies and aspirations to become

³⁴ "It is a milestone that officials hope will enhance stability in the region and clear a path for both countries to join the European Union." See Bilefsky D., (2013), "Serbia and Kosovo Reach Agreement on Power-Sharing", *New York Times*, 20 April p. A9.

³⁵ United Nations General Assembly Resolution, (2014), "*Territorial integrity of Ukraine*", Document A/68/L.39, New York.

³⁶ Putin V., (2005), *Annual Address to the Federal Assembly of the Russian Federation*,. Available from http://archive.kremlin.ru/eng/speeches/2005/04/25/2031_type70029type82912_87086.shtml [Accessed June 20, 2014]

members of NATO and European Union.³⁷ For Russia and its ambition for Eurasia it was unacceptable that its traditional spheres of influence, such as Georgia, Moldova, Kazakhstan and Ukraine, become part of European Union and its European security strategy. Therefore the Ukrainian revolution in autumn 2013 was considered as a direct and eminent threat to Russia's regime and its strategic plans as a regional power. To that end, to defer the developments in Ukraine and its new Western approach, the Russian Federation intervened in Crimea. This would leave Ukraine in bias and secure its strategic advantages in the Black Sea. This is the second case when the territories of other independent countries have been forcefully seized, after the peaceful dissolution of the former Soviet Union. In 2008, Russian troops occupied the territories of Abkhazia and South Ossetia from Georgia. The Crimean events might indicate that Georgia's conflict didn't occur by chance but signaled the beginning of a geo-strategic scenario for restoring the power of the former Russian Empire.³⁸ As Brzezinski has noted, 'Without Ukraine, Russia ceases to be a Eurasian empire'.³⁹

An argument used by the Russian Federation for reuniting with Crimea is the historical one. Crimea was part of Russia from 1783, when the Tsarist Empire annexed it a decade after defeating Ottoman forces in the Battle of Kozludzha, until 1954, when the Soviet government transferred Crimea from the Russian Soviet Federation of Socialist Republics (RSFSR) to the Ukrainian Soviet Socialist Republic (UkrSSR).⁴⁰ 56% of population in Crimea is Russian, 27 % Ukrainian and the rest is Tartar minority. Crimea is historically as close to Russia as to Ukraine. Although history serves to

³⁷ 'In an April 17 interview, Putin declared, "We have reached a point beyond which we cannot retreat." ...The Kremlin's determination to stop the advance of Euro-Atlantic institutions was signaled in a smaller campaign against Georgia in 2008.'

Roberts C. (2014) "The Czar of Brinkmanship," *Foreign Affairs*, Available from <http://www.foreignaffairs.com/articles/141390/cynthia-a-roberts/the-czar-of-brinkmanship>, [Accessed 11 March, 2015]

³⁸ 'Russia's invasion of this Ukrainian region is at once a replay and an escalation of tactics that the Kremlin has used for the past two decades to maintain its influence across the domains of the former Soviet Union.'

Mankoff J., (2014), "Russia's Latest Land Grab; How Putin Won Crimea and Lost Ukraine," *Foreign Affairs*, Vol. 93, No 3.

³⁹ Brzezinsky Z., (1997), "The Grand Chessboard: American Primacy and its Geostrategic Imperatives", New York: Basic Books. pg 56.

⁴⁰ Kramer M., (2014), "The Transfer of Crimea from Soviet Russia to Soviet Ukraine, 1954", London: Wilson Center. Available from: <http://wilsoncenter.org/publication/why-did-russia-give-away-crimea-sixty-years-ago#intro> [Accessed 11 March, 2015]

throw light on and understand current conditions, it is not the essential element to be considered in the developments of international relations and world system. The old dictum that international law is not an instrument for the revision of history, finds here a particular specification.

Another strong argument used by the Russian Federation is the protection of Russian “compatriots” (*sootchestvoenniki*)⁴¹. To fulfill its Euro-Asian strategy, the Russian Federation has raised the issue of its Russian compatriots in the former republics of USSR. Russia claims to protect its own citizens through intervening by force or creating parallel structures (Republic of Donetsk in Ukraine, Transnistria in Moldova, South Ossetia and Abkhazia in Georgia, etc). So Russia pressures not only Ukraine but also Baltic countries, Moldova, Georgia, and Azerbaijan through using the strategy of ethnic division to the existing frozen conflicts in these countries to intervene when it feels its influence is threatened.⁴²

The use of force by the Russian Federation in Ukraine and other countries and the use of Kosovo precedent to justify its interventions in its spheres of influence are means to its end. Crimea’s referendum and its unification with the Russian Federation is a clear breach of international law because it violates the international obligations of Russia, treaties and memorandums where Russia is a party member and is committed to respect the sovereignty and territorial integrity of Ukraine. Russia acted in violation of Budapest Memorandums on Security Assurances (1994), based on which Russia together with the United Kingdom of Great Britain and Northern Ireland and the United States of America reaffirmed their commitment to Ukraine, and confirmed to respect the independence and sovereignty and the existing borders of Ukraine.⁴³ Russia breached also the Treaty on Friendship, Cooperation, and Partnership between Ukraine and

⁴¹ “compatriots” (*sootchestvoenniki*) - a flexible term enshrined in Russian legislation that implies a common fatherland and gives Putin great latitude in determining just whom it includes. See Jeffrey Mankoff, *Russia's Latest Land Grab: How Putin Won Crimea and Lost Ukraine*, Vol. 93, No.3, *Foreign Affairs*, (May/June 2014).

⁴² *Ibid.*

⁴³ United Nations Security Council, (1994), *Memorandums on Security Assurances in Connection with Ukraine's accession to the Treaty on the Non-Proliferation of Nuclear Weapons*, Document A/49/765, December 5, Available from http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_1994_1399.pdf, [Accessed 11 March, 2015]

the Russian Federation (May 31, 1997) in which Russia acknowledged the Ukrainian borders.⁴⁴

5. Conclusions

The paper highlights essential distinctions in assessing Crimea and Kosovo. If the declaration of independence of Kosovo is invoked as a precedent to justify the secession of new entities, including Crimea, it is very significant to note that ICJ decisions are legally binding only on the parties to the case and only with respect to the case in question. They are not binding on other states or the Court itself and as a result ICJ cases do not create precedents.⁴⁵

The first distinction consists in the processes of the right to self-determination of the people of Kosovo and Crimea. Kosovo didn't declare the independence as a result of its expressed will for self-determination through the referendum. It was the ethnic cleansing and the need to protect fundamental freedoms and human rights that led to the international community's action in Kosovo. The political solution of the Kosovo conflict came as the last viable alternative to secure peace and stability in the region. In the case of Crimea, the referendum is a unilateral act to impose a political solution based on force.

The second distinction consists in the fact that Kosovo crisis is widely discussed in the Security Council, which is never expressed against a final political settlement based on the will of people. The SC resolution 1244 (1999) includes, as its annex, The Rambouillet Accord that takes into account the political solution of Kosovo. Regarding Crimea, UNSC member states preliminary articulated the non-recognition of the referendum and strongly stated in favor of the territorial integrity of Ukraine.⁴⁶

⁴⁴ See Chapters IX and X of the 1996 Constitution of Ukraine.

⁴⁵ "This is explicitly stated in article 59 of the Statute: "The decision of the Court has no binding force except between the parties and in respect of that particular case." This is logically necessary if states are to remain sovereign and the modern system is to retain state sovereignty as its legal foundation, for if decisions of the ICJ were able to create precedents then states would find themselves bound by rules that arose from cases in which they had no part. This would contradict state sovereignty."

See Hurd I., (2011), *"International Organizations: Politics, Law, Practice"*, Cambridge: Cambridge University Press, 1st Edition, p. 194.

⁴⁶ United Nations Security Council, (2014), *"UN Security Council action on Crimea referendum blocked"*, 15 March, Available from

The third distinction arises from the political reasons behind the two cases. In the case of Kosovo, there was no influence from Albania in Kosovo's succession and the idea of national unification is always ruled out. In the case of Crimea, the influence of Russian Federation is of crucial importance and the annexation of its territories was part of the political solution. The efforts of the Russian Federation to use the Kosovo precedent in the case of Crimea are used as a precondition to legitimize the case in the UN Security Council. Russian Federation tried to highlight that the action of international community and the West is based on double standards. Mentioning Kosovo as a precedent to justify the actions of Russian Federation in Crimea doesn't stand as a legal argument and an accurate precedent to justify its separation from Ukraine and annexation by Russia, but as a direct pressure on Europe and the United States to remind the international community that Russia is a world power and has the right to act on its spheres of influence. Despite that, the Russian position on Kosovo is not consistent. In the Security Council meeting, the day after the declaration of Kosovo's independence, the Russian Ambassador stated that "The unilateral declaration of independence and its recognition are not in alignment with the provisions of the Helsinki Final Act, which clearly define the principles of territorial sovereignty and integrity of the states".⁴⁷ In fact, this argument exposes the negative influence of the veto power in the UNSC, when the veto of a sole country defines the position of the international body, entrusted to maintain international peace and security. At the same time, it demonstrates the rising tendencies of regional powers towards their spheres of influence and a come-back of geopolitics and use of force, in an environment where liberal international order is based on consensus. The reference and the parallel set between Kosovo and Crimea demonstrate Russian current position of a world that must be again subject to the power of force rather than power of international law.

<http://www.un.org/apps/news/story.asp?NewsID=47362#.U3D9soGSzVF>, [Accessed 10 March, 2015].

⁴⁷ UK government's response to points made by President Putin in his address to the Russian Parliament on 17 March 2014. Available from <https://www.gov.uk/government/news/in-response-to-president-putins-address-to-the-russian-parliament> [Access 09 May, 015].

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