

CRIMEAN CONFLICT – FROM THE PERSPECTIVES OF RUSSIA, UKRAINE, AND PUBLIC INTERNATIONAL LAW

Milena Ingelevič-Citak¹

Faculty of Law and Administration, Jagiellonian University, Poland
email: milena.ingelevic-citak@uj.edu.pl

INGELEVIČ-CITAK, Milena. Crimean conflict – from the perspectives of Russia, Ukraine, and public international law. *International and Comparative Law Review*, 2015, vol. 15, no. 2, pp. 23–45. DOI: 10.1515/iclr-2016-0034.

Abstract: The article presents the Crimean conflict from Russian and Ukrainian standpoints, confronting them with international law analysis. It is worth to mention, that Crimean crisis is still extremely controversial, since both parties are justifying their actions with norms of international law. This article starts with brief introduction of historical background of the Crimean crisis. Second chapter assesses the Crimean secessionist movement claiming the right of self-determination, and its compliance with Ukrainian law. Third chapter examines Russia's position and its actions on the basis of Russian law. Fourth chapter presents the international law analysis of events in Crimea and its current legal status. Results of the analysis are presented in a conclusion.

Keywords: Crimea, Ukraine, Russia, Annexation, Intervention, International Law

1 Historical background

The Crimean Peninsula has a great strategic and military value, because of Sevastopol – warm water port, natural harbor and important naval base, access to which is giving control in and around the Black Sea, as well as provides with easy access to the Mediterranean Sea, Atlantic and Indian Oceans.

For over three centuries (1427–1783) the whole territory of peninsula was ruled by the Khanate of Crimea, which was part of the Ottoman Empire, and under its rule Crimea was inhabited mainly by Crimean Tatars. Due to expansion of Russian Empire, the peninsula was annexed into Russia in 1783. As a consequence, the territory of Crimea was gradually settled by ethnic Russians and Ukrainians².

1 Ph.D., lecturer, Chair of Public International Law, Faculty of Law and Administration, Jagiellonian University, Golebia street 9, 31–007 Krakow, Poland; email: milena.ingelevic-citak@uj.edu.pl.

2 Crimea. *Encyclopaedia Britannica* [online]. 3.21.2014 [accessed 2015-08-25]. Available on: <http://www.britannica.com/place/Crimea>.

The 20th century brought essential changes in ethnic, political and legal situation of Crimea. In 1919 the peninsula was occupied by the Red Army and in 1921 was reorganized as the Crimean Autonomous Soviet Socialist Republic – integral part of the USSR. During the World War II, in years 1941 – 1944 the Crimean Peninsula remained under Nazi occupation. At the beginning of 1944 the Red Army performed a successful military operation and as a result USSR re-captured the territory of Crimea.

On 11 May 1944 USSR State Defense Committee passed the Decree No. 5859-ss “On the Crimean Tatars”³, according to which Crimean Tatars were accused of collaborating with Nazis during World War II. This enabled Soviet authorities banning Tatars from the territory of peninsula and the extensive deportation action was conducted. Approximately 200 thousands of Tatars were forcibly displaced⁴.

As a consequence of the deportation of Crimean Tartars to Central Asia, and forcible displacement of other national minorities – among them Armenians, Bulgarians and Greeks⁵ – the economic and ethnic situation of the peninsula had changed significantly. The property left by deportees were given to Russian settlers arriving to Crimea and, as a result, in the post-war period Russians comprised majority of the Crimean population. The ethnic cleansing and havoc after World War II led to an economic collapse of the peninsula. The situation improved only in the second half of the 20th century.

In 1946 Crimea was downgraded from an autonomous republic to an “oblast” (region) of the Russian Soviet Federated Socialist Republic (RSFSR)⁶.

The turning point in forming the ethnic, economic and legal situation of peninsula was its transfer from Soviet Russia to the Ukrainian Soviet Socialist Republic (UkSSR). The decision of Soviet authorities was made to commemorate the 300th anniversary of signing the Pereyaslav Agreement⁷. On 19 February

3 Decree No. 5859-ss “On the Crimean Tatars”, USSR State Defense Committee, 11 May 1944. *memorial.krsk.ru* [online]. [accessed 2015-08-25]. Available on: <http://www.memorial.krsk.ru/DOKUMENT/USSR/440511.htm>.

4 Crimea. *Encyclopaedia Britannica* [online].: rep. ref.

5 Due to provisions of the Resolution „On the resettlement of Bulgarians, Greeks and Armenians from the territory of Crimean Autonomous Soviet Socialist Republic”, passed by USSR State Defense Committee on 2 June 1944, People’s Commissariat for Internal Affairs (NKVD) was obliged to resettle ca. 37 thousands of people. *alexanderyakovlev.org/fond* [online]. [accessed 2015-08-25]. Available on: <http://www.alexanderyakovlev.org/fond/issues-doc/1022354>.

6 Bill “On the liquidation of the Chechen-Ingush Autonomous SSR and the reorganization of Crimean Autonomous SSR to the Crimean Oblast”, RSFSR Supreme Council, 25 June 1946. *sevkrimrus.narod.ru* [online]. [accessed 2015-08-25]. Available on: <http://sevkrimrus.narod.ru/ZAKON/1945-46.htm#z>.

7 Pereyaslav Agreement was signed by the council of Cossack Army and emissaries of the Russian tsar Alexis in 1654 and established Russian rule over Ukraine. Pereyaslav Agreement. *Encyclopaedia Britannica*. [online]. 4.23.2014 [accessed 2015-08-25]. Available on:

1954 the Presidium of the USSR Supreme Council adopted a decree authorizing the transfer⁸. On 26 April 1954 the USSR Supreme Council adopted the Bill “On the transfer of the Crimean Oblast’ from the RSFSR to the UkSSR”⁹. The act approved the decree of 19 February, and ordered the implementation of amendments into the article 22 and 23 of the 1936 USSR Constitution¹⁰, due to changes of the border between the RSFSR and the UkSSR. The amended article 23 of the USSR Constitution enumerated the Crimean Oblast’ as one of 26 UkSSR regions. The further step of adapting the Soviet law to the transfer of Crimea was taken on 2 June 1954, when the Bill “On entering changes and amendments into the article 14 of the RSFSR Constitution” was passed. Due to its provisions the Crimean Oblast’ was removed from the list of the RSFSR regions¹¹.

The transfer of Crimea to the UkSSR affected the social and economic situation of peninsula. The increased inflow of the Ukrainian population influenced the improvement of infrastructure, industry and general situation of the peninsula.

In the beginning of 1990s, due to Soviet Union’s disintegration, Ukraine increased its efforts to become an independent state. On 24 August 1991 the Verkhovna Rada (Supreme Council) of the UkSSR proclaimed the independence of Ukraine¹². On 1 December 1991 the referendum and presidential elections were held¹³. The USSR recognized the independence of Ukraine on 26 December 1991¹⁴.

In 1991, shortly before the dissolution of the USSR, Soviet authorities restored the autonomy of Crimea. Since the independence of Ukraine was expected, most

<http://www.britannica.com/event/Pereyaslav-Agreement>.

- 8 Decree “On the transfer of Crimea from RSFSR to UkSSR”, Presidium of the USSR Supreme Council, 19 February 1954. *sevkrimrus.narod.ru* [online]. [accessed 2015-08-25]. Available on: <http://sevkrimrus.narod.ru/ZAKON/1954.htm>.
- 9 Bill “On the transfer of the Crimean Oblast’ from the RSFSR to the UkSSR”, USSR Supreme Council, 26 April 1954. *rusconstitution.ru* [online]. [accessed 2015-08-25]. Available on: <http://www.rusconstitution.ru/library/constitution/articles/9662/>.
- 10 Constitution of the USSR, 5 December 1936, amended 8 August 1953. *rusconstitution.ru* [online]. [accessed 2015-08-25]. Available on: <http://www.rusconstitution.ru/library/constitution/articles/9612/>.
- 11 Constitution of the RSFSR, 21 January 1937, amended 11 December 1975. *rusconstitution.ru* [online]. [accessed 2015-08-25]. Available on: <http://www.rusconstitution.ru/term/32/>.
- 12 Resolution “On the declaration of independence”, Verkhovna Rada of the UkSSR, 24 August 1991. *rusconstitution.ru* [online]. [accessed 2015-08-25]. Available on: <http://zakon2.rada.gov.ua/laws/show/1427-12>.
- 13 Resolution No. 1660-XII „On the nationwide referendum on the independence of Ukraine”, Verkhovna Rada of the UkSSR, 11 October 1991. *zakon4.rada.gov.ua* [online]. [accessed 2015-08-25]. Available on: <http://zakon4.rada.gov.ua/laws/show/1660-12>.
- 14 On 26 December 1991 USSR Supreme Council adopted the declaration of forming the Commonwealth of Independent States (CIS). Ukraine was among its members. This declaration is perceived as the final dissolution of the Soviet Union and the recognition of all CIS member states.

of the ethnic Russian population of the peninsula supported claims for the secession from Ukraine and re-joining Russia. On 4 September 1991 the Crimean Supreme Council declared independence¹⁵ and on 26 February 1992 it passed a bill on changing the name of the autonomous republic to the Republic of Crimea¹⁶.

In order to stop the independence movement on the peninsula the Verkhovna Rada of Ukraine granted Crimea with wide autonomy. The change of its legal status was confirmed by the implementation of several amendments into Ukrainian law.

The political crisis in Ukraine in the end of 2013 and beginning of 2014 played a substantial role in initiating the Crimean conflict. Ukrainian president Yanukovich suspended the negotiation on signing the association agreement with the European Union, what caused protests and demonstrations against his politics. The opposition accused Yanukovich of pro-Russian position and demanded his resignation.

Anti-governmental and pro-European demonstrations of Ukrainian citizens were held in Kiev, on the Independence Square (so-called Maidan). Brutal police action against the protesters on 30 November 2013 caused intensification of demonstrations, even among the opponents of the European integration¹⁷. A crucial moment in the development of the situation was escalation of the crisis in February 2014, when street fightings took place, resulting in death of over a hundred people. The pro-government security forces used live ammunition against protesters. Shooting at civilians caused the widespread condemnation of government's actions by Ukrainians and the international community.

On 20 February 2014 the Verkhovna Rada of Ukraine adopted a resolution, which condemned the "anti-terrorist action" of security forces and demanded them to withdraw from the Maidan. On the same day president Yanukovich left Kiev. Two days later the Verkhovna Rada adopted a resolution dismissing the president and setting earlier presidential elections on 25 May 2014. Furthermore, the Verkhovna Rada decided to restore the Constitution of 2004. It also demanded the withdrawal of security forces from the center of Kiev.

The Verkhovna Rada began immediate transformation of political structure of Ukraine. It dismissed the government, the general prosecutor, the head of the security service and the head of general prosecutor's office, the president of the

15 Declaration on Crimea's State Sovereignty, Crimean ASSR (Crimean Autonomous Soviet Socialist Republic) Supreme Council, 4 September 1994. *zakon4.rada.gov.ua* [online]. [accessed 2015-08-25]. Available on: <http://zakon2.rada.gov.ua/krym/show/rb001d002-91>.

16 Bill on the Republic of Crimea as the official name of a democratic state of Crimea, Crimean ASSR Supreme Council, 26 February 1992. *zakon4.rada.gov.ua* [online]. [accessed 2015-08-25]. Available on: <http://zakon2.rada.gov.ua/krym/show/rb0019002-92>.

17 Marxsen, Christian. The Crimea Crisis – An International Law Perspective. *Heidelberg Journal of International Law*. 2014, vol. 74, issue 2, p. 368.

National Bank, suspended judges of the Constitutional Court. The head of the Verkhovna Rada Oleksandr Turchynov was appointed the acting president (due to article 112 of the Constitution of Ukraine). Newly formed Ukrainian government was immediately recognized by the United States and European Union. However, Russia stated that the change of Ukrainian authorities was illegal and refused to recognize them as a legal government of Ukraine¹⁸.

On 1 March 2014 the prime minister of Autonomous Republic of Crimea submitted a petition to Russian authorities asking to secure peace and order in Crimea. President Putin immediately applied to the Federation Council of Federal Assembly for approval to send Russian military forces to Ukraine for stabilization of social and political situation¹⁹. He justified his request with extraordinary situation which constituted the threat for lives and health of Russian citizens, in particular members of Russian military forces stationing on the territory of Ukraine. On the same day the extraordinary session of the Federation Council took place. The resolution authorizing the Russian armed forces to be sent to the territory of Ukraine was adopted²⁰.

It is worth to mention that the intervention of Russian military forces in Crimea started much earlier than it was officially claimed. Along with intensification of the political crisis in Ukraine, Russia sent additional number of soldiers to the Crimean military base, claiming it to be compliant with bilateral agreements with Ukraine. On 21 February 2014, after the escape of president Yanukovich, unidentified armed military personnel started taking control over strategic points of the Crimean Peninsula²¹.

After the Russian authorities' decision from 1 March 2014, the Russian armed forces began undercover intervention and in a short time took control over the territory of peninsula, pretending that it was done without the direct use of the military force²². Furthermore, until half of April 2014 in all official state-

18 Владимир Путин ответил на вопросы журналистов о ситуации на Украине. *kremlin.ru* [online]. 4.3.2014 [accessed 2015-08-25]. Available on: <http://www.kremlin.ru/news/20366>.

19 Владимир Путин внёс обращение в Совет Федерации. *kremlin.ru* [online]. 1.3.2014 [accessed 2015-08-25]. Available on: <http://www.kremlin.ru/news/20353>.

20 Resolution No. 48-SF "On the use of Russian Federation Military Forces on the territory of Ukraine", Federation Council of Federal Assembly of Russia, 1 March 2014. *publication.pravo.gov.ru* [online]. 1.3.2014 [accessed 2015-08-25]. Available on: <http://publication.pravo.gov.ru/Document/View/0001201403010001>.

21 On 6 March 2014 members of OSCE Mission attempted to enter the Crimea and were stopped by armed unidentified soldiers. See Photo story: Attempt to visit Crimea aborted at Armyansk crossing. *osce.org* [online]. 7.3.2014 [accessed 2015-08-25]. Available on: <http://www.osce.org/fsc/116201>.

22 Soldiers that took over the Crimean Peninsula were unidentified, without military insignia on their uniforms. However weapons and the military equipment they had, were identical with the equipment of Russian army. Russian authorities claimed though, that these were "self-defense units", created spontaneously by Crimean people. See Владимир

ments, Russian authorities denied that Russian soldiers are outside their bases²³. Only on 17 April during the interview for leading Russian broadcasters Putin confirmed the presence of Russian military forces all over the territory of the peninsula in order to “guarantee the appropriate conditions for expressing the free will by residents of Crimea”²⁴. Moreover, he stated that Russian authorities never denied their intention to provide nations of Crimea with the possibility to express their will and for that reason Russian soldiers stood behind the “Crimean self-defense units”.

Russian military forces took control of Simferopol (the capital of Crimea), as well as all Crimean strategic positions and infrastructure, in particular airports, buildings, intersections. Russian troops blocked Ukrainian military bases because Ukrainian personnel refused to surrender. On 27 February masked armed troops occupied the buildings of Crimean parliament and government in Simferopol. On the same day Crimean authorities called a special session of parliament, during which the debate on the independence referendum took place and Sergey Aksyonov was elected as a new prime minister. The vote was carried in the presence of armed soldiers. Ukrainian authorities called this election invalid, because of violation of constitutional norms, according to which the choice of the prime minister can take place exclusively with approval of the president of Ukraine²⁵.

On 6 March 2014 the Supreme Council of Crimea, in presence of masked armed troops, adopted a resolution on holding the all-Crimean referendum on the status of Crimea, scheduled for 16 March 2014²⁶. Council decided to put two questions on a vote. First one was about the secession from Ukraine and reunification with Russia as a federal subject of the Russian Federation. Second question was concerned with the restoration of the 1992 Constitution of Autonomous Republic of Crimea and staying within the borders of Ukraine. The resolu-

Путин ответил на вопросы журналистов о ситуации на Украине: rep. ref.; see also Выступление и ответы на вопросы СМИ Министра иностранных дел России С.В.Лаврова в ходе совместной пресс-конференции по итогам переговоров с Министром иностранных дел Туниса М.Хамди, г.Тунис, 4 марта 2014 года. *mid.ru* [online]. 4.3.2014 [accessed 2015-08-25]. Available on: http://www.mid.ru/BDOMP/Brp_4.nsf/arh/51F4535E0C91706C44257C9100511BAE?OpenDocument.

23 See Владимир Путин ответил на вопросы журналистов о ситуации на Украине: rep. ref.

24 See Прямая линия с Владимиром Путиным. *kremlin.ru* [online]. 17.4.2014 [accessed 2015-08-25]. Available on: <http://www.kremlin.ru/news/20796>.

25 See article 136, Constitution of Ukraine, 28 June 1996. *zakon4.rada.gov.ua* [online]. [accessed 2015-08-25]. Available on: <http://zakon2.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80/page3>.

26 Resolution No. 1702-6/14 “On holding of the all-Crimean referendum”, Supreme Council of the Autonomous Republic of Crimea, 6 March 2014. *crimea.gov.ru* [online]. 6.3.2014 [accessed 2015-08-25]. Available on: <http://crimea.gov.ru/act/11689>.

tion provided, that the option supported by the majority of votes shall be deemed a direct expression of will by the Crimean population.

On 11 March 2014 the Supreme Council of Crimea adopted the declaration on the independence of Crimea and the city of Sevastopol²⁷. Provisions of the declaration stated that all decisions and actions taken by the Crimean authorities are based on the Charter of the United Nations and several other international legal acts. The preamble of the declaration invoked the advisory opinion of the International Court of Justice of 22 July 2010 “On the accordance with international law of the declaration of independence of Kosovo”. The Council strongly emphasized that the ICJ ruled that the unilateral declaration of independence made by the part of a state territory doesn't violate general international law. Therefore, bearing in mind such a position of the Court, the Supreme Council made a decision to proclaim the sovereign and independent state – the Republic of Crimea, if its residents will vote in favour of joining the Russian Federation during the referendum. Furthermore, the Council decided to send a request to the Russian authorities for signing the international agreement on this matter.

The Crimean independence referendum was held on 16 March 2014. According to official results, 96.77% of voters have supported joining the Russian Federation²⁸. Ukrainian government announced that the referendum was illegitimate, unconstitutional, and its results could not be recognized. Ukraine questioned the official outcome of the referendum, because of the suspected falsification of votes²⁹, and because of the presence of armed soldiers and paramilitary groups on the peninsula.

On 17 March 2014 the Supreme Council of Crimea proclaimed independence and appealed for accepting the independent state of Crimea as a new member of the international community. Crimean parliament applied to the Russian authorities for accepting Crimea as a new subject of the Russian Federation with the status of a republic. On the same day president Putin signed the Decree No. 147 “On the recognition of the Republic of Crimea”³⁰ with immediate effect.

27 Resolution No. 1727-6/14 “On the declaration of independence of Autonomous Republic of Crimea and the city of Sevastopol”, Supreme Council of the Autonomous Republic of Crimea, 11 March 2014. *crimea.gov.ru* [online]. 11.3.2014 [accessed 2015-08-25]. Available on: <http://crimea.gov.ru/act/11726>.

28 Results of the referendum were published on the official website of the Supreme Council of Crimea. See На общекрымском референдуме 16 марта 2014 года за воссоединение Крыма с Россией на правах субъекта РФ проголосовали 96,77% крымчан. *crimea.gov.ru* [online]. 17.03.2014 [accessed 2015-08-25]. Available on: http://www.crimea.gov.ru/news/17_03_2014_3.

29 Interesting analysis of the voting in comparison with results is presented in the paper Киреев, Александр. Математика и референдум по Крыму. *trv-science.ru* [online]. 25.3.2014 [accessed 2015-08-25]. Available on: <http://trv-science.ru/2014/03/25/matematika-i-referendum-po-krymu/>.

30 Decree No. 147 “On recognition of the Republic of Crimea”, President of the Russian Federation, 17 March 2014. *kremlin.ru* [online]. 17.3.2014 [accessed 2015-08-25]. Available

According to its provisions, due to the outcome of Crimean referendum, Russian Federation had recognized the Republic of Crimea as an independent state with a city of Sevastopol which had a special status.

One day later, the agreement on accession of the Republic of Crimea to Russia was signed³¹. Its preamble invoked the principle of equality of all nations, and a right for self-determination, according to which every nation has the right to determine its political status, social, cultural and economic development while other states are obliged to respect its decision.

On 21 March 2014 the agreement was ratified by Federal Assembly of the Russian Federation. Due to its provisions, Crimea and Sevastopol acquired the status of federal subjects of the Russian Federation and the border between Crimea and Ukraine became the national border of Russia. All residents of the peninsula acquired *ipso iure* Russian citizenship, unless they filed the declaration of keeping Ukrainian citizenship³². Elections of the new Crimean and Sevastopol authorities were scheduled for second Sunday of September 2015.

International organizations, in particular UN, OSCE, EU and the European Council, condemned the armed interference of Russia and demanded the Russian authorities to stop violating the international law. The Council of the EU imposed personal sanctions – asset freeze and travel restrictions – on over 130 Russian citizens, mainly politicians and businesspeople. Moreover, the EU applied economic sanctions which limited the access to west capital markets for largest Russian banks, and targeted exchange with Russia in several economic sectors³³.

As a result of applying restrictive measures Russia has been experiencing the international isolation, nevertheless it didn't bring expected effects. Russian authorities haven't changed their policy on the Crimean Peninsula, but just the opposite – they applied retaliatory sanctions, enforcing ban on the import of some groups of agricultural raw materials, food and goods from several EU countries.

on: <http://www.kremlin.ru/events/president/news/20596>.

31 Agreement between the Russian Federation and the Republic of Crimea on accession of the Republic of Crimea into the Russian Federation and forming new subjects within the Russian Federation, 18 March 2014. *kremlin.ru* [online]. 18.3.2014 [accessed 2015-08-25]. Available on: <http://www.kremlin.ru/events/president/news/20605>.

32 People wanting to keep Ukrainian citizenship have met with numerous obstacles – beginning from very short term for application (1 month), by very few institutions accepting applications (during first days – only 2 for the whole peninsula), to the lack of the clear procedure. See Проблемы жителей Крыма. *president-soviet.ru* [online]. 22.4.2014 [accessed 2015-08-25]. Available on: http://president-sovet.ru/members/blogs/bobrov_e_a/problemy-zhiteley-kryma-/.

33 See EU restrictive measures in response to the crisis in Ukraine. *consilium.europa.eu* [online]. 25.8.2015 [accessed 2015-08-25]. Available on: <http://www.consilium.europa.eu/en/policies/sanctions/ukraine-crisis/>

2 The Independence of Crimea and its Compliance with Ukrainian Law

In February 2014 Ukrainian authorities, facing the political crisis, made some efforts to prevent the escalation of conflict on the Crimean Peninsula. Major changes in the Ukrainian legal order were planned. Nevertheless, the authorities of Crimea had continued preparations for the independence referendum.

On 11 March 2014 the Verkhovna Rada of Ukraine passed a resolution³⁴, which stated that the decision of the Crimean Supreme Council on holding the all-Crimean referendum was unconstitutional and therefore invalid. The Verkhovna Rada demanded the decision to be changed and if not, Crimean Council would be dissolved. Therefore, on 15 March the Verkhovna Rada of Ukraine formally dissolved the Crimean parliament for the violation of Ukrainian Constitution and ordered pre-term elections³⁵.

After the referendum was held and Crimea proclaimed its independence, Ukrainian authorities asked the members of international community not to recognize the Republic of Crimea. Ukraine rejected the legal validity of the Crimean referendum and its declaration of independence and as a consequence has not recognized the incorporation of the peninsula into Russian Federation. Ukrainian authorities consider Crimea and the city of the Sevastopol as a temporarily occupied territory.

2.1 The compliance of All-Crimean Referendum with Ukrainian Law

On 6 March 2014 the Supreme Council of the Autonomous Republic of Crimea adopted a Decree No. 1702-6/14 “On holding of the all-Crimean referendum”³⁶. In the preamble Council has stated that the social and political situation in Ukraine had been destabilized due to an unconstitutional transition of power, conducted by nationalistic groups, which tend to violate the basic human rights. The Council has also stated that nationalistic group tried to destabilize the situation in Crimea and to take control over the peninsula. Therefore, in order to preserve fundamental values and human rights, and to enable the population of Crimea to express their free will, Crimean authorities decided to hold a referendum.

34 Resolution No. 857-VII „On the decision of the Supreme Council of the Autonomous Republic of Crimea of 6 March 2014 regarding holding of the all-Crimean referendum”, Verkhovna Rada of Ukraine, 11 March 2014. zakon4.rada.gov.ua [online]. 11.3.2014 [accessed 2015-08-25]. Available on: <http://zakon4.rada.gov.ua/laws/show/857-18>.

35 Resolution No. 891-VII „On the dissolution of the Supreme Council of the Autonomous Republic of Crimea”, Verkhovna Rada of Ukraine, 15 March 2014. zakon4.rada.gov.ua [online]. 15.3.2014 [accessed 2015-08-25]. Available on: <http://zakon2.rada.gov.ua/laws/show/891-18>.

36 Decree No. 1702-6/14 „On holding of the all-Crimean referendum”, Supreme Council of the Autonomous Republic of Crimea, 6 March 2014. crimea.gov.ru [online]. 6.3.2014 [accessed 2015-08-25]. Available on: <http://crimea.gov.ru/act/11689>.

Most of provisions of the decree deal with the procedures for conducting the referendum, „technical” and organizational issues. The decree also includes statements on accession of the Republic of Crimea into the Russian Federation. The Supreme Council has decided to join the Russian Federation and to make a request to president Putin and Russian parliament to start the procedure of incorporating the Autonomous Republic of Crimea into the Russian Federation.

The Supreme Council based the legality of its decision concerning the referendum on a compliance with constitutional norms. Council states that – according to provisions of the 1998 Constitution of the Autonomous Republic of Crimea³⁷ (in particular article 18 and article 26) – the decision on holding and conducting a local referendum is within a competence of the Crimean Supreme Council. Such competences are also confirmed in article 138 of the 1996 Constitution of Ukraine³⁸. Nevertheless, it is worth noticing that these competences are limited to local issues, whereas the decision on secession is an act with legal implications for the whole territory of Ukraine.

For the assessment of validity of the Crimean referendum three more articles of the Ukrainian Constitution have to be mentioned: it's article 2 which establishes the indivisibility of the Ukrainian state territory, article 134 due to which Ukraine is a unitary state, while the Autonomous Republic of Crimea is an integral part of it and, finally, article 135 according to which all acts of the Crimean authorities must be in accordance with constitutional law and other national laws.

To summarize, any changes to the territory of Ukraine (in particular secession) can be resolved exclusively by the all-Ukrainian referendum (article 73 of the Constitution of Ukraine). Therefore, Crimean referendum on the secession from Ukraine should be considered as a violation of Ukrainian constitutional norms, and in effect should be deemed as invalid.

Another issue causing serious doubts about validity of the referendum are the questions for voters. The most controversial is the fact that both questions reflected choosing a serious change in the functioning of the Autonomous Republic of Crimea, and none of the questions enabled voting for preserving current legal status of peninsula.

First option for voters was a choice for secession from Ukraine and incorporation into the Russian Federation. As presented above, such solution constituted a violation of the Constitution of Ukraine and the legal status of Autonomous Republic of Crimea as an integral part of the territory of Ukraine.

37 Constitution of the Autonomous Republic of Crimea, Supreme Council of the Republic of Crimea, 21 October 1998.

38 Constitution of Ukraine, Verkhovna Rada of Ukraine, 28 June 1996. zakon4.rada.gov.ua [online]. 15.5.2014 [accessed 2015-08-25]. Available on: <http://zakon4.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80>.

Second option, which was presented for voters, was restoring of the 1992 Constitution of the Autonomous Republic of Crimea, and remaining within borders of Ukraine. Such a solution was not violating the constitutional norms of Ukraine and Crimea, and could be presented on a referendum, but only in case of presenting other, legally valid options for voters.

The validity of Crimean referendum and its compliance with the Constitution of Ukraine was examined by the Ukrainian Constitutional Court. The examination procedure was initiated by the acting president, the speaker of parliament, and by Ukrainian parliamentary commissioner for human rights. They filed a petition on 7 March 2014 putting a question whether the decision of Crimean authorities on conducting the referendum is in accordance with constitutional norms.

In the judgement of 14 March 2014³⁹ the Constitutional Court has stated: “The Constitutional Court of Ukraine considers that the Verkhovna Rada of the Autonomous Republic of Crimea, by adopting the Resolution, which provides accession to the Russian Federation as its subject, addressing to the President and Federal Council of the State Duma of the Russian Federation to initiate the procedure of accession to the Russian Federation as a subject of Russian Federation, putting to the referendum mentioned questions, violated constitutional principle of territorial integrity of Ukraine and exceeded its authorities, and thus the Resolution does not comply with Articles 1, 2, 5, 8, paragraph 2 of Article 19, Article 73, paragraph 3 of Article 85, paragraphs 13, 18, paragraph 20 of Article 92, Articles 132, 133, 134, 135, 137, 138 of the Constitution of Ukraine”.

The Court has concluded that the state’s sovereignty over the whole territory, and the territorial integrity are the most important values for the state. It also emphasized that the Constitution of Ukraine is the highest law in the country and all legal acts must be in compliance with it. The Court has ruled that the Autonomous Republic of Crimea remains an integral part of the state territory of Ukraine and that all changes of the country borders can be validated by an all-Ukrainian referendum, since the constitutional status of administrative units, including the Autonomous Republic of Crimea, can be changed only by the all-Ukrainian level decisions.

Therefore, the Court has decided to recognize the decision of Crimean authorities as non-conforming with the Constitution of Ukraine and to terminate the work of the Council of the Autonomous Republic of Crimea on holding of an all-Crimean referendum.

³⁹ *The case on the all-Crimean referendum in the Autonomous Republic of Crimea*, Case No. 1-13/2014, Constitutional Court of Ukraine, judgement, 14 March 2014. mfa.gov.ua [online]. 15.3.2014 [accessed 2015-08-25]. Available on: <http://mfa.gov.ua/en/news-feeds/foreign-offices-news/19573-rishennya-konstitucijnogo-sudu-v-ukrajini-shhodo-referendumu-v-krimu>.

Both the provisions of the Ukrainian Constitution, and the provisions of the Constitution of the Autonomous Republic of Crimea clearly point to the fact that sovereignty and territorial integrity are basic values for the legal system of Ukraine.

At this point it is worth to mention the report of the European Commission for Democracy through Law (Venice Commission)⁴⁰. The Commission has made an assumption that a state which emphasizes unity and territorial integrity as basic values of its legal system, in fact does not include the issue of secession among the available legal solutions in the country's legal order. The Ukrainian law does not prohibit the secession *explicite*, but – in the light of the mentioned report – its provisions confirming the territorial integrity of the state shall be interpreted as prohibiting secession.

Summing up, it shall be emphasized that the legal system of Ukraine does not enable territorial changes by a local referendum. All changes in this matter can be done only by an all-Ukrainian referendum. Also, it must be mentioned that the integrity and unity of the Autonomous Republic of Crimea and the rest of Ukrainian territory is one of basic constitutional values. It means that any changes of this situation would require a prior amendment of the Constitution. However, such alterations would be invalid, as its article 157 prohibits any changes violating the principle of territorial integrity of Ukraine.

Taking into consideration the basic values of the Ukrainian legal system, the decision of the Crimean Supreme Council on holding the referendum regarding secession is a serious violation of constitutional norms. Moreover, during the period of holding the referendum, Crimea didn't have legal authorities, as the Verkhovna Rada of Ukraine has dismissed them on 15 March 2014. As a result, the Crimea referendum does not meet the requirements for validity by a state law, and it constitutes an act with no binding legal results.

2.2 The Circumstances of Referendum and the issue of its validity

The Crimean referendum, as it was shown above, is invalid due to violation of constitutional norms. However, there is one more circumstance affecting the evaluation of its binding force. That is the presence of armed troops in the period before the referendum and as well as on the day of holding it. The occupation of the peninsula raise serious concerns about the credibility of voting.

On 16 March 2014 UN Assistant Secretary-General for Human Rights Ivan Simonovic said that “the presence of paramilitary and so-called self-defence groups, as well as soldiers in uniform but without insignia, was not conducive to

40 European Commission for Democracy through Law, *Self-determination and secession in constitutional law*, Report, 10–11 December 1999. *venice.coe.int* [online]. 12.1.2000 [accessed 2015-08-25]. Available on: [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-INF\(2000\)002-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-INF(2000)002-e).

an environment in which voters could freely exercise their right to hold opinions and the right to freedom of expression⁴¹.

This was also confirmed by the Venice Commission in its opinion, dated 21 March 2014, regarding the compatibility of the Crimean authorities' decision with constitutional principles⁴². Commission has stated that "circumstances in Crimea did not allow the holding of a referendum in line with European democratic standards. Any referendum on the status of a territory should have been preceded by serious negotiations among all stakeholders. Such negotiations did not take place".

To summarize, the presence of armed troops during the referendum has to be treated as a reason to dismiss the validity of the referendum. Nevertheless, despite all reports about irregularities and allegations of fraud, the outcome of all-Crimean referendum could not be verified. Therefore, we cannot exclude that a wide support for secession from Ukraine and for integration with Russia would be real among the population of Crimea.

3 Russia's Position and its Actions on the Basis of Russian Law

Russian authorities are referring to international law and to Russian legal acts to justify their position on the status of Crimea. Russia states that there was a legal basis for its intervention on the peninsula, i.e. the right of Crimean people to self-determination expressed by the outcome of all-Crimean referendum and as a consequence the right of Crimea to secede from Ukraine, as well as two principles of international law: intervention upon invitation and the protection of nationals abroad.

3.1 Russia's Assessment of Events in Ukraine

The position of Russia on the situation in Ukraine was presented by the Russian authorities in numerous statements, interviews and press conferences.

The detailed assessment of Ukrainian crisis and events in Crimea was expressed by president Putin during his interview with media representatives on 4 March 2014⁴³. Putin called the situation in Ukraine an unconstitutional takeo-

41 See Unrest in eastern Ukraine risks 'seriously destabilizing' entire country – UN rights official. *un.org* [online]. 16.3.2014 [accessed 2015-08-25]. Available on: <http://www.un.org/apps/news/story.asp?NewsID=47601&Cr=ukraine&Cr1=#.VebS7zbovui>.

42 European Commission for Democracy through Law, *Whether the decision taken by the Supreme Council of the Autonomous Republic of Crimea in Ukraine to organise 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, 21 March 2014. *venice.coe.int* [online]. 21.3.2014 [accessed 2015-08-25]. Available on:

[http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2014\)002-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2014)002-e).

43 See Владимир Путин ответил на вопросы журналистов о ситуации на Украине: rep. ref.

ver and forced seizure of power. In his opinion, newly elected Ukrainian authorities were only partially legitimate and the acting president was definitely not legitimate, as the procedure of impeachment wasn't carried out, therefore, from a legal standpoint, Yanukovich stayed the only legitimate president of Ukraine. Putin told about the decision to provide financial aid for Crimea, which had turned asked Russia for humanitarian support. He denied that Russian troops were deployed on the Crimean Peninsula and asserted that armed groups taking control of Crimea are members of local self-defense groups. He stressed additionally that there was not a single gunshot or a single armed conflict. Moreover, president Putin claimed that the use of force in Ukraine would be the very last resort. However, he also mentioned that there was the legal basis for Russian intervention which was a direct appeal of legitimate Ukrainian president Yanukovich, asking Russia to use the armed forces to protect citizens of Ukraine. Moreover, president Putin claimed that people from eastern regions of Ukraine also asked Russia for help because of uncontrolled crime spread, what would be the next reason for armed intervention. He declared that Russia would do everything to protect these people. It is worth to mention, Putin told journalists, that Russia did not consider the possibility of Crimea joining the Russian Federation, nevertheless the people of Crimea had the right for self-determination, so they could make such a decision.

The position of Russia on events in Ukraine was also presented by Russian prime minister Medvedev during the interview for Bloomberg Television. Medvedev stressed that Russia considered current Ukrainian government as only *de facto* authority, not legitimate because of an unconstitutional way of appointing it. Medvedev denied that Russia has annexed the Crimean Peninsula and stated that Crimean authorities held the referendum, therefore have exercised their right to determine the social, economic and political status of the region. According to the prime minister's opinion, the process of "secession" of the peninsula was in full compliance with international law – at first Crimean residents held the referendum and voted in favour of secession from Ukraine, next step was the proclamation of independence of Crimea, which was immediately recognized by Russia and only then the incorporation took place⁴⁴.

Currently there are no significant changes in the position of Russia, which claims that no violation of international law in Crimea took place. Although president Putin has confirmed the presence of Russian military forces on the Crimean Peninsula during February and March events, as well as admitted that Russia was considering to incorporate Crimea into Russia before the referendum was held and before its outcome was known⁴⁵.

44 See Dmitry Medvedev: The Bloomberg Interview. *bloomberg.com* [online]. 22.5.2014 [accessed 2015-08-25]. Available on: <http://www.bloomberg.com/news/videos/b/1a6c7355-b42f-4d2d-83ac-2e4616390973>.

45 Putin revealed Russia's plans on Crimea in the TV documentary "Crimea. The way to homeland". See Кондрашов, Андрей. Крым. Путь на Родину. *vesti.ru* [online]. 15.3.2015

3.2 Russia's arguments presented to authorize its actions

Russian authorities have referred to several legal acts and legal principles to justify their actions. Main arguments and their legal evaluation will be presented below.

3.2.1 Invalidity of the transfer of Crimea

First of all, Russia claims that historically and legally Crimea and the city of Sevastopol had never belonged to Ukraine, as its cession in 1954 was illegal and therefore it had no legal effect⁴⁶. In early 1990s this issue was a subject of the research conducted by one of the governmental committees. Its report was a basis for the Supreme Council of the Russian Federation to adopt several legal acts in 1992. According to their provisions, Council has decided to continue the research on legal acts that were passed in 1954. The committee presented also the legal opinion on a decree of the Presidium of the USSR Supreme Council concerning the transfer of Crimea, adopted on 19 February 1954. Committee regarded it uncompliant with the Constitution of RSFSR and therefore having no legal effect from the very beginning⁴⁷.

President Putin in his speech on 18 March 2014 on the occasion of Crimea joining the Russian Federation said that "Crimea has always been an inseparable part of Russia", and the decision on its transfer in 1954 "was made in clear violation of the constitutional norms"⁴⁸.

First of all, we should examine whether the act on transfer of Crimea into the UkSSR was compliant with the 1936 USSR Constitution and the 1937 RSFSR Constitution, which were binding in 1954. According to article 14 of the USSR Constitution, the right to change the structure and borders of federative republics were reserved exclusively for main organs of the state and due to article 30 of the USSR Constitution, the Supreme Council was one of them. Regions of the USSR and the UkSSR were listed in articles 22 and 23 of the USSR Constitution. Therefore, every change in this matter required also the amendment of the Constitution, whereas article 146 stated that only the USSR Supreme Council could make such a decision. It's exactly what was done on 26 April 1954, when a

[accessed 2015-08-25]. Available on: http://www.vesti.ru/videos/show/vid/638944/#/video/https%3A%2F%2Fplayer.vgtrk.com%2Fiframe%2Fvideo%2Fid%2F1188981%2Fstart_zoom%2Ftrue%2FshowZoomBtn%2Ffalse%2Fsid%2Fvesti%2FisPlay%2Ftrue%2F%3Facc_video_id%3D638944.

46 See the PhD thesis of Yuriy Meshkov (separatist president of Crimea) – Мешков, Юрий Александрович. *Конституционно-правовой статус Республики Крым*. Москва: Московская государственная юридическая академия, 2000.

47 Мочалов, Э.А. – Шершнеф, Л.И. – Касатонов, И.В. – Королев, С.И. – Чекмезов, В.И. – Шипков, В.А., *Крым-Севастополь-Россия. История. Геополитика, Будущее*, Москва: Единение, 2007, p. 104.

48 See Address by President of the Russian Federation. *kremlin.ru* [online]. 18.3.2014 [accessed 2015-08-25]. Available on: <http://en.kremlin.ru/events/president/news/20603>.

bill on the transfer of Crimea was passed. Therefore, only the decree adopted by the Presidium of the USSR Supreme Council on 19 February 1954 had violated constitutional norms and could be considered as having no legal effect. Nevertheless, it is worth noticing, that two months after the decision of the Presidium, the USSR Supreme Council passed a bill and authorized the transfer of Crimea in compliance with constitutional norms.

Next issue which has to be examined is whether the transfer of Crimea violated the 1937 RSFSR Constitution. According to its article 16, the territory of the RSFSR could not be changed without an acceptance of the republic, expressed by its authorities. All changes required also the amendment of the Constitution. There was no direct decision of the RSFSR Supreme Council on the acceptance of the cession of Crimea, but the bill on the revision of article 14 of the RSFSR Constitution was passed on 2 June 1954, what had to be considered as the implied acceptance.

Due to presented above, Russian position on the invalid transfer of Crimea to Ukraine seems to have no legal basis.

3.2.2 Sevastopol was Never Officially Transferred to Ukraine

By the 29 October 1948 decree of the Presidium of the RSFSR Supreme Council⁴⁹, the city of Sevastopol was declared a separate administrative RSFSR subject. On the same day the Presidium of the RSFSR Supreme Council has adopted a Decree No. 1082⁵⁰, which regulated the special way of financing the city from the federal budget of the RSFSR.

The legal acts on the transfer of Crimea did not include any decisions regarding Sevastopol, which constituted an administrative unit separate from Crimea. Moreover, after the transfer of Crimea into Ukraine, the city of Sevastopol was still financed from the federal budget of the RSFSR. Only 14 years later, the Cabinet of the RSFSR has cancelled the 1948 decree, but this decision could not be treated as a *de iure* transfer of Sevastopol into the UkSSR, especially due to the fact that the Cabinet had no competences to cede a part of the RSFSR territory.

Due to a new Constitution of the UkSSR, adopted in 1978⁵¹, Sevastopol was considered a part of Ukraine, despite the lack of legal bilateral regulation of this

49 Decree No. 761/2 “On separation of the city of Sevastopol into the separate administrative-economic unit”, Presidium of the RSFSR Supreme Council, 29 October 1948. *pravo.levonevsky.org* [online]. [accessed 2015-08-25]. Available on: <http://pravo.levonevsky.org/baza/soviet/sss6317.htm>.

50 Decree No. 1082 “On issues of the city if Sevastopol”, Cabinet of the RSFSR, 29 October 1948. *sevkrimrus.narod.ru* [online]. [accessed 2015-08-25]. Available on: <http://sevkrimrus.narod.ru/ZAKON/sew48god.htm>.

51 Constitution of the UkSSR, 20 April 1978. *zakon4.rada.gov.ua* [online]. [accessed 2015-08-25]. Available on: <http://zakon4.rada.gov.ua/laws/show/888-09/ed19780420>.

issue. The RSFSR government did not contest that fact, and had not issued any territorial claims towards Ukraine.

On 9 July 1993 the Supreme Council of the Russian Federation has adopted the resolution „On the legal status of Sevastopol”⁵², which recognized the Russian sovereignty over the city within its borders of December 1991, and has recommended the amendments to the Russian Constitution. However, the constitutional changes regarding that matter had not been done.

To summarize, the city of Sevastopol was a *de facto* part of Ukraine since mid-20th century. It seems that despite the lack of bilateral agreements or other legal acts determining the status of Sevastopol, it was considered a Ukrainian territory. In 2003 a delimitation agreement between Russia and Ukraine was signed and as a consequence, the legal and national status of the city were determined. The Russian Federation in a distinct and explicit way recognized the Sevastopol as a part of Ukraine.

3.2.3 No Delimitation and Demarcation of Ukraine Border was conducted

In order to authorize Crimea’s annexation Russian authorities claim that no agreement on inter-state border between Ukraine and the Russian Federation was signed. However, it is worth mentioning, that the Verkhovna Rada of Ukraine started the process of setting its borders immediately after seceding from the Soviet Union. On 12 September 1991 the Verkhovna Rada passed a bill on legal succession⁵³ and on 4 November 1991 adopted a bill on a national border⁵⁴. According to article 5 of the bill on legal succession, the UkSSR border of 16 July 1990, separating it from the Belarussian SSR, the RSFSR and the Republic of Moldova, as well as the USSR border separating the UkSSR from the remaining states, became the state border of Ukraine.

The key role in determining the Ukrainian national border plays a bilateral agreement, signed between Russia and Ukraine in Kiev on 28 January 2003⁵⁵. Precise maps illustrating the inter-state border were attached to this agreement. The demarcation procedure thus was conducted only 7 years later when appropriate agreement between Russia and Ukraine was signed.

It is worth to mention, that Russian authorities accepted these bilateral agreements as the approval of existing border, due to which the Crimean Peninsula

52 Мочалов, Э.А.: rep. ref., p. 106.

53 Bill No. 1543-XII “On the legal succession of Ukraine”, Verkhovna Rada of Ukraine, 5 October 1991. [zakon4.rada.gov.ua \[online\]](http://zakon4.rada.gov.ua/zakon2.rada.gov.ua/laws/show/1543-12). [accessed 2015-08-25]. Available on: <http://zakon2.rada.gov.ua/laws/show/1543-12>.

54 Bill No. 1777-XII “On the state border of Ukraine”, Supreme Council of Ukraine, 4 November 1991. [zakon4.rada.gov.ua \[online\]](http://zakon4.rada.gov.ua/zakon2.rada.gov.ua/laws/show/1777-12). [accessed 2015-08-25]. Available on: <http://zakon2.rada.gov.ua/laws/show/1777-12>.

55 Agreement between the Russian Federation and Ukraine on the state borders, 28 January 2003. [zakon4.rada.gov.ua \[online\]](http://zakon4.rada.gov.ua/laws/show/643_157). [accessed 2015-08-25]. Available on: http://zakon4.rada.gov.ua/laws/show/643_157.

has stayed within Ukraine. President Putin in his speech on 18 March 2014 confirmed, that these agreements should be considered as *de facto* and *de iure* recognition of Crimea as the part of the Ukrainian state territory. All doubts on the border, the national status of Crimea and Sevastopol were definitely settled⁵⁶.

3.2.4 Unconstitutional change of authorities

Russia considered the dismissal of president Yanukovich as unconstitutional and violating the Ukrainian law. Russian authorities claimed that newly elected Ukrainian government was not legitimate.

In fact, the impeachment procedure was not carried out in compliance with Ukrainian constitutional norms. Primarily, according to article 111 of the Ukrainian Constitution, the initiation of impeachment procedure requires the 75 % majority of constitutional number of parliament members (450). Only 73 % have voted on removal of Yanukovich. Secondly, an investigation commission would have to be established to examine the case. Results of investigation should be presented to the parliament, which votes on bringing up the charges. The decision had to be taken by two thirds of the majority. There was no commission established in Yanukovich case. Finally, the decision of parliament had to be confirmed by three quarters of members of the Ukrainian Constitutional Court. Neither of these provisions were respected. Therefore, the removal of Yanukovich violated the Constitution of Ukraine⁵⁷.

Nevertheless, Yanukovich fled to Russia and *de facto* lost his position. Moreover, a new government was elected and was recognized by many states as representatives of Ukraine. Ukrainian military and security forces supported the new government.

3.2.5 Intervention on Invitation

Russian authorities attempted to legitimize the use of forces on the Crimean Peninsula by stating it was an intervention upon the invitation of president Yanukovich and Crimean authorities. An intervention on invitation is acceptable under international law, however, the Russian authorities' actions do not meet their basic conditions.

The requirement for such intervention is, first of all, a consent of the state's highest authorities', recognized by the international community as state legitimate representatives. The consent should be expressed in a clear, direct way, without any external pressure, and should be given prior to the intervention. There is no possibility to examine whether the invitation expressed by Yanukovich fulfilled requirement concerning clear and free consent, furthermore, there are no evidences that his letter to Russian authorities exists at all. Moreover, a

56 Обращение Президента Российской Федерации. *kremlin.ru* [online]. 18.3.2014 [accessed 2015-08-25]. Available on: <http://www.kremlin.ru/news/20603>.

57 Marxen, Ch.: rep. ref., pp. 7–8.

main issue is that Yanukovich, after his dismissal, cannot be considered a state representative entitled to make such an invitation, while the Crimean government is not state's highest authority, therefore is not entitled to give a consent for Russian intervention.

Consequently, justifying the Russian intervention with an invitation from president Yanukovich, or from Crimean authorities is groundless, so the presence of Russian military troops in Crimea constitutes unlawful use of force⁵⁸.

3.2.6 The Right to Protect Nationals

Another claim justifying the Russian military intervention was the alleged need for protecting the lives and health of Russian citizens and of ethnic Russians in Crimea⁵⁹. According to international law, the reason for such actions may only be a real, serious threat for citizens' lives and health, with grave violation of people's rights by government, and in situation of exhaustion of all peaceful measures. Such reasons have not been met in Crimea, as the Ukrainian authorities did not pose any threat to the population of Crimea, what was confirmed by international observers.

Russian national law provides Russian authorities with a right to use force when the protection of its citizens is needed, however national law is not applicable in inter-state conflicts and under international law a right to use armed force to protect own citizens does not include the protection of ethnic minorities on the territory of another state⁶⁰.

Consequently, Russian intervention cannot be considered the protection of its citizens. It was an act of armed aggression and cannot be treated as self-defense under article 51 of the UN Charter⁶¹.

4 The international law analysis of events in Crimea and the current legal status of the peninsula

The international community considers Russia's actions in Crimea as a serious violation of international law. Russia broke several bilateral and multilateral agreements regulating her relations with Ukraine.

The referendum on the peninsula was invalid, therefore Crimea has not become an independent state. International law does not allow to intervene in the territory of other state in order to rescue nationals, or to intervene upon

58 Marxen, Ch.: rep. ref., pp. 7–10.

59 Владимир Путин внёс обращение в Совет Федерации.: rep. ref.

60 It shall be observed that Russia tried to adapt the actual situation to the requirements of international law, especially by introducing a fast-track procedures of granting the Russian citizenship.

61 Article 51 of the UN Charter grants every country with a right to self-defense in case of military attack. However, Ukraine did not started any actions which could be treated as an act of aggression against Russia.

the unauthorized invitation. The Crimean authorities could not invite Russian military troops and to secede from Ukraine. Therefore, from the perspective of international law, Crimea remains the territory of Ukraine.

4.1 General Principles of International Public Law

Russia, by annexing the Crimean Peninsula, has violated several general principles of international law, i.e. territorial integrity, sanctity of state borders, non-use of force, and non-intervention into other state's internal affairs.

The actions of the Russian Federation shall be treated as a direct aggression against Ukraine. According to the UN General Assembly Resolution No. 3314 of 1974⁶², aggression is an act of using armed force by one state against other state's sovereignty, territorial integrity, and political independence. The resolution lists examples of activities considered acts of aggression, in particular naval blocking of ports or coastline, using of armed forces stationed on the state's territory with violating the agreements regulating that stationing, and refusing to pull back troops after the agreement was terminated.

The above examples reflect exactly the actions of the Russian Federation on Ukrainian territory. The illegal character of Russian conduct in Crimea, constituting an act of aggression, and the lack of legal basis for secession of Crimea from Ukraine creates a situation obliging the international community to treat the Crimean Peninsula as an occupied territory, and to consider the Russian annexation of Crimea an illegal action.

4.2 Multilateral and Bilateral Agreements between Russia and Ukraine

On 5 December 1994 in Budapest the United States, Russian Federation, United Kingdom, and Ukraine have signed three agreements in connection to Ukraine's joining the *Treaty on the Non-Proliferation of Nuclear Weapons*. One of them is the Budapest Memorandum on Security Assurances⁶³. In exchange for becoming the non-nuclear-weapon state, Ukraine has received security assurances from the United States, Russian Federation, and United Kingdom. These states have assumed obligation to respect sovereignty, territorial integrity, and existing borders of Ukraine, in accordance with the Helsinki Final Act, and declared they would not use force or a threat of force against territorial integrity and political independence of Ukraine. The only exception would be self-defense, or actions based on the UN Charter.

After the annexation of Crimea, many countries have accused Russia of breaking the obligations assumed in the Budapest Memorandum⁶⁴. However,

62 UN General Assembly Resolution No. 3314, Definition of Aggression, 14 December 1974, UN Doc. A/Res/3314 (XXIX).

63 Budapest Memorandum on Security Assurances, 5 December 1994, UN Doc. A/49/765.

64 See Oral statement to Parliament. UK's response to the situation in Ukraine. *gov.uk*

the Russian authorities have rejected that claim by stating that secession of the Crimean Peninsula is a result of an internal political conflict and of social and economic crisis, while the Russian Federation is not obliged to force a part of Ukraine to remain a part of its territory.

To conclude, the Russian Federation has clearly violated its obligations under the Budapest Memorandum. It broke the security assurances, violated the borders and the territorial integrity of Ukraine.

4.2.1 Bilateral agreements

Relations between Russia and Ukraine have been regulated under several bilateral agreements, with the important treaty, dated 31 May 1997, "On the friendship, cooperation, and partnership between the Russian Federation and Ukraine"⁶⁵, and three agreements of 28 May 1997 "On the Status and Conditions of the Black Sea Fleet of the Russian Federation Presence on the Territory of Ukraine"⁶⁶. On 21 April 2010 the parties prolonged the treaty for the next 10 years, while the three agreements on the Black Sea Fleet was prolonged for 25 years.

The treaty of 31 May 1997 was based on the principle of equality and sovereignty of both states, mutual respect and trust, strategic partnership, and friendly cooperation. Therefore, the military activities of the Russian Federation on the Crimean Peninsula gravely violated many provisions of this treaty.

By conducting an armed intervention in Crimea, Russia had also broken the agreements on stationing the Black Sea Fleet of 28 May 1997. Under its provisions Russia was permitted to station a maximum of 25,000 troops, 132 armored combat vehicles and 24 pieces of artillery at military bases in Crimea. Russian armed forces were obliged to respect the sovereignty of Ukraine and not interfere into its internal affairs.

[online]. 4.3.2014 [accessed 2015-08-25]. Available on: <https://www.gov.uk/government/speeches/uks-response-to-the-situation-in-ukraine>.

U.S./U.K./Ukraine Press Statement on the Budapest Memorandum Meeting. *state.gov* [online]. 5.3.2014 [accessed 2015-08-25]. Available on: <http://www.state.gov/r/pa/prs/ps/2014/03/222949.htm>.

G-7 leaders statement (03/03/2014). *eeas.europa.eu* [online]. 3.3.2014 [accessed 2015-08-25]. Available on: http://eeas.europa.eu/delegations/ukraine/press_corner/all_news/news/2014/2014_03_03_01_en.htm.

65 Agreement between the USSR and the UkSSR "On friendship, cooperation and partnership", 31 May 1997. *sevkrimrus.narod.ru* [online]. [accessed 2015-08-25]. Available on: <http://sevkrimrus.narod.ru/ZAKON/1997god.htm>.

66 Agreement between Ukraine and Russian Federation "On the on the Status and Conditions of the Black Sea Fleet of Russian Federation Presence on the Territory of Ukraine", 28 May 1997. *zakon4.rada.gov.ua* [online]. [accessed 2015-08-25]. Available on: http://zakon4.rada.gov.ua/laws/show/643_076.

It is worth mentioning, that on 31 March 2014, after the annexation of Crimea, the Federal Assembly of Russian Federation has adopted a law No. 38-F3 “On termination of the agreements on stationing the Black Sea Fleet of the Russian Federation on the territory of Ukraine⁶⁷. The law came into effect on 3 April 2014.

5 Conclusion

The Crimean conflict is called a „*frozen conflict*”. It’s a type of conflict present in Abkhazia, Southern Ossetia, or Nagorno-Karabakh. The situation of Crimea is however different because the main reason for the secession drive and secession process was the military intervention of Russian armed forces which was both initiating and influencing the conflict.

The case of Crimea is a unique situation, which has no match in contemporary international relations. Such issues like the: secession process, implementing the self-determination right by creating a new state, have been observed several times by the international community. However, the events in Crimea cannot be considered any of the above, as it was not the result of internal initiative. The decisive actions were conducted by a foreign power.

The Russian influence on social and ethnic situation of the Crimean Peninsula is undisputed. As it was stated before, by long-term rule over the territory and by deliberate activities including the mass-expulsion of whole ethnic groups, the Russian and Soviet authorities played a decisive role in creating the social, economic and demographic situation of Crimea.

Russian authorities claim that incorporation of Crimea and Sevastopol to the Russian Federation is based on the right of self-determination of nations, and on the right of Crimean population to choose their form of government. However, secession without the mother state’s consent, even in case of self-determination, is considered highly controversial, and treated as illegal activity by the doctrine of international law.

Russian authorities and Russian representatives of international law doctrine bring Kosovo’s case to justify the actions of Russia. President Putin has used the Kosovo’s case and the opinion of International Court of Justice in that matter. Most important, he accused the United States and western countries of double standards and hypocrisy, as they supported actively Kosovo’s secession from Serbia, while refusing the same right for Crimea. The president of Russia also emphasized the ICJ advisory opinion, which recognized the legality of unilateral declaration of independence. That was also mentioned by the Crimean authorities when proclaiming independence on 11 of March.

67 В Госдуму внесено предложение о прекращении действия ряда российско-украинских соглашений. *kremlin.ru* [online]. 28.3.2015 [accessed 2015-08-25]. Available on: <http://www.kremlin.ru/acts/20654>.

To address the above we need to point that international law does not consist of clear rules justifying, or prohibiting the unilateral declaration of independence by a part of state's territory. However, the neutral approach of international law to unilateral declaration of independence cannot be considered an argument in analysis of Crimean conflict, due to using of armed forces by the Russian Federation. International law clearly prohibits changing the legal status of a territory by force or by a threat to use armed forces. The proclamation of independence in situation of a threat of armed conflict is invalid according to international law, and as such cannot be considered a legal act bearing legal consequences.

It cannot be denied that a significant number of residents of Crimea had supported the „integration” with Russia. However, due to the military intervention of Russia in Crimea, the real judgement of views expressed by local population seems to be impossible to reach. Russian military intervention has become an initiating, and developing factor, as it ignited the secessionist actions and calls for joining the Russian Federation. As a result, it became impossible to determine how many inhabitants of Crimea in fact supported actions of Russia, and what would be the development of situation in Crimea without Russian intervention.

From the perspective of international law, the armed intervention of the Russian troops into Crimea constitutes the breach of basic international legal norms, what results in illegal situation of occupying the territory of other state. This brings an obligation for members of the international community to non-recognition of such situation.