REPUBLIC OF CRIMEA: A TWO-DAY STATE

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The Crimean situation has put self-determination, secession and accession back at the top of the international law agenda. The article deals with questions of the procedure of Crimea's self-determination and accession to the Russian Federation from the point of view of international law. Special attention is paid to the analysis of the ICJ Advisory Opinion on the question of the accordance with international law of the unilateral declaration of independence in respect of Kosovo in its interrelation with the Crimea case.
The text also includes an unofficial translation of an accession treaty between Russia and the Republic of Crimea. With the Crimean Republic's declaration of independence, it is the most important document for the legal analysis of the situation.

Keywords: Law of treaties; Russian-Ukrainian relations; state formation and sovereignty; recognition of states; non-recognition in international law.

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> The problem of recognition of states and governments has neither in theory nor in practice been solved satisfactorily. Hardly any other question is more controversial, or leads in the practice of states to such paradoxical situations.
>
> *Hans Kelsen*[1]

1. Introduction

The author of the text has, on several occasions, heard from some Russian legal scholars the discourse that 'Crimea is Ours,' they were professors of law, and that greatly surprised me. Speaking about the Crimea situation and about the war in Eastern Ukraine, they have either forgotten their knowledge in the sphere of law or used it in accordance with the proverb 'Little thieves are hanged but great ones

[1] Hans Kelsen, *Recognition in International Law: Theoretical Observations*, 35(4) Am. J. Int'l L. 605 (1941).

escape.' From our point of view, such a situation may be explained as an example of the rationalization of evil.[2]

The logic of the legal reasoning that is used by the Russian state and by the devotees of Crimea's accession to Russia among Russian legal scholars is extremely similar to the ideas of the Stalinist era's tradition of soviet international law.

> Soviet international law doctrine broadly allows the possibility of territorial changes on the grounds of law and justice . . . The enlargement of the USSR territory is primarily possible by means of a plebiscite that is held on the question of the territorial accession of a transferred region or of the incorporated state . . . According to the Soviet state's stance on international law, a plebiscite may, for example, be held as a method of reunification that is an accession of former Soviet territories which were taken by force.[3]

The peculiarity of this conflict is that all of its actors use the rules of international law to justify their position. President Putin stated in a speech before the Russian parliament that the referendum in Crimea was *'in full compliance with democratic procedures and international norms.'* While Russia argues in terms of 'protecting Russian-speaking population' and 'self-determination' other subjects of international relations believe that such actions infringe international law.

It should be noted that no state (except Russia) recognized the independence of Crimea before it was joined to Russia. International law recognizes that if a state uses force against another state, and that use of force results in the changing of the territorial boundaries of the latter without its consent, the international community is obliged to withhold recognition of this change of boundaries. That is the norm of customary international law, which was confirmed in the UN Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States.

2. Ontological Problem of Crimea's Accession to Russia

Crimean independence was, right from the beginning, instrumental in finally joining Russia that differentiates the Crimean case from other contemporary cases of self-determination.[4] From the point of view of international law, the accession of

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[2] Jo-Ann Tsang, *Moral Rationalization and the Integration of Situational Factors and Psychological Processes in Immoral Behavior*, 6(1) Review of General Psychology (2002). doi:10.1037//1089-2680.6.1.25

[3] *Кожевников Ф.И.* Советское государство и международное право [Kozhevnikov F.I. *Sovetskoe gosudarstvo i mezhdunarodnoe pravo* [Fyodor I. Kozhevnikov, Soviet State and International Law]] 181 (Poligrafkniga 1948).

[4] Self-Determination and Secession in International Law 297 (Christian Walter et al., eds.) (Oxford University Press 2014).

Crimea to Russia may be descried as two distinct acts. The first act is an adoption of the Declaration of Independence of the Republic of Crimea[5] by the Supreme Council of Crimea and the Sevastopol City Council on March 11, 2014, and the subsequent Statement by the Russian Ministry of Foreign Affairs regarding the adoption of the Declaration of Independence of the Autonomous Republic of Crimea and Sevastopol.[6] Such a statement is considered to be a political recognition of the state meaning that the recognizing state is willing to enter into political and other relations with the recognized state. It must be mentioned that political recognition is the first step of the state recognition process and it does not lead to legal obligations. Hans Kelsen writes that the political act of recognition, since it has no legal effect whatsoever, is not constitutive for the legal existence of the recognized state.[7]

It is rather interesting that Crimean Republic did not make itself an independent state with the adoption of the Declaration of Independence. Due to its art. 1 '[i]f 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.' The Supreme Council of Crimea declared the Crimean Republic an independent state on the of March 17, 2014.[8] Due to this act, Ukrainian law and state authorities are not working on the territory of the Republic of Crimea.

The second stage of a state recognition is legal recognition. In its turn, such recognition leads to the legal obligations between the states and could be achieved only by a process of international treaty negotiation. The second act is an incorporation of the newly created state, the Republic of Crimea, into the Russian Federation by signing the 'Treaty between the Russian Federation and the Republic of Crimea on the Acceptance of the Republic of Crimea into the Russian Federation and on Creation of New Federative Entities within the Russian Federation' on the March 18, 2014, its translation is added to the text. That was the only treaty signed by the self-determining Republic of Crimea, so we could see that, from the point of view of international law, two different actions: legal recognition of a state and incorporation of a new state into another state, were united in the single act of signing an international treaty.

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5 Декларация о независимости Автономной Республики Крым и города Севастополя [*Deklaratsia o nezavisimosti Avtonomnoi Respubliki Krym i goroda Sevastopolya* [Declaration of Independence of the Republic of Crimea and City Sevastopol]], at <http://www.rada.crimea.ua/news/11_03_2014_1> (accessed Mar. 13, 2015).

6 *Statement by the Russian Ministry of Foreign Affairs Regarding the Adoption of the Declaration of Independence of the Autonomous Republic of Crimea and Sevastopol*, <http://www.mid.ru/brp_4.nsf/0/4751D80FE6F93D0344257C990062A08A> (accessed Mar. 13, 2015).

7 Kelsen, *supra* n. 1.

8 Постановление Государственного Совета Республики Крым «О независимости Крыма» [*Postanovlenie Gosudarstvennogo Soveta Respubliki Krym 'O nezavisimosti Kryma'* [Decree of the Supreme Council of the Republic of Crimea 'On the Independence of Crimea']], at <http://www.rada.crimea.ua/act/11748> (accessed Mar. 13, 2014).

In this case, we observe an interesting ontological effect, when state A is not legally recognized by state B (A state is recognized by B state only politically) and the act of incorporating A state into B state occurs without the recognition required for the act of incorporation. A state without legal recognition by any other state exists only for itself (*Ding an sich*). In real life, we observe a situation where the Republic of Crimea does not exist as a state (as a subject of international law) for Russia, but Russia incorporates it by using the legal framework constructed for already recognized states.

3. Citation of the International Court of Justice Advisory Opinion on the Question of the Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo[9] in Declaration of Independence of the Autonomous Republic of Crimea and Sevastopol

The Declaration of Independence of the Autonomous Republic of Crimea and Sevastopol mentions the 'confirmation of the status of Kosovo by the United Nations International Court of Justice [hereinafter ICJ] on July 22, 2010, which says that the unilateral declaration of independence by a part of the country does not violate any international norms.' However, this citation does not consider the context of the Court of Justice Advisory Opinion. In this context, the ICJ specially mentioned that the question posed by the General Assembly

> does not ask about the legal consequences of that declaration. In particular, it does not ask whether or not Kosovo has achieved statehood. Nor does it ask about the validity or legal effects of the recognition of Kosovo by those States which have recognized it as an independent State . . . The Court accordingly sees no reason to reformulate the scope of the question.

Two main questions which interested the ICJ in that case, were: 1) was the declaration promulgated by the Provisional Institutions of Self-Government; 2) whether the declaration of independence is in accordance with the UN Security Council Resolution 1244 (1999) and the measures adopted thereunder. The ICJ considers that general international law contains no applicable prohibition of declarations of independence. In its Opinion of July 9, 2004, the ICJ found 'the right of peoples to self-determination' to be a right *erga omnes*.[10] It must be mentioned that the ICJ's Opinion

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[9] Advisory Opinion, Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, 2010 I.C.J. 403, available at <http://www.icj-cij.org/docket/files/141/15987.pdf> (accessed Mar. 13, 2015).

[10] Advisory Opinion, Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territories, ¶ 88, 2004 I.C.J. 136, available at <http://www.icj-cij.org/docket/files/131/1671.pdf> (accessed Mar. 13, 2015).

does not cover declarations of independence with illegal external use of force. In 1920, the Committee of Jurists, set up by the League of Nations[11] in order to investigate the problem of the Åland Islands came to the conclusion that, 'public authorities had become strong enough to assert themselves throughout the territories of the State without the assistance of foreign troops.' Finally, the wording of the ICJ's Opinion differs from a text in the Declaration of Independence of the Autonomous Republic of Crimea. Such a situation all-in-all is a bright example of the conflict of interpretations.[12]

4. Conclusion

Russia's accession of Crimea has met with protest form a significant number of international actors. As a result, a greater part of the international community have implemented a non-recognition policy,[13] some actors have imposed sanctions against Russia and against certain entities and individuals, which have promoted and benefitted from the separation of Crimea from Ukraine.

Finally, approaches that are trying to explain every international situation as *sui generis* and the existence of different perspectives for the interpretation of similar situations following the widespread usage of *sui generis*, leads to the decline in value of international law as a whole.

ANNEX

TREATY BETWEEN THE RUSSIAN FEDERATION AND THE REPUBLIC OF CRIMEA ON THE ACCEPTANCE OF THE REPUBLIC OF CRIMEA INTO THE RUSSIAN FEDERATION AND ON CREATION OF NEW FEDERATIVE ENTITIES WITHIN THE RUSSIAN FEDERATION[14]

The Russian Federation and the Republic of Crimea,

based upon the historical sympathy of their nations and taking into account the international relations established by them,

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11 League of Nations O.J. Spec. Supp. 3, at 9 (1920).

12 Paul Ricœur, The Conflict of Interpretations: Essays in Hermeneutics (Don Ihde, ed., & Willis Domingo et al., trans.) (Northwestern University Press 1974).

13 Enrico Milano, *The Non-Recognition of Russia's Annexation of Crimea: Three Different Legal Approaches and One Unanswered Question*, 1 Questions of International Law 35 (2014), available at <http://www.qil-qdi.org/wp-content/uploads/2014/05/CRIMEA_Enrico-Milano_FINAL.pdf> (accessed Mar. 13, 2015).

14 The Treaty is not officially translated to the English language. Nevertheless, its text can be found on the site of state system of law information (http://pravo.gov.ru:8080/page.aspx?92227), which is the official source for the publication of legal acts and in the President's site (http://www.kremlin.ru/news/20605).

recognizing and confirming the principle of equal rights and self-determination of peoples contained in the United Nations Charter and in accordance with which all peoples have the right to freely determine, without external interference, their political status and to pursue their economic, social and cultural development, and every State has the duty to respect this right,[15]

resolvings to ensure full respect for human rights, including the right to life, freedom of thought, conscience and religion, of all people within their territory, without distinction, and in accordance with generally accepted principles and norms of international law and recognizing the close connection to other generally accepted principles of international law, which are recognized by the United Nations Charter, Helsinki Declaration of the Conference on Security and Co-operation in Europe, with the principle of respect for human rights and freedoms,

expressing the common will of their nations, which are indissolubly linked by the common historical fate, to live jointly in a democratic, federative, legal state,

aspiring to ensure the well-being and prosperity of their nations,

relying on the free and willful declaration of will which was implemented by the nations of Crimea in the referendum that was realized in the Autonomous Republic of Crimea and in the city of Sevastopol on March 16, 2014, over the course of which the people of Crimea decided to reunify with Russia as a Russian federative entity,

taking into consideration the proposal of the Republic of Crimea and of the city with special status Sevastopol on the acceptance of the Republic of Crimea, including the city with special status Sevastopol, into the Russian Federation,

negotiated the current Treaty on the following.

Article 1

1. The Republic of Crimea is considered to have been accepted into the Russian Federation upon the signing of the Treaty.[16]

2. The acceptance of the Republic of Crimea into the Russian Federation is realized in accordance with Constitution of the Russian Federation, with the present agreement, with the Federal Constitutional Law 'On the Procedure of the Acceptance into the Russian Federation and on the Creation of the New Federative Entity in Its

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[15] The norm is copied word-for-word from the Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations, G.A. Res. 2625, U.N. GAOR, 25th Sess., Supp. No. 28, U.N. Doc. A/5217 (1970), at <http://www.un-documents.net/a25r2625.htm> (accessed Mar. 13, 2015).

[16] In accordance with Art. 80 of the Vienna Convention on the Law of Treaties, May 23, 1969, U.N. Doc. A/Conf.39/27, 1155 U.N.T.S. 331, 8 I.L.M. 679 (1969), at <https://treaties.un.org/doc/Treaties/1980/01/19800127%2000-52%20AM/Ch_XXIII_01p.pdf> (accessed Mar. 13, 2015), treaties shall, after their entry into force, be transmitted to the Secretariat of the United Nations for registration or filing and recording, as the case may be, and for publication. The Accession Treaty was not registered at the UN Secretariat.

Structure' and with federal constitutional law on the acceptance of Crimea into the Russian Federation.[17]

Article 2

The Republic of Crimea and the city with federal status Sevastopol[18] are formed as new federative entities from the date of acceptance of the Republic of Crimea into the Russian Federation.

Article 3

1. The Russian Federation guarantees all peoples inhabiting the Republic of Crimea and the city with federal status Sevastopol the preservation of their native language and the creation of conditions for learning and developing it.

2. Russian, Ukrainian and Crimean Tatar will be the official languages in the Republic of Crimea.

Article 4

1. The boundary lines of the territory of the Republic of Crimea and the city with federal status Sevastopol are defined by the borders of the Republic of Crimea and the city with federal territories existing on the day of the acceptance of the Republic of Crimea into the Russian Federation and creation of new federative entities in its structure.

2. The land border of the Republic of Crimea adjacent to the territory of Ukraine shall be deemed to be the border of the Russian Federation.

3. The delimitation of sea space in the Black Sea and in the Sea of Azov will be based on the Russian Federation's international agreements and on the norms and principles of international law.

Article 5

As of the day of the admission of the Republic of Crimea into Russia and the formation of new federative entities within the Russian Federation, Ukrainian citizens

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[17] Federal Constitutional Law No. 6 of December 17, 2001, 'On the Procedure of the Acceptance into the Russian Federation and on the Creation of the New Federative Entity in Its Structure' [Федеральный конституционный закон от 17 декабря 2001 г. № 6-ФКЗ «О порядке принятия в Российскую Федерацию и образования в ее составе нового субъекта Российской Федерации» [*Federal'nyi konstitutsionnyi zakon ot 17 dekabrya 2001 g. No. 6-FKZ 'O poryadke prinyatiya v Rossiiskuyu Federatsiyu i obrazovaniya v ee sostave novogo sub'ekta Rossiiskoi Federatsii'*]] is a legal framework for the acceptance of new federative entities into Russia. Although this law has existed for a long time, it was never used. Another federal constitutional law mentioned in the paragraph is 'On the Acceptance of Crimea into the Russian Federation,' it had not been created at the time when the Treaty was signed. There is a difference between ordinary federal laws and federal constitutional laws, occurring with the supremacy and overriding legal force of federal constitutional laws.

[18] There were only two cities with federal status in Russia: Moscow and St. Petersburg. The main difference between federal status cities and ordinary cities is a type of local government organization. In addition, there was an old idea that if federal cities have special status among other Russian cities; each of them must contain some central structures of federative authorities. The idea was realized in 2008, when the Russian Constitutional Court was moved from Moscow to St. Petersburg.

and stateless citizens permanently residing in the Republic of Crimea and in the city with federal status Sevastopol are recognized as Russian citizens with the exception of those people who within one month of this day express their wish to retain their current citizenship for themselves and their underage children or to remain persons without citizenship.

Article 6

From the day of acceptance of the Republic of Crimea into the Russian Federation and creation of new federative entities in its structure until January 1, 2015, a transition period is in force to settle all issues relating to the integration of new federative entities into the Russian Federation's economic, financial, credit, and legal systems, the public administration system of the Russian Federation, as well as issues relating to conscription and military service on the territories of the Republic of Crimea and the city with federal status Sevastopol.

Article 7

Russian citizens conscripted in the Republic of Crimea and city with federal status Sevastopol will serve on the territory of the Republic of Crimea and the city with federal status Sevastopol until 2016.

Article 8

Elections to the government bodies of the Republic of Crimea and the government bodies of Sevastopol as a city holding federal status shall be held on the second Sunday of September 2015. Before the elections, the Crimean State Council and Sevastopol's Legislative Assembly will perform the functions of these government bodies.

Article 9

1. Legislative and other regulatory legal acts of the Russian Federation are in force on the territories of the Republic of Crimea and of the city with federal status Sevastopol, from the day of acceptance of the Republic of Crimea into the Russian Federation and creation of new federative entities in its structure, if not otherwise stipulated in the legislation of the Russian Federation.

2. Regulatory legal acts of the Autonomous Republic of Crimea and of the city Sevastopol as well as Republic of Crimea and of the city with special status Sevastopol shall be in force in the Republic of Crimea and of the city with federal status Sevastopol, respectively, until the end of the transition period or until acceptance of a special regulatory legal act of the Russian Federation and / or a regulatory legal act of the Republic of Crimea, regulatory legal act of the Russian Federation and / or regulatory legal act of the city with federal status Sevastopol.

3. Regulatory legal acts of the Autonomous Republic of Crimea and of the city Sevastopol as well as regulatory legal acts of the Republic of Crimea and of the city

with federal status Sevastopol, which are in contravention of the Constitution of the Russian Federation, have no effect.

Article 10

The agreement herein applies provisionally from the date of signature and will be affective from the date of ratification.[19]

March 18, 2014

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[19] In compliance with Art. 8(1) of the Federal Constitutional Law 'On the Procedure of the Acceptance into the Russian Federation and on the Creation of the New Federative Entity in Its Structure,' the international treaty on acceptance, which has not yet become effective in law, shall be ratified only after a Constitutional Court review on the correspondence of the treaty with Russian Federal Constitution. Such review was conducted by the Constitutional Court on March 19, 2014, in the Judgment No. 6-P, <http://www.ksrf.ru/ru/News/Pages/ViewItem.aspx?ParamId=3162> (accessed Mar. 13, 2015) (resume in English: <http://www.ksrf.ru/en/Decision/Judgments/Documents/Resume19032014.pdf> (accessed Mar. 13, 2015)). The Constitutional Court underlined with references to Russian law and the Courts precedents, that it cannot discuss questions of political practicability of international treaties. The Court's decision is largely based on the problem of enforcing an international treaty before it comes into legal effect. That is rather interesting in terms of the UN International Law Commission's work on the themes 'Provisional Application of Treaties' and 'Treaties over Time / Subsequent Agreements and Subsequent Practice in Relation to Interpretation of Treaties.' Other provisions of the Judgment are tied to each treaty's article interrelation with provisions of the Russian Constitution. As a final result, the Court judged that the Treaty is constitutional.

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