

BOOK REVIEW NOTES

DIFFICULT SEARCH FOR TRUTH*

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The separation of Crimea from Ukraine provoked a wide scientific discussion in the West, in which Oleksandr Viktorovich Zadorozhnii, a professor at the University of Kiev, took an active part. The result of his efforts was the book under review published in Russian and English, which provides a detailed account of the arguments from the Ukrainian side.¹ The author was one of the Ukraine's most famous international lawyers. He graduated from the University of Kiev (the International Relations Department) and immediately after graduation began actively teaching and doing extensive research. In 1999, he became a President of the Ukrainian Association of International Law, and in 2003 was appointed the Head of the International Law Division at the International Relations Department of the University of Kiev. During 1990–1998 he was actively engaged in legal practice; in 1998–2006 he was a member of the Ukraine's Parliament (the Verkhovna Rada); and in 2006–2008 served as a vice-principal at the University of Kiev. Academic work, however, has always been his main priority. In the late years of his life, he published a number of works, presented several reports in Ukraine and abroad, and organized some conferences. On 12 May 2017, he passed away leaving a mark in the memory of all those who knew him.

* Reviewed book: Oleksandr Zadorozhnii, *Russian Doctrine of International Law After the Annexation of Crimea* (Kiev: K.I.S., 2016).

¹ Задорожний А.В. Российская доктрина международного права после аннексии Крыма [Oleksandr V. Zadorozhnii, *Russian Doctrine of International Law After the Annexation of Crimea*] (Kiev: K.I.S., 2015); Oleksandr Zadorozhnii, *Russian Doctrine of International Law After the Annexation of Crimea* (Kiev: K.I.S., 2016).

I met him twice: in the spring of 2011 in Kiev (at a conference on the Russia–Ukraine relations); and in the spring of 2015 in Warsaw (at a conference on the Crimean issue). We had several discussions, the last of which was long and memorable. His personal qualities made a huge impression on me. He was a radiant person and a natural leader. Having an enormous charisma and inner strength, he easily attracted people. He enjoyed expressing his opinion and knew how to do it, and his interlocutors trusted his judgments without questioning. His talks were always full of openness, honesty, irony, humor, delicacy, respect, impartiality, reason, and restraint (the combination that is not often found in a scientific discourse). He possessed the best qualities of a Ukrainian and Russian intellectual and was a true patriot. His patriotism was manifested not as blind praising of everything Ukrainian, but as the understanding that his people were experiencing a historical tragedy and as a desire to help them going through this trial. I think, his departure from politics was not accidental: as a general rule, this kind of persons are rejected by the political elite. Despite the fact that I will further contest some of his views, I want to express my deep respect for this man. I am sure that most Russian experts on international law and politics feel the same way.

Zadorozhnyi's work "Russian Doctrine" consists of three chapters, each dealing with a certain aspect of the conflict in Ukraine. In each of the chapters, the arguments of the Russian doctrine are analyzed and refuted. The first chapter considers the revolution (*coup d'état*) of 2013–2014. The *first* argument of the Russian doctrine in this regard is that the Ukrainians had no right to revolt against the regime of Yanukovich. The right to insurrection, however, is directly enshrined in the constitutions of many countries and the Universal Declaration of Human Rights of 1948 – as well as, indirectly, in the Constitution of Ukraine (Arts. 3, 5 et al.²). The Ukrainian people used this right on the basis that Yanukovich usurped the state power, encouraged corruption and police violence, restricted human rights, and unilaterally refused to sign an association agreement with EU.

The *second* argument of the Russian doctrine is that there was an armed *coup d'état* in Ukraine. However, until 20 January 2014, the protest was entirely peaceful; the authorities had a month and a half to reach a compromise but instead tried to disperse the Euromaidan. In late February 2014, Yanukovich and the opposition leaders concluded an agreement but at this point Yanukovich, while not being threatened, unexpectedly fled to Russia. Russia's attempts to refer to this agreement are inconclusive because its representative refused to sign this document (unlike the

² Art. 3 states: "The human being, his or her life and health, honor and dignity, inviolability and security are recognized in Ukraine as the highest social value... The State is accountable to the individual for its actions..."; Art. 5 states: "...The people are the bearers of sovereignty and the only source of power in Ukraine... The right to determine and change the constitutional order in Ukraine belongs exclusively to the people and shall not be usurped by the State, its bodies or officials. No one shall usurp the state power..."

representatives of Germany, France and Poland). The Constitution of Ukraine does not contain clear instructions on what to do if the president and the prime minister flee abroad. However, according to Article 102, the president is the guarantor of sovereignty, territorial integrity, constitution, and human rights; and the behavior of Yanukovich clearly undermined these values. The impeachment procedure (Art. 111) is too complex and rather politicized, and cannot be promptly carried out when necessary. In this critical situation, the Verkhovna Rada dismissed Yanukovich and his government and instead appointed new officials, thereby preserving the integrity of the state. The legitimacy of the new government was recognized by many states (including Russia).

The *third* argument is that the Ukrainian state disintegrated as a result of the *coup d'état*, and a new state was established. International law, however, does not recognize the concept of "disintegration of state" leading to "the creation of a smaller state," and Russian authors do not provide any exact criteria for defining such disintegration. Changing the government could not justify termination of the country's obligations given to another state, since the obligations are seen as related to the state as a whole, and not to its representatives. Besides, Russia cannot claim a radical change in circumstances because, according to Article 62(2) of the Vienna Convention on the Law of Treaties (1969), it cannot be claimed if a treaty establishes a boundary and if the change results from a violation committed by the claimant. Russian authors often refer to the deficiency of the Ukrainian statehood, ignoring the fact that the statehood of Kievan Rus was based on Ukrainian identity.

The *fourth* argument is that the West intervened in the internal affairs of Ukraine and organized the Euromaidan. This argument attempts to cover up the Russia's intervention that manifested in gas wars, economic blockade threats, support for separatists, etc. Before the flight of Yanukovich, the Western states recognized him as a legitimate president and did not demand his resignation. Not only did they not interfere in the affairs of Ukraine, they did not even use the means available to them in order to respond to human rights violations.

The second chapter deals with the annexation of Crimea. The *first* argument of the Russian doctrine is that Russia used force to protect its citizens and compatriots (the concept of protecting compatriots resembles the concept of humanitarian intervention). There are five criteria for legitimacy of protecting citizens abroad: the existence of a real threat or systematic and grave violations of rights, absence of peaceful means for settlement, exclusively humanitarian nature of the operation, proportionality, and limitations on the time and means. None of these criteria were met. There is no evidence of human rights violations in Crimea: the "White Paper" of human rights violations in Ukraine compiled by the Russian authorities reproduces rumors and does not mention any direct sources; Russia wanted to seize Crimea from the outset and began preparations during peaceful protests in Kiev. The conditions to be met for justifying humanitarian intervention are even stricter: only cases of

massacres, torture, etc. are seen as valid reasons. There was nothing of the kind in Crimea.

The *second* argument of the chapter two refers to the request for help made by the legitimate leaders of Ukraine and Crimea, Yanukovich and Aksenov. There are various arguments against this statement: firstly, the president of Ukraine has no right to ask for the deployment of foreign forces; secondly, at the time of the appeal, Yanukovich no longer had effective power; thirdly, the Crimean officials in principle were not authorized to contact foreign powers. Russia often states that the very fact of using force was not proven (no shots and victims); these consequences, however, do not constitute a necessary attribute of aggression (the main sign being the use of armed forces regardless of the consequences).

The *third* argument is that the events in Crimea represent a legitimate secession, and the subsequent entry of Crimea (in the capacity of an independent state) into the Russian Federation was therefore justified. However, international law does not provide for a general right to secession, allowing it only in the case of decolonization or occupation (this position was adopted by Russia itself in the Kosovo case). There are four conditions for lawful secession: the existence of a self-determining entity (people); exhaustion of the means for internal self-determination; extraordinary circumstances (violations of human rights, etc.); and non-engagement of a foreign state. In the case of Crimea, these conditions were not met. Firstly, the Crimeans are not a "people": apart from the Ukrainians, there are only three indigenous people living in Ukraine, namely Crimean Tatars, Karaims, and Krymchaks; while Russians are an ethnic minority (like Romanians, Hungarians, and Bulgarians). Secondly, the Crimea had a wide autonomy, satisfying all needs for the internal self-determination. Besides, no extraordinary circumstances took place. Ultimately, Crimea separated as a result of the Russia's actions. The referendum was only an attempt to make the occupation and annexation look legitimate.

The *fourth* argument is that Ukraine does not respect the principle of self-determination. This argument is at odds with the Russia's position on Kosovo, according to which secession is possible only in case of an unjustified attack that threatens the existence of the people. The allegations about massive violence against Crimeans and their exclusion from political communication are speculative, and are not supported by any evidence. Quarrels in the Parliament, criminal persecution of several politicians, and individual withdrawals from the parliamentary groups cannot be interpreted as an evidence of removal of the population of a certain region from national communications.

The *fifth* argument is that the events in Crimea are similar to those in Kosovo, the Åland Islands, the Island of Mayotte, etc.; in condemning the secession of Crimea, the West adopts a double standard policy. The Kosovo case, however, differs from the Crimean case in many respects. An indigenous people (Kosovo Albanians) resided in Kosovo, and the Serbian government subjected them to oppression,

resulting in an armed conflict. The international community was trying to resolve this conflict for many years; the indigenous people of Kosovo asserted itself as a result of self-determination; no state annexed Kosovo. In addition, in the 2010 Opinion of the International Court of Justice regarding Kosovo, it was indicated that the declaration of independence of Kosovo does not conflict with international law because international law does not contain any prohibitions of such acts. In doing so, the Court failed to interpret the right to self-determination, considering that this issue is beyond the scope of the initial request. Other comparisons are similarly inappropriate.

The *sixth* argument is that Crimea is a historical Russian territory, while its transfer to Ukraine in 1954 was contrary to the USSR constitutional provisions. This argument contravenes with the principles of territorial integrity, inviolability of borders, equality, and self-determination. International law does not recognize the concept of “historical” belonging, which otherwise would be the basis of various territorial claims. During its history, Crimea was owned by different states, while Russia annexed it only in the late 18th century. Moreover, most of the time it was a part of the Russian Empire, and not a part of Russia as a national state. The events of 1954 were caused by the deportation of 200 thousand Crimean Tatars to Central Asia, which led to economic chaos in the region. The decision to transfer Crimea was completely legitimate. When challenging the events of 1954, Russia simultaneously disputes the transfer of Ukrainian lands to it in 1919–1928 (areas near Belgorod and Starodub, Taganrog, and Eastern Donbass). In addition, Russia itself recognized the borders of Ukraine in a number of treaties.

The *seventh* and final argument of chapter two is that the 1994 Budapest Memorandum was a political document which did not contain any legal obligations. This memorandum, however, meets all criteria for being an international treaty, as provided in the 1969 Convention. It is an important element of nuclear disarmament system and contains guarantees of Ukraine’s security given by the United States, the United Kingdom, Russia and China, received in exchange for Ukraine’s renunciation of nuclear weapons. Most of its provisions were subsequently violated by Russia.

The third chapter is devoted to the armed conflict in the southeast of Ukraine (the Donbass). The *first* argument of the Russian authors is that there is a civil war in Ukraine, in which Russia does not take part. There are, however, numerous evidences that Russia fully controls both the Donetsk People’s Republic (DPR) and the Lugansk People’s Republic (LPR): its career officers carry out subversive activities in the region; it finances, supplies and prepares militants, and provides them political and informational support. Consequently, Russia is responsible for the actions of the DPR and LPR while its own actions can be qualified as aggression.

The *second* argument of the chapter three is that the Ukrainian antiterrorist operation (ATO) is an illegal operation unleashed by Kiev against the civilians. However, as early as in April 2014, the Donbass was inundated by the representatives

of the Russian special services which destroyed settlements, persecuted their opponents, etc. The ATO was announced only on 13 April 2014.

The *third* argument is that the DPR and LPR are subjects of international law. Such statements are intended to show that these puppet structures are independent, and Russia is not involved in the Ukrainian conflict. The DPR and LPR, however, do not meet the criteria set out in the 1991 Declaration on the “Guidelines on the Recognition of New States in Eastern Europe and the Soviet Union” and the Montevideo Test. They were created by unlawful use of force, are unable to fulfill international obligations, grossly violate principles of international law and human rights, encroach on the territorial integrity of Ukraine, and are generally unstable. In fact, they provide a cover to the Russian occupation.

The author of the book comes to the following conclusions: (1) Russian scientists carry out systematic work aimed at justifying Russia’s actions and condemning Ukraine; (2) their arguments are not based on international law; (3) the change of government in Ukraine occurred within the framework of the constitution; Western states did not interfere in the affairs of Ukraine while Russia grossly violated international law; (4) the scientific level of Russian publications is low (not up to the standard): Russian authors do not refer to the relevant law, do not take the context into account, entirely fail to apply modern concepts, etc.; (5) Russia abandoned its initial ideas of non-interference, non-use of force and respect for the U.N. Charter; (6) the Russian official position contains a fundamental contradiction: while criticizing the position of the West regarding the Kosovo case, Russia is trying to replicate Western arguments; (7) all Russian authors are of the same opinion, making the same mistakes over and over again; (8) they reproduce the position of official authorities, perceiving it as an axiom and not bothering with checking the facts; (9) they appeal to the geopolitical speculations, such as a reference to “historical justice”; (10) alternatively, some of them use dubious new “approaches,” such as a “peaceful annexation” or “disintegration of statehood”; (11) they refuse to analyze various aspects of the conflict, such as participation of the Russian forces in military operations in the Donbass; (12) Russian experts in public and criminal law, political science, history, sociology, economics, etc. are involved in the discussion, blurring clear norms of international law; (13) the Russian position is an expression of legal nihilism.

Sadly, most of Zadorozhnyi’s claims should be accepted. The overall level of the Russian doctrine is indeed quite low, and the reaction to the Ukrainian events is a good proof of that. These events did not give rise to any extensive discussion: the Moscow scientific circles *de facto* ignored them.³ Only two of the leading scholars (Anatoly Kapustin and Oleg Khlestov) expressed their personal opinion; publications of the other authors were rather weak and did not cause much resonance. This passivity

³ The scientific events held in 2014–2015 were by tradition devoted to general issues, for example, to “the role of international law in the context of globalization” (57th Annual Meeting of Russian Association of International Law, June 2014).

contrasts sharply with the attitude of the Western scientific centers, professional periodicals, and individual scholars. The Max Planck Institute (Germany), the Academy of Sciences of Italy, the University of Warsaw, and the American Association of International Law held conferences on the Crimean issue; the Heidelberg Journal of International Law devoted a special issue to it; one of the Polish centers published a collective monograph, etc.⁴ In this regard, it is not surprising that the West qualifies the position of Russian scientists as legal nihilism.

Most of the arguments put forward by the Russian authors are, indeed, far from being supported by international law. Russia can scarcely refer to the need to protect its citizens and compatriots because there was no immediate threat to their rights. It cannot refer to the request of Yanukovych either, as he fled the country and effectively lost his presidential powers. Besides, the Kosovo case, indeed, differs from the Crimean case, and the Advisory Opinion of the ICJ does not address the issue of the right to self-determination. Also, the Budapest Memorandum is an international treaty. Finally, Russia can not dispute the events of 1954; the doctrine of reversion is not supported by international law because its application, quite simply, would lead to a global chaos.

In my opinion, the reunification of Crimea and Russia can be justified by the principle of self-determination only. In the articles written in 2014, I argued that the idea of general will should be taken into account when interpreting this situation. This idea was established by classics (Plato et al.), supported by Rousseau, and further developed by the historical school and some contemporaries. Its essence is simple: people should have an opportunity to participate in politics, and their interests should be taken into account by the government. From this point of view, the right to secession belongs to groups excluded from political communication who are not enjoying the protection of their government. Such exclusion often occurs as a result of a revolution, when individuals usurp power and break the social contract. This is what happened in Ukraine in early 2014. Zadorozhnii and a number of Western authors have provided a number of arguments against this position. *Firstly*, the idea of general will, being rather abstract and political, cannot be used in legal discussions. *Secondly*, the social contract in Ukraine was not broken: the Law on languages was not abolished, and the campaign against the Crimean population was not carried out. *Thirdly*, the Crimeans are not a people because they do not possess the required identity; while the Russian-speaking residents of Crimea are only a minority. *Fourthly*, the real reason for the secession of Crimea was the Russian intervention, which cannot be justified by the *coup d'état* in Kiev. I would like to provide some objections to these arguments.

International law is not static: it is formed on the basis of political theories and enforces them. Democracy, human rights, and international peace were originally abstract

⁴ See 75(1) Heidelberg Journal of International Law (2015); *The Case of Crimea's Annexation Under International Law* (W. Czaplinski et al. (eds.), Warsaw: Scholar Publishing House, 2017).

ideas; they became a part of positive law over time. The idea of general will, indeed, is used mainly in public law. The main concept of international law is sovereignty: the will of the government usually has a priority over the will and interests of the people. However, the domination of the sovereignty idea is not complete: in situations involving self-determination and secession, a positive right could evoke priority of the people will. The common characteristic of all these situations is the rupture of the connection between the sovereign and the people, i.e. "non-representation" of the people by the government (the protective clause of the Declaration on Principles). Such a rupture occurs when the government refuses to pursue policies that are in line with the values and interests of the population. It is not just about violations of rights or retreat from democracy; such interpretation would artificially narrow the idea of representation. It is more of the government's refusal (inability) to create and maintain a holistic, stable and harmonious community, i.e. an environment where human rights and democracy have a real (not merely formal) meaning.⁵ Such a refusal is manifested in a sharp and dramatic change in language policy, historical symbols, geopolitical views, economic order, and other concepts that unite the nation (*res publica*). Recent history shows that this every time results in civil wars that end with ethnic cleansing or secession. Since international law cannot authorise ethnic cleansing, in such situations secession should be allowed. Of course, like many other theories, this theory is not sufficiently clear; therefore, its application requires the scholar to be especially careful and to have rather flexible views. In any event, the international community must condemn any cases of destruction of the social contract and show sympathy towards the affected groups. In relation to secession, it shall take a predominantly wait-and-see position, focusing more on the effectiveness criterion than on formal appraisals. In critical cases, the international community must intervene by ways of early recognition, applying collective sanctions, etc.

There are also arguments regarding *termination of the social contract*. In winter of 2014, President Yanukovich, his government, and the two leading parties (the Party of Regions and the Communist Party) were removed from power which passed to the Chairman of parliament and the new government. These events were accompanied by the illegal use of force and violations of the Constitution. Many Ukrainian authors see these events as a revolution (the Revolution of Dignity), while Russian authors talk about unconstitutional *coup d'état*. This issue often works as a stumbling block; however, it is secondary and covers a more important issue about the fate of the social contract. To find a solution to this problem, it is not enough to determine

⁵ The well-known "paradox of Arendt" is that the rights proclaimed as belonging to a person as such acquire significance only in the political community: "The fundamental deprivation of human rights is manifested first and above all in the deprivation of a place in the world which makes opinions significant and actions effective. Something much more fundamental than freedom and justice as rights of citizens is at stake, when belonging to a community into which one was born is no longer a matter of course..." (Hannah Arendt, *The Origins of Totalitarianism* 296 (New York: Harcourt Brace Jovanovich, 1968)).

the transformation of the power institutions or legal order; it is also necessary to determine what changes have occurred in the relationship of the state and the society, as well as between the different parts of the society. Indeed, something more significant than a violation of the Constitution occurred in Ukraine: there was a disintegration of the formerly united nation. This disintegration was caused by a policy showing that the values shared by one part of the Ukrainian society were unacceptable for the other part of this society. These values are the Russian language, Soviet past, communist ideology, cultural and economic incline towards Russia, and belonging to the Russian Orthodox Church. Those who shared these values were required to abandon them and adopt other concepts instead: the Ukrainian language, nationalist ideology, commitment to the European course of development, etc. These requirements became the main paradigm of the Ukrainian politics: they were stated by legislation, voiced in political statements, chanted at meetings, discussed in the media, etc. They were effectively an ultimatum: a political discussion involving equality of the opponents and an opportunity to openly discuss all points of view were not present; the supporters of the alternative position were declared traitors and enemies of the people. As the abovementioned requirements concerned the foundations of the national self-consciousness, they inevitably led to the termination of the social contract and provoked separatism. This allows to suggest, among other things, that the disintegration of Ukraine was a project, and the Euromaidan was a technology.

The argument that the population of Crimea is not a "people" refers to the positions of certain experts that determine a "people" by using objective criteria (ethnicity, language, etc.).⁶ This point of view seems to be rather unpersuasive for the following reasons. *Firstly*, these criteria are about quantity not quality, and therefore they do not provide accurate means for making a conclusion. Since there is no people or nation that has always been completely independent and separate in terms of history, language, and culture, application of the aforementioned criteria involves a dispute regarding the degree of independence, which, in turn, inevitably includes a discretionary assessment and a constitutive recognition,⁷ i.e. ultimately, the

⁶ The report prepared by the UNESCO experts back in 1989 identifies the following features of a people: common historical tradition; racial or ethnic identity; cultural homogeneity; linguistic unity; religious or ideological affinity; territorial connection; common economic life (See International Meeting of Experts on Further Study of the Concept of the Rights of Peoples, UNESCO, Paris, 27–30 November 1989, SHS-89/CONF.602/7, para. 22 (Oct. 4, 2018), available at <http://unesdoc.unesco.org/images/0008/000851/085152eo.pdf>).

⁷ According to Crawford, the principle of self-determination is applied as a right after the subject of self-determination has been determined by States through the application of relevant rules. It applies to States, Non-Self-Governing Territories, areas whose inhabitants do not participate in the formation of the Government, and to other territories in respect of which self-determination is seen as an appropriate solution. Thus, it is all about constitutive recognition (James Crawford, *The Criteria for Statehood in International Law*, 48(1) British Yearbook of International Law 93, 108–109, 160–161 (1976)).

discretion of the great powers.⁸ *Secondly*, the “objective approaches” do not take into account the fact that not only politics is the outcome of history but history also often results from politics. Unique and independent history and culture do not arise on their own; they result from political decisions, including decisions similar to those that were taken in Ukraine in 2014. The Crimeans were not a “people” as long as their values formed a part of the common Ukrainian culture, but they became a people when these values were rejected and stigmatized. This interpretation also flows from the Declaration on Principles which focuses on non-representation of a people, not on its objective features. *Thirdly*, these criteria do not take into account the aspiration for an independent political life, manifested in the political programs and at the referendums. If a group of people declares their individuality and the intention to live an independent political life, such a statement is a strong argument in favor of the existence of a “people” in itself because it cannot be made in the absence of the common identifying features.⁹ *Fourthly*, the opinions of experts do not form a part of the positive law; they are not reflected in treaties and do not form *opinio juris*. In addition, these criteria were phrased quite a long time ago, before the events relating to disintegration of Yugoslavia and the USSR changed the paradigm of self-determination. Thus, the question of existence of a people should be shifted from the area of history to the field of active politics (if not entirely removed): if certain political actions and events destroy the national consensus and provoke a collective aspiration for secession, any group formed as a result of such destruction can be considered a people. Any other interpretation is *de facto* a licence for ethnic cleansing and discrimination.

The argument that *the real reason for the separation of Crimea was the Russian intervention* is not unquestionable. *Firstly*, Russia’s actions can be justified by reference to humanitarian intervention and self-defense. The threat of civil war in Crimea was real, and only the intervention of Russia ruled out a scenario similar to the one realized in the Donbass. The absence of victims among the Crimeans did not necessarily mean that they would not occur in the future; the terrible events that took place in Odessa

⁸ For instance, Israeli authors insist that Palestinians are not an independent people, but a part of the Arab ethnos, and therefore do not have the right to have their own state (Elon Jarden, *The Israeli-Palestinian Conflict in International Law in Israel and a Palestinian State: Zero Sum Game?* 132 (A. Stav (ed.), Tel Aviv: Zmora-Bitan and ACPR, 2001); Robbie Sabel, *International Legal Issues of the Arab-Israeli Conflict: An Israeli Lawyer’s Position*, 3(2) *Journal of East Asia and International Law* 407 (2010)).

⁹ According to Turp, a people is a group of individuals who strive to determine their future. Common language, culture and religion play a role in the process of self-determination but the collective desire to live together is a more important indicator (Daniel Turp, *Remarks in Contemporary International Law Issues: Opportunities at a Time of Momentous Change: Proceedings of the Second Joint Conference Held in the Hague, The Netherlands, July 22–24, 1993* 63–64 (Dordrecht: Martinus Nijhoff, 1994)). The Opinion of the Arbitration Commission of the Peace Conference on Yugoslavia No. 2 of 11 January 1992 states that by virtue of the right to self-determination “every individual may choose to belong to whatever ethnic, religious or language community he or she wishes” (*Yugoslavia Through Documents: From Its Creation to Its Dissolution* 474–475 (S. Trifunovska (ed.), Dordrecht: Martinus Nijhoff, 1994)).

on 2 May 2014 present an indirect proof. Also, the new Ukrainian government from the outset took a course to joining NATO which would make it impossible to maintain the Russian military base in Crimea. The preventive nature of these actions is what makes the Russian position vulnerable; however, the concept of preventive self-defense is supported by a number of authors and several states. The U.S. and UK used it in order to justify the invasion into Iraq, Israel relied on it to justify the occupation of Palestine, and the UK used it to justify the title in respect of the Chagos Archipelago. *Secondly*, when the disintegration of the Ukrainian state started in December 2014, the authorities of Crimea condemned the Euromaidan and expressed their support to the Yanukovich's course of action. At the end of February 2014, Yanukovich left Ukraine and the *coup d'état* took place. Thus, the actions of Russia a few days later were directed against the inefficient government which did not represent the whole population of the country. This fact can at least serve as a mitigating circumstance. *Thirdly*, the Russian intervention was a reaction to violations of *jus cogens* whose victim was a kindred people, and which had as its primary goal not the annexation of the territory but the creation of conditions for the Crimean people to freely determine their political future by way of a referendum.¹⁰ The fact that it was accompanied by the use of force and the implementation of Russia's own plans certainly undermines this argument but does not completely remove it. The thesis regarding the historical bonds between Crimea and Russia, of course, cannot justify the title but it can justify Russia's special attention to the political status of the peninsula and Russia's concern for its population, especially when the statehood collapsed.

The proposed interpretations, while not being a part of the doctrinal mainstream, are allowed by the law in force. If a consensus was reached, they would have been accepted unconditionally (in the same way as earlier the extremely controversial interpretations of the events related to the dissolution of Yugoslavia and Kosovo's separation from Serbia were adopted). The lack of consensus, however, does not make these interpretations useless: they can be used in shaping Russia's foreign policy and thus may be gradually introduced into the legal discourse). Regardless of whether this approach will provide any benefits, it would solve the systemic problem of the absolute dominance of the *uti possidetis juris* principle, and lack of attention to the national issue when determining the boundaries of new states. This problem is rather acute: it is the source of most of today's conflicts; any attempts to resolve them *post factum* proved to be completely ineffective. One of the reasons is that international law is still pretty much law of elites (not peoples) and regulates issues related to statehood, "relying upon historical legal traditions that have become obsolete and incomplete."¹¹

¹⁰ A similar mechanism of accession was used by the United States with regard to the islands of Micronesia: the trusteeship administered by the U.S. was ended by a referendum which led to the establishment of an association; in fact, these territories were annexed without granting political rights to their residents.

¹¹ Anthony Cartwright, *Philosophy of International Law* 92 (Edinburgh: Edinburgh University Press, 2007).

International law, like any other law, often limits social events, allocating certain facts and cutting off others for the purposes of legal qualification. This approach ensures the certainty of regulation and the promptness of reaction. However, it should be constantly evolving: the doctrine must continuously amend it in order to take into account the significant facts, ignoring which would make legal decisions conditional, temporary and inefficient. Refusal to do so not only has negative social consequences but also leads to the destruction of the law, which turns into a field for rhetorical exercises whose validity is no longer believed into by the participants themselves. In this regard, the lessons of the Ukrainian events are not limited to the national issue; other important aspects that require thorough analysis are the intervention of Western states, the struggle of the Ukrainian oligarchs for power, the degradation of the state institutions, the aggressive policies of IMF and EU, and the formation of unrecognized states and their legal orders.

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