

CRIMEA'S DECLARATION OF INDEPENDENCE AND THE SUBSEQUENT ANNEXATION BY RUSSIA UNDER INTERNATIONAL LAW

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Abstract:

In the spring of 2014, the world was kept on its toes with the daily news coming from Ukraine. Russia played an important role in this affair, keeping up threats of invasion of Crimea and abundant military action. In the end, Crimea held a referendum regarding its independence and subsequently was annexed into the Russian Federation. Putin's "new vassal" was on everybody's minds. In regards to international law, however, the process of declaring independence and annexation is much more complex. Peoples are guaranteed the right to self-determination under the Charter of the United Nations on the one hand, but on the other, the Charter also protects states' territorial integrity. With the incident in Crimea, these two fundamental principles of international law experienced a major clash. In this article, after briefly introducing the facts of the Crimea Crisis, the author will examine both the state's right to territorial integrity and the peoples' rights to self-determination in the specific case and circumstances of Crimea. In doing so, the author takes into account the Quebec test and also the potential formation of regional customary law in the area of the former Soviet Union. Finally, this article strives to answer the question of the illegality of the annexation of Crimea by Russia.

Introduction

The current conflict between Ukraine and Russia about the Ukrainian breakaway of the autonomous republic of Crimea and the special-status city of Sevastopol [1] raises fears of a new war in Europe, as well as serious questions about the impact of international law. In particular, claims that Russia's intervention in Crimea were as legitimate as the North Atlantic Treaty Organization's (NATO) 1999 intervention in Kosovo [2], and that the claims to independence of both territories are of similar value[3], are misguided [4]. In this article, the fundamental principles of public international law, which are relevant to the situation in Crimea, will be explained and the question as to whether the breakaway of Crimea from Ukraine is legal under international law will be answered. While the primary aim of this article is to address the compatibility of Russia's intervention in Crimea with international (customary) law, it will be shown in the course of this text that there is not only no "moral equivalence" [5] between the invasion of Crimea in 2014 and NATO's Operation "Allied Force" in 1999, but also differing facts [6].

Crimea's declaration of independence brings two fundamental concepts of international law into conflict with each other: territorial integrity and self-determination. Crimea's vote for independence, which appears to be marred not only by the presence of Russian armed forces but also by very serious irregularities such as the absence of voter lists and multiple votes, is only legally relevant if international law allows for secession of Crimea from Ukraine as a permitted form of expressing the right to self-determination.

Territorial Integrity

For hundreds of years, Crimea has been part of Russia [7], like Ukraine, which experienced only a few troubled years after World War I outside the Russian and Austrian Empires prior to becoming part of the Union of Soviet Socialist Republics (Soviet Union, USSR) [8]. In 1954, when both Ukraine and Russia were part of the Soviet Union, Crimea was transferred from Russia to Ukraine [9]. What was an internal matter at the time has now become an international question. In 1994, after the dissolution of the Soviet Union, the new separate Russian Federation, together with the United States and the United Kingdom (UK), agreed to safeguard the borders of the independent nation of Ukraine in the Budapest Memorandum [10]. At the same time, Ukraine gave up the nuclear arsenal it had inherited when the USSR fell apart [11]. While Ukraine has lived up to its part of the deal, its sovereignty is now at stake [12].

States have a legally protected right to the preservation of their territorial integrity [13]. The fact that this is commonly referred to as territorial sovereignty already indicates the origin of the concept. The right to territorial integrity is a natural consequence of the sovereignty of the state in question. State sovereignty is one of the most fundamental principles of international law [14]. Despite the increasing importance of human rights, non-state actors, and international organizations, states remain key building blocks of the system of international law [15]. The state's territorial integrity is a key component of state sovereignty as it is protected not only under customary international law but also under Article 2 (1) of the Charter of the United Nations (UN Charter), which protects the "sovereign equality of all [nations]" [16]. As such, the obligation to respect other states' sovereignty is a fundamental norm not only within the UN Charter but within public international law in general, i.e. customary international law, supported by longstanding state practice and *opinio juris*.

Likewise, Article 2 (4) of the UN Charter prohibits the use of armed force in international relations, although Article 51 of the UN Charter allows for the use of armed force as self-defense and for the defense of allies and Chapter VII of the UN Charter allows for the UN to take action to preserve or restore peace [17]. While Russia claims that the armed forces operating in Crimea are not Russian regulars [18], international law has long recognized that states can also be held responsible for acts committed by armed groups which are de facto under the control of a foreign state [19]. This very much appears to be the case with regard to the Russian-speaking forces operating in Crimea.

Russia's claim that the ousted president Viktor Yanukovich had consented to an intervention does not hold water, as Russia claims that the invitation came after the ouster [20]. As Mr. Yanukovich was no longer in office (regardless of how he lost it [21]), he was no longer in a position to invite Russia to invade Ukraine [22]. If Russia had been serious about restoring the elected president to power in Ukraine against the will of the Ukrainian parliament, it at least should have tried to follow the path taken by the United Nations Security Council in Haiti [23] and by the Economic Community of West African States (ECOWAS) in Sierra Leone [24] in 1998 [25].

Some claim that Russia is entitled to operate in Ukraine as a consequence of Russia's close relationship with Ukraine [26]. Such a view is reflective of an imperialist approach [27] in which imperial centers claim powers over the periphery [28]. This approach is often tempting for powerful states and spheres of interest [29] and influence that have been claimed for a long time. What Russia claims with regard to Ukraine (and in 2008 with regard to Georgia) is a status that does not see Russia and Ukraine to be equally sovereign [30]. This is not the same as being de facto economically dependent on another state, nor is it the same as being in a politically or economically weaker position in a group of nations, such as the European Union, in which membership is voluntary. President Putin is said to have told the younger President Bush in 2008 "that Ukraine is not even a country. Part of its territory is in Eastern Europe and the greater part was given to us" [31]. At the end of the day, it is legally problematic whether Russia claims to rule parts or all of Ukraine directly. Such imperialism in which some states rule over others against the will of the latter is incompatible with the principle of the sovereign equality of states which is enshrined in the Charter of the United Nations [32].

As obligations which are contained in the UN Charter, the duty to respect the sovereignty of other states and the duty to refrain from using armed force unless explicitly permitted by the UN Charter have a particularly important status in international law as Article 103 of the UN Charter makes it clear that obligations under the UN Charter "shall prevail" over other obligations under international law [33].

Self-Determination and Independence

Rights of peoples

International Law also gives peoples a right to self-determination. However, the population of Crimea consists of three ethnic groups: Ukrainians, Russians and Tatars [34]. While Ukrainians and Russians already have states of their own, the majority of the Crimean Tatars remember

historic injustices suffered by the Tatars at Russian hands [35] and support Crimea's continued stay in Ukraine [36].

Article 1 (2) of the UN Charter describes as one of the goals of the UN the “develop[ment of] friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples” [37]. The next question then is whether this goal amounts to an obligation of states within the meaning of Article 103 of the UN Charter. If this is not the case, the territorial integrity of Ukraine takes precedence over the right to self-determination. In general, there are only very few indicators of a clear hierarchy in international law beyond Article 103 of the UN Charter [38] and falling within the scope of this norm would give the principle of self-determination a particularly high legal status. However, in the case at hand this question can be left open because there are several ways in which the right to self-determination can be exercised. As states are to be also the first guarantors of the rights of peoples [39], self-determination of a people should first be realized within the existing state. International law is, even more so than national legal systems, reactive rather than creative and, although it often positively influences the development of national norms, it is relatively conservative in nature, which is a logical consequence of the ultimate *raison d'être* of international law—the preservation of peace.

Exercising the right to self-determination

Therefore, international law places so much emphasis on legal certainty and the protection of existing states. This does not mean that the right to self-determination cannot lead to successful claims for independence:

The right of self-determination does not of itself give rise to a legal right for a state to intervene in the territory of another state, whether directly or through private actors. Where a people are being oppressed and force is being used against them by their own state, it is, I would argue, possible for them to seek and obtain military assistance of a defensive kind from another state. This is preferably through a resolution of the UN, as collective action by a number of states or as part of a self-defense agreement. However, a unilateral military action where there is no such oppression or force is unlawful [40].

Rather, the last step of secession may only be taken if a number of conditions are met which have long been recognized as being part of public international law and therefore binding upon all states and all who wish to exercise the right to self-determination [41]. Declaring independence is only the most far-reaching manner in which to do so. On lower levels, a number of different options exist [42]. While independence played an important role in the decolonialization era of the 1960s, many peoples that could claim this right will not aim for all-out independence but for a protection of their rights within an existing state. This is a model usually claimed in multi-ethnic states and by indigenous peoples.

International customary law requires that, in order to become an independent state, the peoples who wish to exercise the right to self-determination have to be oppressed in such a manner as to make meaningful self-determination within the original state essentially impossible [43]. This test was elaborated in more detail in the Canadian decision concerning the possible secession of

Canada's French-speaking province of Québec [44]. Investigating not only Canadian law but also analyzing Public International Law, the court established the Québec test, which reflected the existing customary law [45].

At this time, there are, however, no indicators that the people of Crimea would be discriminated against by the Ukrainian authorities [46]. Unlike the Kosovo-Albanian population in Kosovo in 1999, the Russian-speaking people who live in Crimea in 2014 did not have to fear genocide [47]. Crimea enjoys a degree of autonomy which is unrivaled by any other part of Ukraine [48]. As the conditions of the Québec test have not been met, the people of Crimea are only permitted to exercise the right to self-determination (assuming that there is a Crimean people which can claim this right *ratione personae* to begin with) within the Ukrainian state and cannot secede from Ukraine.

Does the Quebec test still reflect customary international law?

Yet, one might wonder if the Québec concept is still a rule in customary international law. After all, there have been successful claims for independence in recent years, such as the dissolution of the former Czechoslovakia [49], the break-up of the former Yugoslavia [50] and of the former USSR [51], as well as the independence of South Sudan [52] and East Timor [53]. While the dissolution of Czechoslovakia was consensual [54] and therefore cannot be compared to unilateral secessions, the independence claims by countries such as Slovenia, Croatia, or Kosovo are comparable at first sight from Crimea's secession [55].

Claims to independence by countries such as South Sudan, East Timor, or Kosovo are considered successful because many other states have recognized the independence of these states [56]. Recognition by other states is not legally necessary for the emergence of a new state [57]. The case is different however, when virtually all states refrain from recognizing the new entity [58]. This is because statehood requires a territory, a population, and an effective government [59]. The latter requires that the government is actually able to engage in international relations—but if all states deny recognition, this is not possible—simply because no state will then enter any relations. There are a number of precedents for this—for example the homelands in South Africa, which had been declared independent states by South Africa during the Apartheid era [60]. These areas, Transkei, Bophuthatswana, Venda, and Ciskei were not recognized and the collective non-recognition meant that they never were true states [61]. The same is valid for the so-called Turkish Republic of Northern Cyprus (TRNC) [62], the Georgian breakaway provinces of Abkhazia and South Ossetia, Transnistria, Somaliland, or Nagorno-Karabakh [63].

Apart from the Russian Federation, no state recognized the statehood of the Republic of Crimea [64]. This indicates that there might have been a lack of recognition, which was so severe as to prevent the Republic of Crimea from actually attaining statehood [65]. Collective non-recognition does not require a complete non-recognition, but also includes cases in which just one or two countries have recognized a state or in which only non-recognized entities have recognized an entity as a state [66]. Russia's willingness to deal with the *de facto* government of Crimea is insufficient to establish Crimea as an independent state. The situation in Crimea is therefore comparable to the legal position of the TRNC.

It has to be noted that between the declaration of independence and the incorporation of Crimea and Sevastopol into the Russian Federation, there was not much time for other states to consciously refrain from recognizing the Republic of Crimea as a state [67], which leaves open the issue of whether the lack of recognition actually amounts to a collective non-recognition in this case. The short-lived nature of the Republic of Crimea, which lasted only a few days between the declaration of independence and its absorption by Russia, plays into the hands of Russia because the time of independence was too short for a collective non-recognition by the international community [68]. Even though no other state apart from Russia recognized the Republic of Crimea as a state, the absence of recognition by other states might not necessarily amount to a collective non-recognition as other states simply did not have enough time to even reflect on the issue and make a decision whether or not to recognize this alleged new state. Yet, the legal position of the now former Republic of Crimea at the time it claimed to exist was significantly stronger than that of other would-be states, such as the TRNC, Abkhazia, South Ossetia, or Transnistria, all of which have claimed statehood for years without achieving much (if anything) in terms of recognition and without any effective foreign policy governance. In these cases, time has shown that, for example, the TRNC is not a state within the meaning of international law [69]. By quickly incorporating the constitutive elements of the alleged Republic of Crimea (Ukraine's Autonomous Republic of Crimea and the city of Sevastopol) into the Russian Federation, Moscow has at least avoided this verdict. This is not to say that the Republic of Crimea actually ever was a state – in fact, all appearances indicate that it was as little a state as the so-called TRNC is [70].

The successful claims to independence mentioned earlier have one thing in common: these states were able to declare independence because the people in question had been marginalized in the old state. In other words, countries like East Timor, Kosovo, South Sudan, Slovenia, or Croatia pass the Québec test. In this sense, it is much easier to make the case for the independence of the aforementioned states than for Crimea. The Crimean case is on a different level altogether and can only be compared to Abkhazia, South Ossetia, or the TRNC [71]. The Baltic states as well as Montenegro's claim to independence is different in nature as they only regained the independence they enjoyed prior to the occupation [72] (the situation is slightly more complicated with regard to Ukraine, which saw several competing claims to statehood in the time between the end of World War I and its inclusion in the Soviet Union). On the other hand, recognition has been widely denied to South Ossetia and Abkhazia [73], where the Québec test's requirements were not met. This indicates that the Québec criteria still reflects the existing customary international law. However, the declaration of independence by former Soviet states (except the Baltic states [74] and, somewhat, Ukraine) as a result of independence referenda at a time when there was not the same level of oppression indicates that there might be a willingness of the international community to allow for unilateral declarations of independence even if there is no longer an overwhelming degree of oppression.

The same is indicated by the manner in which the government of the United Kingdom treated the discussion of the planned independence referendum in Scotland. If the UK government maintained that the Québec test was reflective of the current rule of international law in this regard, this should have been made clear. Instead of denying the legality of the proposed referendum under international law *per se*, the UK government merely spelled out consequences, such as an unwillingness to let an independent Scotland use the British Pound as a common

currency [75]. This lack of clarity on the part of UK authorities and the unwillingness of the UK government to prevent the proposed referendum [76] indicate a weakening of the existing customary law rule. Also, the fact that Spain refuses to recognize Kosovo due to fears over potential independence claims by the Basque Country and Catalonia further complicates the matter unnecessarily [77]. If Spain were to take the Québec standard seriously and trust in the strength of international law, it would not have to fear Kosovo's independence as a precedent as long as the conditions within Spain do not deteriorate to the level that would allow for secessions. In itself, these reactions to the mere possibility of independence claims, though, are not sufficient to change the existing customary international law.

On the other hand, it has to be noted that the Québec decision was made in 1998 [78] and hence years after the dissolution of the Soviet Union. With the exception of the proposed Scotland referendum, the independence declarations by Kosovo, South Sudan, and East Timor, the post-1998 cases that are widely accepted by the international community were in compliance with the Québec test.

It can therefore be concluded that, in general, the conditions spelled out in the Québec test still describe the current customary international law.

An Echo of the Soviet Constitution: Regional Customary International Law?

There is, however, the possibility that a norm of regional customary international law [79] has been formed in the region of the former USSR (minus the Baltic states). According to Article 72 of the 1977 Constitution of the Soviet Union [80], every republic of the USSR had the right to secede from the USSR [81]. Accordingly, from the perspective of the other Soviet Republics, the republics which gained independence in the early 1990s did so without having to fulfill the normal conditions of customary international law which were identified later in the Québec decision. Although with regard to every other state, a stricter standard might have been applicable, unless a regional customary law rule identical to the rule contained in Article 72 of the 1977 Soviet Constitution exists.

The question then, has to be whether the dissolution of the USSR created an instant rule of regional customary international law that would also be applicable to the secession of Crimea from Ukraine or if this was merely an application of Article 72 of the Constitution of the USSR, which would not be applicable to the current situation. The fact that not only other former republics of the USSR but other states around the world have recognized the statehood of countries such as Tajikistan, Uzbekistan, Armenia, and the other newly independent states on the territory of what used to be the Soviet Union [82] indicates that indeed a different standard applied to the dissolution of the USSR. At least this argument is noteworthy unless one were to assume that Russia's dominance over the other Soviet republics was sufficient to amount to a level of oppression which would allow for secession anyway. The fact that the Soviet Union's Constitution gave the republics a legal status not unlike that of constituent states in other federal nations, such as the states which make up the United States, Germany's Länder, or Switzerland's Kantone, indicates that despite massive human rights violations, the Soviet republics (with the exception of the occupied Baltic states and, to some extent, Ukraine, which had been conquered

by Russia [83]) were not marginalized to a degree which would have made secession based solely on international customary law evidently possible.

This question, however, does not need to be answered in order to determine the legality of Crimea's claim to independence. This becomes clearer when one looks at the four earlier cases of independence claims in the region in recent years: Transnistria, South Ossetia, Abkhazia, and Nagorno-Karabakh. Like Crimea, none of these territories was a republic within the meaning of Article 72 of the 1977 USSR Constitution [84]. In all of these cases, the customary international law conditions for independence, as spelled out in the Quebec test, were not met at the time when they declared independence: the mere fact that there is an independence movement and a popular desire for independence does not allow for secession, especially not if the people in question are treated like any other group of citizens and with respect for their individual and collective human rights [85]. Even if there was in the early 1990s an instant customary international law norm regarding secessions in the territory of the former USSR (minus the Baltic states), such a rule does not apply to Crimea today because earlier independence claims by other non-republic territories were not even supported by the majority of former USSR states: among the states in the territory of the former USSR, only Russia recognizes South Ossetia and Abkhazia [86], as well as Transnistria as independent states, Armenia claims that Nagorno-Karabakh is part of its own territory [87]—and the four territories recognize each other as independent states. As Russia's position with regard to Transnistria, South Ossetia, and Abkhazia (and Armenia's position with regard to Nagorno-Karabakh) is similar to that of Turkey with regard to the so-called Turkish Republic of Northern Cyprus, these recognitions are insufficient in order to indicate the statehood of these territories. Like the TRNC, these territories are not independent states. The situation of Crimea on March 17, 2014 was identical [88].

Therefore, the Québec test applies to the situation in Crimea. Unlike in the case of Kosovo, the people of Crimea were not subjected to widespread violations of their rights to an extent that a unilateral secession would have been warranted. The claim by the Crimean leadership that their case is as legal as Kosovo's secession from Serbia [89] does not hold water. Neither does their reference to the International Court of Justice's advisory opinion [90] regarding the declaration of independence by Kosovo [91].

Conclusions and Outlook

Illegality of Russia's Annexation of Crimea

It has to be concluded that in the absence of persecution of the Crimean population by the Ukrainian government [92] the conditions of the Québec test are not met and that accordingly the right to self-determination cannot be utilized by Crimea for the purpose of breaking away from Ukraine. Accordingly, Crimea remains part of Ukraine. It is not impossible that the customary international law in this regard will change in the future, but with the current state of the law, Crimea's claim for independence does not have a legal basis in international law. Under customary international law, it has long been illegal for states to recognize violations of the territorial sovereignty of another state as legal if in fact they are not [93]. Russia's claim is not only "weak" [94], it is not convincing in light of the existing customary international law.

Accordingly, Russia not only must refrain from using armed forces in Ukrainian territory, including Crimea, but is also prevented by international law from recognizing the referendum of March 16, 2014, in which an overwhelming majority of Crimeans is said to have voted to secede from Ukraine and to join Russia [95]. Russia's recognition of Crimea as an independent state on March 17, 2014, is as illegal as the recognition of the alleged independence of South Ossetia and Abkhazia was after Russia's 2008 war against Georgia. Likewise, Russia's claim on March 17, 2014, that Crimea is now a part of the Russian Federation is invalid [96].

However, as Russia enjoys veto power in the UN Security Council, Ukraine's possibilities to seek help from the UN Security Council in order to preserve the peace with Russia appear extremely limited. Even if Ukraine was able to hold Russia accountable in the International Court of Justice, it would be the Security Council that would eventually be tasked with enforcing any judgment against Russia. Russia's veto power would make this practically useless, in particular since it requires Security Council and General Assembly action to take away rights from a member state under Article 5, sentence 1, of the Charter of the United Nations [97]. In so far, it appears that while Ukraine's rights under international law are being broken, there is little recourse available in the realm of peaceful dispute settlement. While Ukraine would be permitted to use armed force in order to secure its borders, the new government in Kyiv has shown considerable restraint in light of Russia's overwhelming military might.

These practical effects of Russia's superior military power combined with its economic dominance over Ukraine and its veto power in the UN Security Council show that a collective security system is not always enough to protect states. In the long run, a truly fair international law will require the abolishment of the veto power and the creation of other kinds of safeguards that allow the UN to work effectively without putting it at risk of being abused. As the UN is an international, not a supranational, body, any such changes will require the consent of all UN member states, which is highly unlikely, at least in the seriously foreseeable future. It is therefore necessary to find an effective solution within the existing international legal system. As things stand today, Ukraine has very few options to react effectively to Russia's violations of international law. The close economic and political ties to Russia and Ukraine's failure to forge a closer association with the West in the form of NATO or EU membership have turned it into a relatively easy target, as was the case with Georgia in 2008 [98].

Like in the case of NATO's 1999 intervention in Yugoslavia [99], the case of Crimea shows that international law is not irrelevant but that, to the contrary, the international community needs clearer rules. As other European states witness independence movements for example in Scotland, Catalonia, the Basque Country, Padania, and Venice, clearer legal rules with regard to the declaration of independence from an existing state and the intervention by other states are needed. As states (which might fear to be at the receiving end of this particular idea at some future date) are unlikely to even want to touch the issue of independence movements, it will be left for customary international law to provide a solution at some point in the future. As things are standing today, it can only be hoped that in the future, independence movements will look more like those in Scotland, Catalonia, or Quebec than those in Crimea, Kosovo, or the Basque Country. Yet, if history is any guide, one might doubt that the development of international law in this regard will happen without further bloodshed.

Russia's New Empire

With the annexation of Crimea, “Moscow is challenging the fundamental international norms on which the European state system relies: territorial integrity and the sanctity of borders” [100]. For many modern states, which are based on the post-1945 international legal order, including even economically powerful states as, for example, Germany [101], this return to the 19th century [102] comes as a shock. It is of the interest of the international community as a whole that Russia's attempt at a return to a darker age in international law is repelled. This has to be done with the tools available under international law. In this context, Russia's veto power in the Security Council of the United Nations provides a formidable obstacle. In particular, the precedent set in 1950 by the United Nations General Assembly's “Uniting for Peace” Resolution [103] might well be argued to have become customary international law. However, were Russia to stabilize the situation in Crimea (and it very much looks like this at this time), there would still be a violation of international law – not necessarily a threat to international peace but “merely” an occupation.

Even if the situation in Crimea would have warranted expression of a desire for self-determination, which could have resulted in Crimea breaking away from Ukraine, it has to be kept in mind that a large number of Ukrainian citizens use the Russian language in everyday life and that there is no oppression of Russian-speakers in Ukraine that would allow secession [104].

Today, Ukraine and other former Soviet states (minus the Baltic states) are perceived by the Russian leadership not only as neighbors with a long history but as Russia's sphere of influence which other states ought to respect [105]. If this reminds one of the Monroe doctrine, it is worth remembering that this doctrine was formulated in 1823 [106]. In a sense, Russia seems to have taken a jump back in time to the first half of the 19th century, to a time before the sovereign equality of nations. In contrast to European states' colonial endeavors beyond the seas in Africa, the Americas, Asia, and the Australian-Pacific area, Russia's empire has for the greatest part been geographically continuous in the sense that it developed first overland and then to adjacent areas with Russian presences in Hawai'i, Alaska, and California [107]. This might explain the mindset, which places such a claim on locations such as the former Soviet states. After all, Russia and the lands it claims to be in its sphere of influence share both geographic vicinity and a colonial history [108]. From an American perspective, it is difficult to find an example that would parallel Crimea's significance for Russia: the Philippines and the Pacific Island nations which gained independence from the United States in the 20th century hardly have the same cultural significance for Americans as Crimea has for Russia. Even in a European context, the symbolic importance of Crimea is hard to match elsewhere. From a European perspective, the relationship between Britain and Ireland or between France and Algeria comes to mind or—if one wants to stretch the example a bit by placing emphasis on language as a connecting component—between Germany and Austria. In historical terms, though, Crimea's political and cultural importance for Russia transcends these examples from other countries. This, however, does not free the Russian Federation from its obligations under international law, in particular, Ukraine's right to territorial integrity. The fact that the Russian president, Vladimir Putin, referred to the annexation of Crimea as a reaction to the eastward expansion of the North Atlantic Treaty Organization (NATO) in recent years [109] is indicative of this imperial outlook.

For several years, Russia has claimed a special relationship with the former Soviet states and has made a distinction in its foreign policy between foreign policy in the proper sense of the term and foreign policy in its so called “near abroad,” in other words, the former USSR [110]. In a sense, Putin does not see Ukraine as Russia’s sovereign equal [111]. The same applies to Crimea and the people who live there: President Putin’s view of the Crimean Tatars is particularly telling, as it exhibits an almost traditional colonial worldview of apparent superiority of Russians over Tatars, without excluding them completely from the imperial project [112]. To quote from the speech he gave on the occasion of the annexation of Crimea and Sevastopol:

True, there was a time when Crimean Tatars were treated unfairly, just as a number of other peoples in the USSR. There is only one thing I can say here: millions of people of various ethnicities suffered during those repressions, and primarily Russians. Crimean Tatars returned to their homeland. I believe we should make all the necessary political and legislative decisions to finalize the rehabilitation of Crimean Tatars, restore them in their rights and clear their good name.[\[113\]](#)

In other words, while admitting that injustice was done to the Crimean Tatars in the past, they have no reason to complain because others suffered much more. In particular, in light of the horrors of the Holodomor [114], these words will sound painful to many Ukrainians. The phrase “clear their good name” [115] somehow implies a wrongdoing on the part of the Tatars that would require ethnic Russians to forgive them for past acts. Here, the perpetrator becomes the victim and the victims of injustices are somehow to blame for what happened in the past. What Putin refers to as “the rehabilitation of the Crimean Tatars” [116] is more than an attempt to win support for Russia among the Tatars – the choice of words also indicates a need to include the Tatars in the Russian society. Would Putin consider the Tatars to actually be Russian citizens from the moment the self-proclaimed Republic of Crimea has been annexed by the Russian Federation, this would hardly be necessary. Although one has to be careful not to read too much into this statement, apart from the signature ceremony, there was hardly even the pretense of equality between the Russian Federation and the so-called Republic of Crimea.

Russia might not desire an all-out annexation of Eastern Ukraine (although this can no longer be ruled out), but at the very least the Putin government seems to want to weaken Ukraine so much that Ukrainian membership in NATO or the EU effectively becomes impossible [117]. The Russian government might feel factually encircled by NATO in the West, Islamic nations in the South, and a rising China in the East. Russia has histories of confrontations with all three neighbors, ranging from the Cold War to the Chechen Wars and the Sino-Soviet Border Conflicts of 1969. The terrorist attacks in Volgograd in late 2013 serve as a reminder that the end of the Second Chechen War was not the end of Russia’s conflict with militant Islam [118]. While relations with China appear to be relatively cordial [119], Russia cannot rule out future Chinese territorial ambitions towards Russia’s Far East, and it is unable to project force in the region to the same extent the world’s most populous country could, should it choose to set its sights on the sparsely populated area to its north. Many in Russia have seen NATO’s eastward expansion as a humiliating defeat by the former Cold War rival [120].

It comes as no surprise that Russia’s attempt to regain a sense of greatness has found a victim in Ukraine: relations with China are generally good at the moment, the war against Islamist

terrorism does not lend itself to a quick and easy victory, and other states which have left Russia's orbit are members of NATO (like the Baltic states, which were occupied by the USSR for decades and are now members of both NATO and the EU [121]) or at least the EU (like Finland, which was part of Russia until 1917 [122]). Taking into account that the central Asian states, which emerged after the dissolution of the USSR, pose almost as little a threat to Moscow's power as Belarus, this essentially leaves Ukraine, Azerbaijan, Moldova, and Georgia as opponents. The latter has been dealt with by Russia in 2008, as NATO will hardly accept a new member that still has open territorial disputes, although this option is not completely excluded [123]. Despite the admission of Cyprus to the EU, it appears likely that the EU will not offer full membership to Georgia as long as the issues of South Ossetia and Abkhazia are not settled permanently—but on June 27, 2014, the EU signed association agreements with Ukraine, Moldova, and Georgia [124]. This opens the door to potential future accession, although—as the Turkish bid shows—this is a process that can take a very long time [125]. Russian-Azeri relations have to be seen in light of the conflict between Russia's ally Armenia (which did not ratify a planned association agreement with the EU) and Azerbaijan, as well as in the Turkish support for Azerbaijan. However, as EU-Azeri negotiations continue, it remains to be seen how Russia would react to Azerbaijan moving closer to the EU. The same can be said for Moldova, where separatists in Transnistria have already called for incorporation of their self-declared state, the Pridnestrovian Moldavian Republic, into the Russian Federation [126]. It has been speculated that by fermenting unrest in Eastern and Southern Ukraine, Russia could be laying the groundwork for an invasion and eventual annexation of these parts of Ukraine for the purpose of building a land-bridge connecting Russia proper with Crimea or even Transnistria [127]. Like in the case of the overt 2008 war against Georgia, Russia is now using force (albeit less overtly) to prevent former USSR states from joining the EU and/or NATO. In the case of Armenia, which in 2013 refused to ratify a planned association agreement, political pressure was sufficient for Russia to achieve the desired outcome [128]. In Georgia and Ukraine, armed force has now been used in 2008 and 2014 respectively. In all cases Russia has acted like an imperial power.

This imperial mindset does not see the need for legal justifications in case of an intervention [129], which is hardly surprising when one takes into account that the periphery is seen neither as sovereign nor as equal. It is not simply that international law is weak per se; rather, it appears that the Russian leadership does not believe that it fully applies in the relationship between the imperial center and the vassal. If this is indeed the rationale driving Moscow, then the annexation of Crimea is not a return to 1954 (the year Crimea was transferred from Russia to the Ukraine [130]), nor to the Cold War, nor to the early 19th century concept of spheres of influence. Instead, at least in this regard, Russia seems to have gone back to the idea of client republics. This is a step back to 1823, the year of the Monroe doctrine [131]. Russia's policy towards the states of the "near abroad" is a return to a concept similar of France's client republics, which were set up in the late 18th and early 19th centuries [132]. It behooves the international community to remember the fate of these entities under the French Empire, which emerged soon thereafter. For the time being, however, it appears as if Eric Posner's summary of the situation remains correct. On March 1, 2014, he wrote: "1. Russia's military intervention in Ukraine violates international law. 2. No one is going to do anything about it" [133]. Law is meant to protect those who cannot protect themselves by force against more powerful adversaries. In the case of Crimea, it is not international law that has abandoned Ukraine. It is Russia that is stepping away from modern international law.

The lack of a forceful reaction by Western governments to Russia's aggressive actions in Ukraine emboldens the Russian leadership [134]. When the West, without recognizing Russian sovereignty over Crimea (which would be illegal [135]), does not stop Putin, no favor is done to Russia either. Instead of integrating Russia into the European unification project, Putin is resurrecting not merely the Soviet Union[136] but continues Russia's imperial history, of which the Soviet Union and the Cold War dominance over Eastern Europe were merely one or two episodes.

But if no meaningful response is found, the international community has abandoned international law in the face of Russian power. In the long run, Russia, too, will benefit if the international community takes a stand and defends international law in general and the sovereign equality of nations in particular because it will enable Russia to remain an active player in a globalized world. Hiding behind the borders of its empire and living on the basis of an economy which only includes the empire and the vassals already did not work during the time of the Warsaw Pact. In today's connected and globalized planetary economy, it would appear outright impossible. Russia now has to choose between freedom and empire.

From the perspective of international law, such an imperial approach has several consequences beyond the legality of Russia's actions with regard to Ukraine. In the current crisis between Russia and Ukraine, the rule of law is "of direct relevance" [137], indeed of utmost importance. It appears that the Russian leadership sees Russia as an empire. If one no longer believes in the concept of the sovereign equality of nations, it is only logical that one believes that different rules apply to the powerful. In so far, from the Russian perspective, the situation is not much different from the colonial time when great powers shared the world between them.

In recent decades, wars between states have become rare and it can be argued that the codification of the concept of sovereign equality of states in the UN Charter [138] and its widespread acceptance by states have had a significant pacifying function in this regard. Russia's treatment of both Georgia and Ukraine indicates a willingness to abandon the consensus of the sovereign equality of nations. It has to be assumed that the actions of the Russian leadership are calculated and rational. In fact, the events in Georgia and Ukraine make the case for proponents of the rational choice theory of international law: "Rational choice folks think that international law works best (in fact, works at all only) when states have a rational self-interest to cooperate around certain legal norms and institutions. But where states no longer have such a rational self-interest, states will depart from those legal norms" [139].

It appears that the current Russian leadership has a greater interest in shoring up support at home and in restoring Russia to what is perceived as greatness than it has in remaining a reliable member of the international community. This does not mean that Russia will isolate itself. In fact, like during the Cold War, Russia is actively cooperating with like-minded states, for example through the Shanghai Cooperation Organization and the Eurasian Union [140]. The latter has the potential to give shape to Russia's imperial ambitions while the former opens the door for cooperation with China. Since the loss of its status as a superpower at the end of the Cold War, the idea of a multipolar world has been around in Russia. Yet, Russia cannot turn back time and pretend that the last twenty-five years have not happened. Any dreams of a world shared by imperial powers will conflict with a reality, which has seen individual empowerment

on an unprecedented scale thanks to globalization and technological progress. At the same time, European integration has advanced to a degree that should give Russian leaders pause. Pro-European protests were the beginning of the protests of the former regime in Kyiv. Many (in particular young) people in Ukraine see their future with the European Union rather than with Russia. The same could apply to Russia. Russia's choice therefore is also one of facing the challenges and opportunities of the future alone or as part of Europe.

The Russian people deserve better than an un-free empire, isolated from freedom and progress. Being part of Europe does not mean that Russians have to give up values that are perceived as typically Russian. President Putin seems to fear freedom because true freedom and democracy would mean that he would not rule Russia forever. Everyone under Russia's jurisdiction has fundamental human rights and other European states have an obligation to defend human rights. In so far, Ukraine's inter-state complaint against Russia before the European Court of Human Rights is laudable as it not only serves Ukraine's interests but the interests of European society at large.

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[1]. Sevastopol has long had a special status under first Soviet and later Ukrainian law and was not part of the Autonomous Republic of Crimea within Ukraine; the Autonomous Republic of Crimea and the city of Sevastopol are claimed to have formed a new, independent state—the Republic of Crimea. Vladimir Putin, President of Russia, Address by President of the Russian Federation (Mar. 18, 2014), <http://eng.kremlin.ru/news/6889> (President Putin refers to the Autonomous Republic of Crimea and the city of Sevastopol as “the Republic of Crimea and Sevastopol”). After a referendum, Russia has annexed this allegedly independent state, and the Russian Federation now considers the Autonomous Republic of Crimea to be a federal subject of the Russian Federation (the Republic of Crimea) and Sevastopol to be a federal city. René Värk, *The Incorporation of Crimea into Russia: Legal Perspective*, *Diplomaatia* (Apr. 2014), <http://www.diplomaatia.ee/en/article/krimmi-liitmine-venemaaga-oiguslik-vaatenurk/>.

[2]. Putin, *supra* note 1. The same claim was also made by the separatists in the self-declared Republic of Crimea. See Christian Marxsen, *Crimea's Declaration of Independence*, *EJIL: Talk!* (Mar. 18, 2014), <http://www.ejiltalk.org/crimeas-declaration-of-independence/>; *Putin Compares Kosovo's 2008 Independence to Russia's Annexation of Crimea; Others Disagree*, *FOX News.com* (Mar. 19, 2014) <http://www.foxnews.com/world/2014/03/19/putin-compares-kosovo-2008-independence-to-russia-annexation-crimea-others/>; *Crimea is not Kosovo*, *The Baltic Times* (Mar. 24, 2014), <http://www.baltictimes.com/news/articles/34610/#.VEsE-IvF94V>.

[3]. Patrick Goodenough, *Crimea Vote: Putin Cites Kosovo 'Precedent'*, CNS News.com (Mar. 15, 2014), <http://www.cnsnews.com/news/article/patrick-goodenough/crimea-vote-putin-cites-kosovo-precedent>; Bojana Barlovac, *Putin Says Kosovo Precedent Justifies Crimea Secession*, Balkan Insight (Mar. 18, 2014), <http://www.balkaninsight.com/en/article/crimea-secession-just-like-kosovo-putin>; see also Marko Milanovic, *Crimea, Kosovo, Hobgoblins and Hypocrisy*, EJIL: Talk! (Mar. 20, 2014), <http://www.ejiltalk.org/crimea-kosovo-hobgoblins-and-hypocrisy/> (Milanovic considers the cases of Kosovo and Crimea to be similar enough as to be legally relevant: "even if Kosovo and Crimea are legally distinguishable, they are still close enough. The West's position on Crimea is undeniably undermined by their previous stance regarding Kosovo, and they can only blame themselves for that." Milanovic also cites the speech by the Vladimir Putin cited in note 1).

[4]. Robert Marquand, *Crimea Vote: Five Reasons Why Putin's Ukraine Case Falls Apart*, The Christian Science Monitor (Mar. 15, 2014), <http://www.csmonitor.com/World/Security-Watch/2014/0315/Crimea-vote-Five-reasons-why-Putin-s-Ukraine-case-falls-apart-video>.

[5]. Paul Roderick Gregory, *Enough of Moral Equivalence on Russia's Invasion of Ukraine Already!*, Forbes (Mar. 13, 2014, 5:32 PM), <http://www.forbes.com/sites/paulroderickgregory/2014/03/13/enough-of-moral-equivalence-on-russias-invasion-of-ukraine-already/>.

[6]. See Chris Borgen, *Kosovo, South Ossetia, and Crimea: The Legal Rhetoric of Intervention, Recognition, and Annexation*, Opinio Juris (Apr. 2, 2014, 8:04 PM), <http://opiniojuris.org/2014/04/02/kosovo-south-ossetia-crimea-legal-rhetoric-intervention-recognition-annexation/> (comparing the situation in Crimea with the situation in Kosovo in 1999).

[7]. *Timeline of the History of Crimea*, Crimea Historical Society, <http://www.crimeahistory.org/timeline-of-the-history-of-crimea/>.

[8]. *Id.*

[9]. *Id.*

[10]. *Budapest Memorandums on Security Assurances*, Council on Foreign Relations (Dec. 5, 1994), <http://www.cfr.org/arms-control-disarmament->

[and-nonproliferation/budapest-memorandums-security-assurances-1994/p32484](http://www.cfr.org/arms-control-disarmament-and-nonproliferation/budapest-memorandums-security-assurances-1994/p32484).

[11]. Terry Atlas, *Ukraine Gave Up Nuclear Arms in 1994 Deal Russia Flouts*, Bloomberg (Mar. 5, 2014, 1:34 PM), <http://www.bloomberg.com/news/2014-03-05/ukraine-gave-up-nuclear-arms-in-1994-deal-russia-flouts.html>; see also Joshua Keating, *So Much for the Budapest Memorandum*, Slate, (Mar. 19, 2014, 12:53 PM), http://www.slate.com/blogs/the_world_/2014/03/19/the_budapest_memorandum_in_1994_russia_agreed_to_respect_ukraine_s_borders.html.

[12]. Atlas, *supra* note 11.

[13]. “All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purpose of the United Nations.” U.N. Charter art. 2, para. 4, <https://treaties.un.org/doc/Publication/CTC/uncharter.pdf>; *see also* Michael Wood, *Territorial Integrity*, Encyclopedia Princetoniensis: The Princeton Encyclopedia of Self-Determination, <http://pesd.princeton.edu/?q=node/271> (last accessed Jan. 2, 2015).

[14]. Kenneth W. Abbott & Robert Snidal, *Hard and Soft Law in International Governance*, 54 Int’l Org. 421, 427, *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1402966.

[15]. Bob Reinalda, *Non-State Actors in the International System of States*, Ashgate Research Companion to Non-State Actors (Bob Reinalda ed., 2011) *available at* https://www.ashgate.com/pdf/SamplePages/Ashgate_Research_Companion_to_Non_State_Actors_Intro.pdf.

[16]. U.N. Charter art. 2, para. 1, *available at* <https://treaties.un.org/doc/Publication/CTC/uncharter.pdf>.

[17]. *Id.* at art. 2, para. 4, art. 51, ch. VII.

[18]. Bill Chappell & Mark Memmott, *Putin Says Those Aren’t Russian Armed Forces in Crimea*, NPR Online (Mar. 4, 2014, 7:05 AM), <http://www.npr.org/blogs/thetwo-way/2014/03/04/285653335/putin-says-those-arent-russian-forces-in-crimea>.

[19]. Military and Paramilitary Activities in and Against Nicaragua (Nicar. v. U.S.), 1986 I.C.J. 14, ¶ 195 (June 27).

[20]. Gregory H. Fox, *Ukraine Insta-Symposium: Intervention in the Ukraine by Invitation*, Opinio Juris (Mar. 10, 2014, 11:00 AM), <http://opiniojuris.org/2014/03/10/ukraine-insta-symposium-intervention-ukraine-invitation/>.

[21]. After all, decisions of a head of state are binding under international law, even if he or she has come to power through less than democratic means.

[22]. Fox, *supra* note 20.

[23]. S.C. Res. 940, ¶ 5, U.N. Doc. S/RES/940 (Jul. 31, 1994), *available at* [http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/940\(1994\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/940(1994)).

[24]. *See* S.C. Pres. Statement 1998/5, U.N. Doc. S/PRST/1998/5 (Feb. 26, 1998), *available at* http://www.un.org/en/ga/search/view_doc.asp?symbol=S/PRST/1998/5 (discussing UN approval of the ECOWAS action in Sierra Leone).

[25]. Fox, *supra* note 20.

[26]. Cf. Zur Startseite, *Helmut Schmidt hat Verständnis für Putins Krim-Politik*, Zeit Online (Mar. 26, 2014, 11:09 AM), <http://www.zeit.de/politik/2014-03/schmidt-krim-putin>.

[27]. See Matthew Heywood-Cunliffe, *What Europe Can Do for Crimea, A Resonance of International Community About the Situation in Crimea*, One Europe (Mar. 30, 2014), <http://one-europe.info/losingthebattlewhycrimeaisgoneforgood>; Henry D'Souza, *The Age of Neo-Imperialism: Western Hypocrisy in Ukraine and Capitulation in Palestine*, Al-Jazeera: Cross-Cultural Understanding (Apr. 21, 2014), <http://www.ccun.org/Opinion%20Editorials/2014/April/21%20o/The%20Age%20of%20Neo-Imperialism,%20Western%20Hypocrisy%20in%20Ukraine%20and%20Capitulation%20in%20Palestine%20By%20Henry%20D'%20Souza.htm>; John Lloyd, *Russia's Imperialism vs. Globalization*, Reuters (Mar. 21, 2014), <http://blogs.reuters.com/john-lloyd/2014/03/21/russia-imperialism-vs-globalization/>.

[28]. An imperialist approach describes a country's "policy of extending [its] power or influence through diplomacy or military force." New Oxford American Dictionary 872 (3rd ed. 2010).

[29]. Angela Stent, *Putin's Ukrainian endgame and why the West may have a hard time stopping him*, CNN (Mar. 4, 2014), <http://edition.cnn.com/2014/03/03/opinion/stent-putin-ukraine-russia-endgame/>.

[30]. An ally of Putin and the speaker of Russia's upper chamber, Valentina Matviyenko, stated in March that Crimea would "become an absolutely equal *subject* of the Russian Federation." Henry Chu & Sergei L. Loiko, *Tension Escalates as Russia Presses Claims for Ukraine's Crimea*, Los Angeles Times (Mar. 7, 2014) (emphasis added), <http://articles.latimes.com/2014/mar/07/world/la-fg-wn-russia-ukraine-crimea-referendum-20140307>.

[31]. Stent, *supra* note 29; see also Timothy Snyder, *Putins Projekt*, Frankfurter Allgemeine Zeitung (Apr. 13, 2014), http://www.faz.net/aktuell/politik/die-gegenwart/ukraine-putins-projekt-12893812.html?printPagedArticle=true#pageIndex_2/ (discussing the historic relationship between Ukraine and Russia against the backdrop of the current conflict).

[32]. U.N. Charter, *supra* note 16, at art. 2, para. 4.

[33]. Stefan Kirchner, *Relative Normativity and the Constitutional Dimension of International Law: A Place for Values in the International Legal System?*, 5 German L. Rev. 47, 50 n. 23 (2004), available at http://www.germanlawjournal.com/pdfs/Vol05No01/PDF_Vol_05_No_01_47-64_European_Kirchner.pdf.

[34]. *Facts You Need to Know About Crimea*, RT News Online (Feb. 27, 2014), <http://rt.com/news/crimea-facts-protests-politics-945/>.

[35]. Eric Lohr, *Russia and the Crimean Tatars: The Burdens and Challenges of History*, Religion & Politics (May 28, 2014), <http://religionandpolitics.org/2014/05/28/russia-and-the-crimean-tatars/>.

[36]. Noah Snider, *Mindful of Past, Most Tatars Fear a Russian Future*, N.Y. Times (Mar. 13, 2014), http://www.nytimes.com/2014/03/14/world/europe/crimean-tatars-on-guard-against-joining-russia.html?_r=0.

[37]. U.N. Charter, *supra* note 16, at art. 1, para. 2.

[38]. Kirchner, *supra* note 33, at 59.

[39]. *Human Rights: An Overview*, Legal Information Institute, Cornell University Law School (Oct. 24, 2014), http://www.law.cornell.edu/wex/human_rights.

[40]. Kristen Hausler & Robert McCorquodale, *Ukraine Insta-Symposium: Crimea, Ukraine and Russia: Self-Determination, Intervention and International Law*, Opinio Juris (Mar. 10, 2014), <http://opiniojuris.org/2014/03/10/ukraine-insta-symposium-crimea-ukraine-russia-self-determination-intervention-international-law/>.

[41]. *Id.*

[42]. *See, e.g., id.* (discussing various factors contributing to self-determination).

[43]. *Id.*

[44]. Reference re: Secession of Quebec, [1998] 2 S.C.R. 217 (Can.), *available at* <http://scc-csc.lexum.com/scc-csc/scc-csc/en/1643/1/document.do>.

[45]. *Id.*

[46]. Press Release, Ukraine's Crimea Envoy EU to Move Beyond Expressing Solidarity to Action, European Parliament (Mar. 3, 2014), <http://www.europarl.europa.eu/news/en/news-room/content/20140303IPR37432/html/Ukraine's-Crimea-envoy-asks-EU-to-move-beyond-expressing-solidarity-to-action>.

[47]. Hajrudin Somun, *Five Reasons Why Crimea Cannot be Compared with Kosovo*, Today's Zaman (Apr. 13, 2014,) <http://www.todayszaman.com/news-344554-five-reasons-why-crimea-cannot-be-compared-with-kosovo-by-hajrudin-somun-.html>.

[48]. *See* Anastasiia Tatarenko, *The Legal Status and Modern History of Crimean Autonomy*, Verfassungsblog.de: On Matters Constitutional (Apr. 2, 2013), <http://www.verfassungsblog.de/en/the-legal-status-and-modern-history-of-crimean-autonomy/#.U9QJhMaIKQo>.

[49]. *See generally*, Michael Kraus et al., *Irreconcilable Differences?: Explaining Czechoslovakia's Dissolution*, (Michael Kraus & Allison Stanger eds. & trans. 2000) (discussing the dissolution of the Czech and Slovak Federal Republic).

[50]. *See generally* Peter Radan, *The Break-up of Yugoslavia and International Law* 135-36 (2003) (discussing the break-up of former Yugoslavia).

[51]. *See generally* Susan Muaddi Darraj, *The Collapse of the Soviet Union* (2010) (discussing the collapse of the former USSR).

[52]. *See generally* Matthew LeRiche & Matthew Arnold, *South Sudan: From Revolution to Independence* (2012) (discussing the history of South Sudan and its independence).

[53]. *See generally* James Dunn, *East Timor: A Rough Passage to Independence* (2003).

[54]. *See generally* Kraus, *supra* note 49.

[55]. Contrary to the dissolution of Czechoslovakia, the unilateral claims of independence of states such as Slovenia, Kosovo, and Crimea have just that in common, the unilateral character of their claims.

[56]. *Cf.* Alison K. Eggers, *When is a State a State? The Case for Recognition of Somaliland*, 30 B.C. Int'l & Comp. L. Rev. 211, 214-15 (2007), available at <http://lawdigitalcommons.bc.edu/iclr/vol30/iss1/12> (Somaliland has yet to be recognized by other states and is not likely to be considered "successful" until it is).

[57]. *See* Nurullah Yamili, *What is Meant by State Recognition in International Law?*, Ministry of Justice: Turkey, 5 (2009), available at <http://www.justice.gov.tr/e-journal/pdf/LW7081.pdf>; *see also* Ian Brownlie, *Principles of Public International Law* 86 (7th ed. 2008).

[58]. John Dugard, *International Law: A South African Perspective* 461 (2nd ed. 2000) (1994).

[59]. *Cf.* Georg Jellinek, *Allgemeine Staatslehre* 137 (1905) (describing Jellinek's three-element theory).

[60]. *See* Jeffrey Butler et al., *The Black Homelands of South Africa: The Political and Economic Development of Bophuthatswana and KwaZulu* (1978) (preface to the 1978 edition).

[61]. Because no state recognized the entities, these entities could not fulfill all requirements of statehood and thus never became states.

[62]. The so-called "Turkish Republic of Northern Cyprus" is only recognized by Turkey, while all other states only recognize the Republic of Cyprus. *See* Alexander H. Berlin, *Recognition As A Sanction: Using International Recognition Of New States To Deter, Punish, And Contain Bad Actors*, 31 U. Pa. J. Int'l L. 531, 551-52 (2009).

[63]. None of the entities mentioned above have been internationally recognized; therefore, they do not fulfill the requirement of an efficient government and, thus, cannot be states in the meaning of international law. *See* Christopher J. Borgen, *Introductory Note to*

Kosovo's Declaration of Independence, 47 I.L.M 461, 464 (2008), available at <http://www.asil.org/insights/volume/12/issue/2/kosovos-declaration-independence-self-determination-secession-and>.

[64]. See Chris Borgen, *From Intervention to Recognition: Russia, Crimea, and Arguments over Recognizing Secessionist Entities*, *Opinio Juris* (Mar. 18, 2014, 11:34 AM), <http://opiniojuris.org/2014/03/18/intervention-recognition-russia-crimea-arguments-recognizing-secessionist-entities/> (discussing the recognition of so called "Republic of Crimea").

[65]. See Jan Christoph Nemitz, *Kollektive Nichtanerkennung Illegal Staaten. Grundlagen und Folgen einer International Koordinierten Sanktion, Dargestellet am Beispiel der Turkischen Republik Nord-ZypernI*, 6 *Chinese J. Int'l L.* 3, 784-85 (2007) (book review), <http://chinesejil.oxfordjournals.org/content/6/3/784.full.pdf+html?sid=4b122a91-4d48-4bcf-b2f3-d3474c038c04> (stating the Turkish Republic of Northern Cyprus is not collectively recognized and defining collective non-recognition).

[66]. Cf. *Cypriot Judgment regarding land in Northern Cyprus Must be Recognized*, *EU Focus* 254, 7 (2009) (describing the legal situation in Northern Cyprus).

[67]. Anna Dolidez, *Ukraine Insta-Symposium: Potential Non-recognition of Crimea*, *Opinio Juris* (Mar. 17, 2014, 11:29 PM), <http://opiniojuris.org/2014/03/17/ukraine-insta-symposium-potential-non-recognition-crimea/>.

[68]. *Id.*

[69]. *Id.*

[70]. *See id.*

[71]. *Id.*

[72]. As opposed to creating a new state or enjoying independence for the first time. See Roland Rich, *Recognition of States: The Collapse of Yugoslavia and the Soviet Union*, 4 *Eur. J. Int'l L.* 36, 37, 47 (1993), available at <http://www.ejil.org/pdfs/4/1/1207.pdf>.

[73]. Russia partially recognizes both South Ossetia and Abkhazia as break-away republics in the Caucasus, seeking independence from Georgia. See Dolidez, *supra* note 67, at 2.

[74]. The three Baltic states, Estonia, Latvia, and Lithuania should not be considered to be former Soviet states as they had merely been occupied by the Soviet Union, temporarily losing their independence but not their original identity.

[75]. Andrew Black & Aiden James, *Scottish Independence: "Yes" vote means leaving pound, says Osborne*, *BBC News* (Feb. 13, 2014), <http://www.bbc.com/news/uk-scotland-scotland-politics-26166794>.

[76]. See RR Donnelly, *Choosing Scotland's Future* 35, 44 (Scottish Executive 2007) available at <http://www.scotland.gov.uk/Resource/Doc/194791/0052321.pdf> (an overview of the Scottish referendum for independence of 2014); see generally *Scotland's Future* (Scottish Government 2013), available at <http://www.scotland.gov.uk/Resource/0043/00439021.pdf>.

[77]. See, e.g., Jeff Israely, *Why Kosovo Divides Europe*, *Time*, Feb. 19, 2008, <http://content.time.com/time/world/article/0,8599,1714413,00.html>.

[78]. See Reference re: Secession of Quebec, *supra* note 44.

[79]. Cf. Andrea Buss, *The Preah Vihear Case and Regional Customary Law*, 9 *Chinese J. Int'l L.* 111 (2010), available at <http://chinesejil.oxfordjournals.org/content/9/1/111.full>.

[80]. "Each Union Republic shall retain the right freely to secede from the USSR." *Konstitusii SSSR (1977)* [Konst. SSSR] [USSR Constitution] art. 72 (Russ.).

[81]. *Id.*

[82]. The succession being fulfilled by Armenia, Azerbaijan, Belarus, Estonia, Georgia, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan.

[83]. These states were not given the same legal status, since the occupation gave them less rights than the federal components themselves.

[84]. See USSR Constitution, *supra* note 80.

[85]. See Hausler & McCorquodale, *supra* note 40.

[86]. President of Russia Dmitry Medvedev, *Statement on Major Issues on South Ossetia and Abkhazia* (Aug. 26, 2008), http://archive.kremlin.ru/eng/speeches/2008/08/26/1543_type82912_205752.shtml (formally recognizing South Ossetia and Abkhazia).

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