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МЕЖДУНАРОДНОЕ ПРАВО И ОТДЕЛЕНИЕ КРЫМА ОТ УКРАИНЫ (часть 2)

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INTERNATIONAL LAW AND CRIMEAN SECESSION FROM UKRAINE (part 2)

Введение. Статья ставит вопрос о том, является ли объявление независимости Крыма незаконным. Противоречит ли это международному праву? Рабочая гипотеза состоит в том, что право народа на самоопределение и самоуправление является частью его «остаточных прав». Референдум подтверждает подлинность народного волеизъявления и провозглашение независимости.

Материалы и методы. Правовой основой являются ст. 1.2, 55, 73 и 76 Устава Организации Объединенных Наций и практика Международного суда в Гааге, подтверждающая «общие принципы права».

Обсуждение. «Народы», пользующиеся принципом суверенитета и одностороннего отделения от государств, включают в себя различные этнические, языковые и религиозные объединенные группы, а также территорию, на которой они проживают. Об этом свидетельствует широкий спектр случаев, например, практика Литвы, Хорватии, Косово и т.д. Таким образом, смешанная мультикультурная или этническая группа на определенной территории является народом.

Результаты исследования. Возникает вопрос, противоречит ли провозглашенная на референдуме независимость Крыма международному праву. Это подтверждается примерами Армении, Бангладеш и Косово, первых признало международное сообщество, ситуация с Косово легализована Международным судом в Гааге. Очевидно, что для подобных процессов не требуется международное признание независимости де-факто или де-юре («действие, декларирующее политические реалии»).

Другое возражение заключается в том, что нет положения о провозглашении независимости. Как заявляет Международный суд, это не может быть оправдано, поскольку принцип территориальной целостности ограничивается сферой отношений между государствами и не затрагивает право людей на самоопределение.

Заключение. Таким образом, географически определенная смешанная мультикультурная или этническая группа, декларирующая независимость от своей родной страны, — это народ, который на законных основаниях осуществляет свои остаточные права. Сербское конституционное правление территориальной целостности не помешало косовскому албанскому населению отделиться от Сербии.

Ключевые слова: *международное право, Международный суд, Хартия Организации Объединенных Наций (ООН), «исправительное» отделение, территориальная целостность, Хельсинкский Заключительный акт.*

Introduction. This is an article on whether Crimea's declaration of independence is illegal or not. Is it contradictory to international law? My working hypothesis is that "people's" right to self-determination and self-government are part of its "residual rights". Referendum confirms the authenticity of the popular will; declaring independence. The main topic is whether remedial secession is contrary to international law.

Materials and methods. The legal basis are the Articles 1.2, 55, 73 and 76 of the Charter of the United Nations (UN) and the practice of the International Court of justice in the Hague confirming the since ancient times "general principles of law".

Discussion. "Peoples" benefitting from principle of sovereignty and unilateral secession from other states do include diverse amalgamated groups, i.e. territory inhabited by different ethnic, linguistic and religious residents. A wide range of cases illustrates this, i.e. practice of Lithuania, Croatia, Kosovo etc. Thus, a mixed multicultural or ethnical group at a defined territory is a people.

Results of the study. Therefore, the question arises whether the of Crimea elected representatives declared independence, confirmed by referendum, contradicts international law. This is made evident by the cases of Armenia, Bangladesh and Kosovo, while the former is acknowledged by the international societies of states, the latter is also confirmed by the International Court of Justice in The Hague. However, it does not require independence in international recognition de facto or de jure ("acting declaring political realities").

Another objection is that there is no provision for a declaration of independence. As stated by the ICJ, this cannot be justified: "Thus, the sphere of operation of the principle of territorial integrity is limited to the sphere of relations between states" [1, p. 437].

Conclusion. Thus, a geographically defined mixed multicultural or ethnic group declaring independence from its mothercountry, is a people that lawfully is practicing its residual rights. The Serbian constitutional rule of territorial integrity did not prevent the Kosovar Albanian population from seceding from Serbia.

Key words: *International law, residual rights, referendum, United Nation (UN) Charter, remedial secession, territorial integrity, Helsinki Final Act.*

Introduction

It is quite evident that minority groups [16] are International law subjects [10, p. 60], cf. the international law transition from Friedman's entry of "domain of princes" serving as a basis for the world population as a whole, being [10, p. 7] a principle that gained consent after WWII [10, p. 64]. This statement enjoys "increased acceptance that such jurisdictional duties may in some circumstances be owed not only to other states but also to private parties" [19, p. 187].

Since codified law, treaties, pacts, resolutions etc. are incomplete these texts leave out *lacunaes* or loop-holes-of law to be filled in by general principles of law and customary International law (see Paragraph B). International law structure is built on peoples ultimate residual rights or — jurisdiction [19, p. 187]. Accordingly, the following text focuses on peoples' right to self-determination (Paragraph A).

Materials and methods

The legal basis are the Articles 1.2, 55, 73 and 76 of the Charter of the United Nations (UN) codification confirming the since ancient times, "general principles of law".

Discussion

UN-treaties and Resolutions

Legal theory seems to deny that any UN-prescription authorizes remedial secession: declaration of independence is the right to interior self-determination solely [28, p. 26 ff.]. However, as things have evolved, recently more wide-ranging results such as remedial secession may be justified.

It is worth mentioning that popular sovereignty is among basic principles of International law, as displayed in UN-Charter Article 1.2. National UN member-states are obliged to respect the right of an ethnic group or other minorities to enjoy self-rule and self-determination. It is stated in UN-Charter Chapter XI; Declaration regarding non-self-governing territories, cf. Article 73:

"...interests of inhabitants of these territories are paramount, and accept as a sacred trust obligation to promote to utmost, within system of international peace and security established by present Charter, well-being of inhabitants of these territories..." To promote the right "...to develop self-government, to take due account of political aspirations of peoples, and to assist them in progressive development of their free political institutions".

A common perception is that "peoples" can claim nothing but *internal* self-rule. Full independence is beyond reach. My position derives from the fact that relevant texts do not define the notion of "the Peoples". Thus, separatist movements are clearly included [7, p. 327]. My study deals with "administration of territories whose peoples have not yet attained a full measure of self-government", which includes territories beyond colonies and mandated areas, cf. UN-Charter Article 77 "territories now held under mandate"; "territories which may be detached from enemy states as a result of Second World War" and "ter-

ritories voluntarily placed under system by states responsible for their administration". If beneficiaries of Article 73 are identical to those in Article 77, then the latter is superfluous and we can simply refer to first provision.

The interpretation of UN-Charter shall meet not only the textual — but also the contextual requirements of UN-prescriptions, i.e. 1966 Covenant on economic, social and cultural rights and 1966 Covenant on civil and political rights. Both Covenants state that: "[a]ll peoples have right of self-determination" (Article 1.1). That is, all peoples enjoy the right to considering and deciding upon its economic, social and cultural development. All parties to UN-Charter "shall promote realization of right of self-determination, and shall respect that right, in conformity with provisions of Charter of United Nations" (1966 Covenant on civil and political rights Article 1.3).

The 1966 Covenants contribute to the interpretation of the peoples' concept: "In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall..." (Civil rights Article 27). This term confirms "the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources" (Article 47).

The Covenant addresses "all peoples" without reservations. References made are illustrative only: cf. the word "or" (Article 27), which indicates that ethnic, religious, linguistic etc. are alternatives among many others. Reference to "natural wealth and resources" points to geographical co-location of peoples.

"A people" is a group distinct from other groups in the same territory, some of which is in opposition to those in charge. "Pending achievement of objectives of resolution 1514(XV) adopted by General Assembly of United Nations on 14 December 1960 concerning Declaration on Granting of Independence to Colonial Countries and Peoples, provisions of present Protocol shall in no way limit the right of petition granted to these peoples by Charter ... and other international conventions and instruments under the United Nations and its specialized agencies".

Nevertheless, many other tough issues are still unsettled. Is a group of persons qualified as "a people" or "dependent people" if the inhabitants located in same territory are multilingual, multiethnic or religiously divided? To obtain a reasoned opinion on this question I need to look into the beneficiaries of some closely related provisions.

These issues are important for all persons addressed by 1966-covenants. Clearly colonial inhabitants qualify as a people. However, antithetical deduction is leading astray since other groups of inhabitants may qualify as well. One is "Optional Protocol to International Covenant on Civil and Political Right 1966 covenants c.f.; "further to achieve purposes of International Covenant" (preamble) and "communications from individuals subject to its [Human Rights Committee] jurisdiction (Article 1). While this Protocol refers to the right "further to achieve purposes of International Covenant" and thus does not limit its reach to "Colonial Countries and Peoples", the December 1960 rules relate to the latter category.

Some lawyers resort to an analogy as justified by Article 7: cf. "the Declaration on Granting of Independence to Colonial Countries and Peoples". Ho-

wever, the sole purpose of Article 7 is to clarify that "provisions of the present Protocol shall in no way limit the right of petition granted to these peoples by Charter of United Nations and other international conventions and instruments".

My opinion is thus that neither antithesis nor analogy is a proper method of interpreting these UN-provisions. With some few exceptions as discussed above, the peoples' right to separatism derives from either customary International law or general principles of law.

Summing up, "all peoples" concept, in both the two UN 1966 covenants should read, according to ordinary language, as "every single people", which embraces far more than colonial countries or — peoples. One could perhaps say that according to present legal situation peoples inhabiting a territory is their own masters as regards the accurate characteristics. International law does not determine people's own choice.

Customary law: peoples and competencies

Addressing social hierarchical systems the peoples' superior status is often omitted. It appears not only in domestic law systems, but also internationally. "The People" create their basic institutions by entrusting its sovereignty to parliaments, courts and ministries. Remaining powers however — "the residual rights" [11] — belong to the people. The principle may also formulate as a law system, which keep all competences intact if not specifically prohibited by the law. A key point is whether the International law outlaws popular vote as a decision-making system.

The concept of "the people" refers to a particular group of inhabitants. Often distinction lies between religion, ethnicity or language groups. These groups are often more or less dominant in a particular territory of a multicultural empire or homeland. How to apply these principles on the Russian empire?

"Tension and then open conflict between imperial state and an emergent Russian nation or society was a major factor in imperial collapse in 1917 and in collapse in 1991. In both cases ... Russia contributed to fall of 'The Empire'" [26, p. 84].

"Russian nation or society" refers to inhabitants of one of the Tsar-empire landscapes, and later the Soviet Union [17, p. 34]. The Russians took the lead both in 1917 revolution and played a vital role in break-up of Soviet Union in 1991. Belarusians, Ukrainians, Kazakhs, etc. had a more modest role. While Estonia, Latvia and Lithuania took lead in secession from Soviet Union 1990—91, Kazakhstan hesitated until December 16, 1991 and hence became the last territory to leave the Union. The international societies of states have now acknowledged these radical changes — resulting from unilateral secessions.

However, sometimes a remedial secession finds little sympathy internationally. Then mediation or other kind of dispute settlement takes the lead. One such illustration is the ICJ Kosovo-decision. Here it was decided that 1) the multiethnic groups on the territory of Kosovo qualified as a "people" and thus enjoy International law personality and 2) that no international law principle prohibit

this people from unilaterally declaring independence. Kosovar Declaration of Independence of February 17 2008 states:

"1. We, democratically-elected leaders of *our people,* hereby declare Kosovo to be an independent and sovereign state. This declaration reflects *will of our people*... 2. We declare Kosovo to be a democratic, secular and *multi-ethnic republic,* guided by principles of non-discrimination and equal protection under law" (italics added) [3].

Another important question is whose definition resolves whether a particular group of persons qualify as "people". What is decisive is the group's "subjective elements to examine "the extent to which individuals within group self-consciously perceive themselves collectively as a distinct 'people'. Key point is "the degree to which the group can form a viable political entity" [4], a requirement that easily is fulfilled due to an often-common will to get out of a suppressive majority rule.

I. Unilateral secession due to referendum

"Under intense questioning about why *the Israeli annexation of Golan Heights was good* but *the Russian seizure of Crimea was bad*, US secretary of state, Mike Pompeo, told senators that there was an "International law doctrine" which would be explained to them later. It turned out there was no doctrine. The state department's clarification of Pompeo's remarks contained no reference to the one, and experts on international law said that none exists" [5].

The traditional view is that only peoples suppressed by military occupation [12] as well as colonial peoples enjoy the right to remedial secession. More recently new groups such as indigenous peoples [2] and minorities suppressed by human rights breaches [23] may qualify as the basis for secession. Modern theory promotes that unilateral withdrawal is valid if the territory, in first place, was illegally occupied [15, p. 20]. Such a position excludes several minorities or groups of peoples from a right to unilateral secession (one illustration of this theory [20]). As the following text envisages, this position is too demanding. Other instances of degradation may qualify as well.

The salient point is whether Crimea's declaration of independence satisfies these prerequisites. Before considering this puzzle, a look into Quebec situation is appropriate: Canadian Supreme Court refused to concede with Quebec's referendum based independence (1998) because:

"a right to secession only arises under principle of self-determination of people at international law where a people is governed as part of a colonial empire; where a people is subject to alien subjugation, domination or exploitation; and possibly where a people is denied any meaningful exercise of its right to self-determination within state of which it forms a part" [24].

The legality of Quebec declaration of independence was tried vis-á-vis internal home rule i.e. the Canada Constitution and its territorial integrity. Since full independence meant a shrinking of the Canadian territory, the argument was that secession was contrary to the constitution and thus illicit.

As ICJ Kosovo decision (2008) [1] and evolving state practice reveal [25], this position is at present, too restrictive.

It is undisputed that peoples' autonomy, due to the power devolution to democratic, representative organs and political decision-making process, is limited. However, the right to referendum is not banned nor blocked, the peoples' still possess its law authentication instrument. This way of will expression remain in peoples as part of the residual rights — *jus dispositivum*. The right to referendum may result in remedial secession within international law — but not constitutional law — limits. I thus adhere to ICJ-Kosovo decision:

"In no case, however, does practice of States as a whole suggest that act of promulgating declaration was regarded as contrary to international law... A great many new States have come into existence because of exercise of this right. There were, however, also instances of declarations of independence outside this context. Practice of States in these latter cases does not point to emergence in international law of a new rule prohibiting making of a declaration of independence in such cases" [1].

ICJ Kosovo-decision implies the principle of self-rule a step further:

"During second half of twentieth century, International law of self-determination developed in such a way as to create a right to independence for peoples of non-self-governing territories and peoples subject to alien subjugation, domination and exploitation" [1, paragraph 79].

Consequently, either peoples, inhabitant in non-self-governed territories or peoples under foreign suppression, dominance, or exploitation enjoy the right to unilateral secession. However, ICJ case law shows that also "outside this context" declaration of independence may lead to remedial secession.

"Whether, *outside* context of non-self-governing territories and peoples subject to alien subjugation, domination and exploitation, international law of self-determination confers upon part of population of an existing State a right to separate from that State is, however, a subject on which radically different views were expressed by those taking part in proceedings and expressing a position on question. Similar differences existed regarding whether International law provides for a right of remedial secession and, if so, in what circumstances. There was also a sharp difference of views as to whether circumstances which some participants maintained would give rise to a right of remedial secession were actually present in Kosovo" [1, paragraph 82].

II. Peoples' secession — contradictory to constitutional "territorial integrity"

The Helsinki Final Act Article 4 declare "... independence of an existing state is protected by international law rules against illegal invasion and annexation..." [9, p. 120]. Legal theory does not challenge this position; "... independence of an existing state is protected by international law rules against illegal invasion and annexation..." [9]. Clearly, the law protects one national state against another's aggression.

The Helsinki Final Act does, despite various opposite political statements [21], not however address the relations between national states and its inhabitants: "... scope of principle of territorial integrity is confined to sphere of relations between States" [1, paragraph 80]. Thus, remedial secession by a territory's inhabitants, is not affected by this act.

The next question is whether the analogy suits the Crimea-case, and if so, which issue is the analogy? Canadian Supreme Court — referring to Helsinki Final Act Articles I, II, IV and VIII ("The Friendly Relations Declaration" — Organization for Security and Co-operation in Europe (OSCE) — claimed that the emerging principle of unilateral secession took place within frame of a principle of territorial integrity [27, paragraph 127].

The OSCE addresses its Member States of Helsinki Final-Act and "people". While the national states are inclined to comply with other states territorial integrity, inhabitants are not. To the contrary, the decision on the political destination is up to people's itself, without interference, according to international customary law.

It was the Crimean Parliament, not Duma nor President Putin, that initiated the Crimea referendum (Chapter II).

The ICJ-Kosovo illustrates the link between the right to secession and territorial integrity. Kosovo declared independence from Serbia 17 February 2008 [1].

This "declaration represented a forceful and unilateral secession of a part of territory of Serbia" [1, paragraph 77]. ICJ-task was "to assess accordance of declaration of independence of 17 February 2008 with international law" [1, paragraph 78]. ICJ mandate requested the court search for an answer whether the International law hindered such a withdrawal. This issue is as well a key point in Crimean case. The question was not whether the International law authorized minorities, ethnical-, language- or religious groups etc. to declare independence and separate from its homeland (paragraph 56).

Neither treaties nor SC- or GA-decisions solve the puzzle of secession. What are the principles for peaceful and legally valid separation of territories? State practice and case law are valid legal sources: Cf. 1969 Vienna Convention on interpretation of treaties Article 31.3(b): "Any subsequent practice" and Statute of International Court of Justice Article 38.1.d.

The Crimean-referendum satisfied the authenticity, notoriety and legitimacy of popular will. While Crimean authorities had all the decisions documented (as revealed in Part I) and supervised, the Kosovo declaration of independence failed to publicize or address the UN. Who created the proclamation was unclear:

"Whether it was indeed Provisional Institutions of Self-Government of Kosovo which promulgated declaration of independence was contested by a number of those participating in present proceedings" [1, paragraph 76].

ICJ rejects that declaration of independence and a resulting right of secession, as being against the international law. Kosovo declaration defines "this right", which referrers the declaration and the possibility to exercise the right to establishing new national states. These words show that even such rather "loose" decisions may lead to separation that international society of states acknowledges.

Briefly told; Serbia controlled Kosovo. Albanian majority retreated after a local parliament meeting to another location to consider a Kosovo independence declaration. Despite that Constitution of Serbia which claimed that "territory of Republic of Serbia is inseparable and indivisible" (article 8), Kosovar's withdrawal was agreed upon. Serbia condemned, with no effect, this declaration; "denounced declaration of independence as an unlawful act which had been declared

null and void by National Assembly of Serbia" (Kosovo-case paragraph 77), such as Ukraine did 6 years later regarding Crimea.

ICJ Kosovo-decision stated that court competency included the issue of balancing territorial integrity and declaration of independence:

"it has been argued... that Constitutional Framework is an act of an internal law rather than an international law character... Constitutional Framework derives its binding force from binding character of resolution 1244 (1999) and thus from international law. In that sense it therefore possesses an international legal character" [1, paragraph 88].

The Crimean case also raises a territorial integrity question: "The territory of Ukraine within its present border is indivisible and inviolable" [8]. It is crucial whether the principle of integrity is *jus cogens* and *lex superior* to principle of right to separatism and full independence from its original domicile-state. If so, the western criticism has a base.

The Kosovo-case is relevant when justifying Crimean withdrawal from Ukraine. Since a conclusive presumption, is that internal law cannot contradict International law, an identical factual situation should result in identical legal subsumption.

ICJ-Kosovo case disregarded that Helsinki Final Act Article 4 decided the case because this act relates to national states *inter partes,* and not a state — minority relation. ICJ reveals that its opinion builds upon both general and special International law, i.e. SC Resolution 1244 (1999). As documented by the ICJ (paragraphs 82, 83,122), it states that International law does not prevent a declaration of independence that ignores home-state's territorial integrity.

Results of the study

Important puzzles are still seeking its solution. It is still pending whether revolt, *coup d'état,* anarchy or civil war may more generally entitle peoples' remedial secession right. ICJ confirms the right to separate from a state in cases of state-practice resulting in excessive force, which results in terrorism [22], anarchy [26] and "failed states" [6]. My impression is that this principle is not only *de sentencia ferenda,* but at present also a well-developed de *lege lata,* details of which still needs more fine-tuned limits. ICJ-Kosovo referred to SC criticism of declarations leading to illicit military force, breaching *jus cogens* principles. However, as the court told:

"In context of Kosovo, Security Council has never taken this position. The exceptional character of resolutions enumerated above appears to Court to confirm that no general prohibition against unilateral declarations of independence may be inferred from practice of Security Council" [1, paragraph 81].

Status quo is that quite a few new states result from unilateral declaration of independence. Kosovo-court refers to simple fact that international society of states — for a long period — persistently has recognized such decisions of separation. There is no sign of a consistent practice to opposite.

The Canadian Supreme Court's (1998) took a more restrictive position in case of Quebec. The court stressed substantial and personal limitations: right to

withdrawal was limited to colonial- or deprived peoples in territories of its political, economic, social and cultural development. Secondly, court told that inhabitants of Quebec disqualified as "peoples" in a legal sense [27].

I cannot side with this court. It is a long foregone position. I subscribe to the Kosovo-case position accepting multiethnic population as "peoples" that enjoy right to unilateral secessions. Many states have followed this practice over a long period in belief that it is according well-established international customary law.

III. The "effective political realities"

The declarations of independence and remedial secession is necessary, but it is insufficient to establish a national state. To succeed the international society of states need to recognize newborn states. I agree to the following statement: "Arguments were also advanced of a positive right to unilateral secession, international law will in the end recognize effective political realities — including emergence of a new state — as facts" [13].

I hereby conclude: If unilateral secession is acknowledged by the international society of states it is per definition valid according to International law.

One illustration clarifies the situation: USA's hesitancy vis-á-vis Croatian and Slovenian unilateral declarations to secede from Yugoslavia. USA's initial reaction was to "regret that Croatian and Slovenian republics made unilateral assertions of independence from Yugoslavia. These unilateral acts by Croatia and Slovenia will not alter way United States deals with two republics as constituent parts of Yugoslavia" [20].

Despite this strong diplomatic reaction, less than nine months later the USA changed its position and found these two countries declaration of independence fully in line with the principle of remedial secession. Croatian and Slovenian independence was recognized April 8th 1992. Thus, international society of states recognized that these two countries' unilateral declaration of independence was not contradictory to International law.

In addition to *de jure* recognition (USA's reaction to Croatia and Slovenia declarations) *de facto* acknowledgement often results in new independent states. One such illustration was international society of states' recognition of Soviet Union in 1920—30s.

Conclusion

EU condemnation of Crimean referendum is illicit: "the European Union considers holding of referendum on future status of territory of Ukraine as contrary to Ukrainian Constitution and international law" [14]. The USA strongly spoke on "annexation of Crimea and continued violation of international law" [29].

This article challenges this position. Declaration of independence results frequently in remedial secession. A territory is entitled to withdrawal from its home-state not only in obvious cases such as foreign suppression, domination or exploitation [1, paragraph 82], but also in other situations. Breaching constitutional law of land is such an event. The first Secretary of CPSU Nikita Khrushchev's personal "pay back" to his Ukrainian comrades by transferring Crimea

from Russia to Ukraine, is one of the illustrations. The other one is the 2014 coup d'etat which ousted legally valid president Yanukovych from power.

States without law and order, anarchies, failing states etc. are instigating at best extralegal instruments, at terror and waging civil war. Verkhovna-Rada was well aware of that as resolutions launched during weeks and even months before the Crimean referendum (see Chapter II).

Breaching the constitution and rejecting legitimate, legal power, i.e. the President to function according to basic laws of Ukraine, extra-parliamentary and undemocratic powers, ignored the people's will expressed by the electorate. Direct power of people is the highest authority and thus in charge of the "People's right to self-determination and self-government are part of its **"residual rights"**. Peoples sovereignty — residual rights — are applicable, as it happened in Norway 1814. This practice is reliable, and followed by many new states in belief that this principle is part of a customary international law. Next, the case law and the state practice show that "peoples" declaring independence may include groups living in same territory of mixed religious, ethnical, cultural or linguistic background or origin. Kosovo, Slovenia, Croatia, Estonia, Latvia, Bangladesh and other declarations illustrate this.

For instance, ICJ-Kosovo case neither considered which are the unilateral recession prerequisites nor whether peoples of Kosovo in the tense 2008-situation enjoyed the right of remedial secession. Kosovo-case shows that the right for a territory to separate from its domicile state includes instances beyond "the peoples of non-self-governing territories and peoples subject to alien subjugation, domination and exploitation" (p. 436).

The list of material situations that according to mainstream legal theory instigate right to secession is incomplete. This article shows that claim of remedial secession is successful beyond colonial suppression and breach of human rights [23]. I maintain that "failing states", states under "regime change" [18] i.e. by "coup d'état" as illustrated by Ukrainian (2014) or despotic transfer of territories as happened with Crimea in Soviet Union (1954), may authorize unilateral withdrawal from a national state, i.e. "remedial secession". In such instances, secession is valid if organized referendum meets the popular will authentication requirement.

My study proves that International law does not contain any *jus cogens* principle of territorial integrity that prevents people from secession. Addressee for this integrity principle entails national states, not peoples. Thus, no such principle prevents peoples from orchestrating referenda for support of its remedial secession claim. Territorial integrity is a constitutional law principle effecting national states and its peoples' *inter partes* or, as an International law principle, addressing two or more national states. There is no International law principle of territorial integrity that prohibits minority groups' from orchestrating referenda and hereunder initiating and implementing the declaration of independence.

REFERENCES

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

2. Anaya J.S. 1996. *Indigenous Peoples in International Law.* Oxford, Oxford University Press.

3. Assembly of the Republic of Kosovo. Available at: http://www.assembly-kosova.org/?cid=2,128,1635 (accessed: 24.05.2018).

4. *Association of Accredited Public Policy Advocates to EU (AALEP), legitimate case for recognition of Crimea* (11. September 2017). Available at: http://www.aalep.eu/legitimate-case-recognition-crimea (accessed: 22.04.2021).

5. Borger J. 2019. "Pompeo flounders on why annexation is good for Golan but not for Crimea". *Guardian,* April 11.

6. Call Ch.T. 2008. "Fallacy of "Failed State". *Third World Quarterly,* vol. 29, no. 8, pp. 1491—1507.

7. Cassese A. 1995. *Self-Determination. A Legal Reappraisal*, Cambridge University Press.

8. Constitution 28de Juni 1996. Available at: http://extwprlegs1.fao.org/docs/pdf/ukr127467E.pdf (accessed: 22.04.2021).

9. Crawford J. 1976—1977. "Criteria for Statehood in International Law, 48". *Brit. Yearbook of International Law,* pp. 120—151.

10. Friedmann W. 1964. *Changing Structure of International Law.* New York, Columbia University Press, p. 60.

11. Foss K., Foss N.J. 1999. "Understanding Ownership Residual Rights of Control and Appropriable Control Rights". *DRUID Working Papers,* vol. 99-4.

12. Hansell H.J. 1978. "Letter of April 21st 1978", 17 *I.L.M.* 777 on Israeli settlements in 1967-war occupied territories, stating Israel "had no right to establish such settlements" (17 *International Legal Material [I.L.M.]* 777).

13. Reference re Secession of Quebec. *International Law Reports (ILR)*, 1999, vol. 115, pp. 217—297.

14. Joint statement on Crimea by President of European Council, Herman Van Rompuy, and President of European Commission, Jose Manuel Barroso (16 March 2014). Available at: http://ec.europa.eu/commission_2010-2014/president/news/archives/2014/03/20140317_1_en.htm (accessed: 22.04.2014).

15. Kohen M.G. 2006. *Secession, International Law Perspectives*. Cambridge.

16. Kymlicka W. (ed.). 1995. *Rights of Minority Cultures*. Oxford, Oxford University Press.

17. Lake D.A. 1997. "Rise, fall and future of Russian Empire". In Dawisha K., Parrott B. (eds.) *End of Empire? Transformation of USSR in Comparative Perspective.* New York, Sharpe, pp. 30—62.

18. *Military and Paramilitary Activities in und against Nicaragua (Nicaragua* v. *United States of America).* Merits, Judgment, I.C.J. Reports 1986.

19. Mills A. 2014. Rethinking jurisdiction in international law. *British Yearbook of International Law,* vol. 84, iss. 1, pp. 187—239.

20. Orentlicher D.F. 1998. "Separation Anxiety: International Reponses to Ethno-Separatist Claims, 23". *Yale J. Int'l L,* pp. 1—79.

21. Pierce K. UK Permanent Representative to United Nations, at Security Council Briefing on Ukraine; UK committed to Ukraine's sovereignty and territorial integrity, October 30, 2018. Available at: https://www.gov.uk/government/speeches/uk-committed-to-ukraines-sovereignty-and-territorial-integrity (accessed: 21.04.2021).

22. Resolution 1160 (1998), Adopted by SC at its 3868th meeting, on 31 March 1998 (UN/SC SC/6496).

23. Resolution 54/183 of 17 December 1999. Situation of human rights in Kosovo (UN/GA A/54/49).

24. Secession of Quebec, [1998] 2 S.C.R. 217 Paragraph 154. Available at: https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1643/index.do (accessed: 21.04.2021).

25. See i.a. EUs approach to Soviet Union and East Europe disintegration: Community and its Member States confirm their attachment to principles of Helsinki Final Act and Charter of Paris, in particular principle of self-determination". Declaration on `Guidelines on Recognition of New States in Eastern Europe and in Soviet Union' (16 December 1991), intlaw 15/10/2010. Available at: https://www.dipublico.org/100636/declaration-on-the-guidelines-on-the-recognition-of-new-states-in-eastern-europe-and-in-the-soviet- union-16-december-1991/ (accessed: 06.05.2018).

26. Szporluk R. 1997. "The fall of the Tsarist Empire and the USSR. Russian question and imperial overextension". In K. Dawisha, B. Parrott (eds.). *End of Empire? Transformation of USSR in Comparative Perspective.* New York, Sharpe.

27. The Quebec-case, Supreme Court of Canada, August 20 1998, 37 I.L.M. p. 1340 (question 2 in paragraph 110 flg.) Paragraph 127 (37 International Law Material [I.L.M.], p. 1340).

28. Tomuschat Ch. 2006. "Secession and Self-Determination". In Kohen M.G. (ed.). *Secession, International Law Perspectives.* Cambridge, издательство.

29. "U.S. Denounces Russia's Crimea Annexation On Referendum Anniversary" (Radio Free Europe, March 16, 2017). Available at: https://www.rferl.org/a/united-states-denounces-crimea-annexation-referendum-anniversary/28373961.html (accessed: 08.06.2020).