

ISSN: 2582-6433



# INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary  
Peer Reviewed 6th Edition

VOLUME 2 ISSUE 7

[www.ijlra.com](http://www.ijlra.com)

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**AN APPRAISAL OF THE LEGALITY OF UNILATERAL  
DECLARATIONS OF INDEPENDENCE: DISTINGUISHING  
CRIMEA, LUHANSK, DONETSK from KOSOVO<sup>i</sup>**

AUTHORED BY - MAKAM GANESH KUMAR

& RITAM DUTTA

***ABSTRACT***

*The subject of whether Kosovo's unilateral declaration of independence from Serbia on February 17, 2008, complied with international law was referred to the International Court of Justice by the General Assembly of the United Nations. The International Court of Justice ruled on July 22, 2010, in an advisory opinion that the proclamation did not breach any valid international law. This decision has not only endangered the stability of international law, but it has also created a loophole in international law that is exploited unethically by separatist parties around the world. In 2014, Crimea's unilateral declaration of independence from Ukraine was explicitly predicated on this decision. This article compared Kosovo's unilateral declaration of independence to Crimea's unilateral declaration of independence to determine whether international law justifies the former. The researcher applied strictly doctrinal research methods, as well as analytical, descriptive, and prescriptive approaches. This paper concluded that, in contrast to Kosovo's unilateral declaration of independence, Crimea's unilateral declaration of independence was manifestly illegal because it breached a fundamental rule of international law: it was implemented through Russia's use of force against the territorial integrity of Ukraine. Therefore, the report urged the United Nations General Assembly to seek the International Court of Justice's advisory opinion on the validity of Crimea's declaration of independence so that it does not serve as a precedent for other secessionist parties.*

**Keywords:** Crimea, Donetsk, Luhansk, Declaration, Independence, International law, Kosovo, Unilateral, ICJ, Montevideo, Convention

# 1. INTRODUCTION

A unilateral declaration of independence is an independence declaration issued without the consent of the parent state and solely on the initiative of the emergent state. The question of whether a unilateral declaration of independence is consistent with international law is not determined by the statement's unilateral nature but by the surrounding circumstances. A declaration of independence falls under the jurisdiction of international law if the events preceding it constituted a violation of any rule of international law. However, if it does not violate any rule of international law, it is considered an internal matter of the affected state, which neither the United Nations nor any other state may interfere with without the express permission of the affected state.

Judging whether the circumstances surrounding a unilateral declaration of independence violate international law is a legal obligation that can only be fulfilled by a court or quasi-court. Over the years, the International Court of Justice (ICJ) has been the primary judicial body for making this judgement, whereas the United Nations Security Council (UNSC) has been the primary quasi-judicial body<sup>1</sup>. As the organisation primarily charged with safeguarding international peace and security, the UNSC is typically the first to be contacted whenever there is a unilateral declaration of independence, and it has deemed a number of such declarations unconstitutional. An example in point is the 1965 unilateral proclamation of independence by a racist minority in Southern Rhodesia from the United Kingdom, which the UN Security Council pronounced null and void. In a similar vein, the UNSC deemed the unilateral declaration of independence of Northern Cyprus from the Republic of Cyprus by the Turkish Cypriot Authority to be "legally invalid"<sup>2</sup> since it violated international law<sup>3</sup>.

The aggrieved state may petition the International Court of Justice (ICJ) through the United Nations General Assembly (UNGA) for an advisory opinion on the legitimacy of the proclamation if the UN Security Council failed to declare it unconstitutional. Following the failure of the UNSC to decide on the legitimacy of Kosovo's unilateral declaration of independence under international law, the UNGA sought the advisory opinion of the ICJ in October 2008 at the request of Serbia. The International

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<sup>1</sup> Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion, I.C.J. Reports, 2010, para. 122.

<sup>2</sup> S/RES/216 (1965) and S/RES/217 (1965).

<sup>3</sup> S/RES/541 (1983)

Court of Justice found on July 22, 2010 that Kosovo's unilateral declaration of independence did not breach any applicable rule of international law, after considering general international law, state practise, and UNSC practise concerning unilateral declarations of independence<sup>4</sup>. This decision was not a blanket endorsement of unilateral declarations of independence in international law, as the ruling made clear that each unilateral declaration of independence must be evaluated on its own merits. In light of this, Crimea, Luhansk and Donetsk unilateral declaration of independence from Ukraine, which was mostly based on the ICJ's ruling in the Kosovo Advisory Opinion case, will be looked at to see if it was the same as Kosovo's unilateral declaration of independence.

## 2. MEANING AND NATURE OF STATE UNDER INTERNATIONAL LAW

The primary subject of international law is the state. In international law, "state" refers to constituent units of a federal nation or country, whereas in municipal law, "state" refers to constituent units of a federal nation or country. In international law, "state" refers to an entire nation or country<sup>5</sup>. A state is defined by Black's law dictionary as a group of people who live together in a fixed territory and are united by common law customs and habits to form a single body politic, exercising independent sovereignty and control over all individuals and things within that territory through the use of an established government, and being able to wage war and peace as well as engage in international relations with other human communities<sup>6</sup>. As outlined in the 1933 Convention of Montevideo, international law specifies certain requirements for a nation to qualify as a sovereign state. Article 1 of the convention stipulates that in order to qualify as a state under international law, an entity must meet four criteria: a permanent population, a defined territory, a government, and the ability to engage in legal relations with other states. The fourth criterion is recognition, or the acceptance of the entity as a state by other states or nations. A state can only enter into legal relations with other states if other states recognise it. In Black's Law Dictionary, "recognition" is defined as the formal act of a country openly or implicitly recognising, de jure or de facto, the existence of a government or country, or a circumstance such as a change in territorial sovereignty. Recognition provides a state with its

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<sup>4</sup> The declaration violated the 1960 Treaty of Guarantee between Republic of Cyprus, Greece, Turkey and United Kingdom  
<sup>5</sup> Convention on the Rights and Duties of States (Montevideo Convention) 1933, art. 1.

<sup>6</sup> "STATE Definition and Meaning - Black's Law Dictionary." The Law Dictionary, 2013, [thelawdictionary.org/state](http://thelawdictionary.org/state).

complete international identity because it demonstrates the state's political independence and control over its territory<sup>7</sup>.

### 3. UNILATERAL DECLARATION OF INDEPENDENCE

When a subnational entity announces its independence and sovereignty without the existence of any formal agreement with the state it is seceding from, that is, without the parent state's consent, the process is known as a unilateral declaration of independence and results in the creation of a new state. This term first came into existence when Rhodesia declared independence from the United Kingdom in 1965 without entering into any formal agreement with the UK. It is based on the idea of natural law and right, which is shown in the American Declaration of Independence. The first paragraph says that "when it becomes necessary, in the course of human events, for one people to sever the political ties that have bound them to another and to assume among the powers of the earth the separate and equal station to which the "laws of nature" and God's nature entitle them, a decent respect for human opinion demands that they do so." A unilateral declaration of independence is typically exercised when achieving consensual independence is almost impossible or rendered impossible by the state from which independence is sought. However, the resultant new state has to be in accordance with the parameters of the Montevideo convention, otherwise it would not be held to be legally valid. One of the prime examples of this is the case of Catalonia. For two fundamental reasons: firstly, because of the Catalan government's inability to establish exclusive control over the area; and secondly, because of its failure to gain legal recognition from the rest of the world. Furthermore, many states that survived unilateral declarations of independence only existed as de facto states for a few years before their eventual collapse, such as the defunct Republic of Biafra, which unilaterally declared its independence from Nigeria in 1967 and only existed as a de facto sovereign state for about three years before its eventual collapse. The most crucial reason behind the failure of the newly emerging states to remain as sovereign states is deeply political—the lack of legal recognition from the international community. The United Nations shall refrain from participating in subjects that are basically within the domestic authority of any state, according to Article 2(7) of the United Nations Charter. Because of this, the United Nations Security Council (UNSC), which is mostly in charge of keeping international peace and security, is always very careful when dealing with unilateral

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<sup>7</sup> "International Law - States in International Law." Encyclopaedia Britannica, [www.britannica.com/topic/international-law](http://www.britannica.com/topic/international-law).

declarations of independence, unless they pose a threat to that security. This was the case with Rhodesia's unilateral declaration of independence from the United Kingdom in 1965, which the UNSC ruled illegal and asked all states to stop helping the country. In a similar way, the UNSC told other countries to reject Northern Cyprus' unilateral declaration of independence from Cyprus in 1983.

#### **4. KOSOVO'S UNILATERAL DECLARATION OF INDEPENDENCE**

The unilateral proclamation of independence of Kosovo from Serbia was adopted by Kosovo's provisional institutions of self-government on February 17, 2008. Prior to then, Kosovo was an autonomous province of the Republic of Serbia, one of the three newly formed states following the dissolution of Yugoslavia. This declaration was the culmination of a series of events that began in 1998 with the onset of the Kosovo war. This war, which was mostly defined by the ethnic cleansing from both sides, caused severe humanitarian crises in Kosovo. The North Atlantic Treaty Organization (NATO) had to intervene militarily to terminate the war and restore peace in Kosovo. In an effort to consolidate the fragile ceasefire enabled by NATO, the UNSC issued resolution 1244 in June 1999, establishing the United Nations Interim Administration Mission in Kosovo (UNMIK) until the final status of Kosovo is determined. Serbia thwarted every effort to decide Kosovo's final status, prompting United Nations special envoy for Kosovo Martti Ahtisaari to propose, on behalf of the UN Secretary-General, that Kosovo should become independent subject to a period under international supervision. A UNSC draught resolution sponsored by the European Union and the United States to implement the idea was vetoed by Russia's "pocket veto" Russia's position on the Ahtisaari plan was delivered to the UNSC by Vitaly Churkin, the Russian ambassador to the United Nations, during a meeting of the UNSC on May 10, 2007, during which he stated:

...plan based on that proposal would not only clearly set a negative precedent for international practice, but would also have dangerous consequences for regional and international stability: by rewarding separatism it would encourage that phenomenon in other regions, and could spark a chain reaction that would eventually affect regions throughout the world.

In contrast to Russia's previously stated attitude, Kosovo chose a unilateral declaration of independence, leaving it with little or no chance of achieving independence through consensus. As anticipated, Serbia rejected Kosovo's declaration of independence within its territory, labelling it a "flagrant violation of Security Council resolution 1244" and calling on the UNSC to declare the declaration illegal. However, a Russia-backed UNSC draught resolution that would have declared Kosovo's declaration of independence illegal was not adopted. So, Serbia suggested that the UNGA ask the ICJ for a legal opinion on whether or not Kosovo's unilateral declaration of independence was legal.

## 5. UNILATERAL DECLARATION OF INDEPENDENCE

- *Crimea*

Crimea is a peninsula located south of Ukraine's mainland. Crimea has long been contested by a number of countries due to its strategic importance on the Black Sea. Since annexing the region in 1783, Russia has dominated Crimea for the majority of the past two centuries. Crimea was "given" to Ukraine in 1954 by former Soviet leader Nikita Khrushchev. Supposedly, the transfer was made as a reward for fidelity during the de-Stalinization process and to commemorate the 300th anniversary of Ukraine's union with the Russian empire. Obviously, Khrushchev did not anticipate the dissolution of the Soviet Union less than forty years after he made the gift. Numerous ethnic Russians view this relocation as an act of historical injustice. Just under 60% of the two million residents identify as ethnic Russians, 24% as ethnic Ukrainians, and the rest as Tatars. The Tatars are a Muslim minority that were formerly the majority on the peninsula but were deported for suspected collaboration with Nazi occupiers during World War II under Stalin's government. In the 1980s and 1990s, a large number of Tatars returned to the peninsula, causing tensions with Russians over land disputes. When the Soviet Union collapsed in 1991, many anticipated that the new president of the Russian Federation, Boris Yeltsin, would claim Crimea for Russia. However, this did not occur<sup>8</sup>.

Crimea was awarded autonomous republic status within Ukraine in 1992. Between 1992 and 1994, relations between Ukraine and Russia were exceedingly tense. In July 1993, the Russian parliament

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<sup>8</sup> "Giving Crimea to Ukraine Was Illegal, Russians Rule : Commonwealth: Parliament's Vote Brings Tensions Between the Two Powers Close to the Boiling Point." Los Angeles Times, 1992, [www.latimes.com/archives/la-xpm-1992-05-22-mn-278-story.html](http://www.latimes.com/archives/la-xpm-1992-05-22-mn-278-story.html).

passed a contentious law designating Sevastopol as a "Federal Russian city." The Ukrainian parliament and most Western nations denounced this action. The United Nations Security Council ruled that the resolution violated the UN Charter. Russia, together with the United Kingdom and the United States, signed the Budapest Memorandum in 1994, declaring its commitment to respect Ukraine's independence, sovereignty, and existing borders. The Treaty of Friendship, Cooperation, and Partnership between the Russian Federation and Ukraine was signed in 1997<sup>9</sup>. In accordance with Article 2, the parties agreed to "respect each other's territorial integrity and affirm the inviolability of the existing borders." Separate agreements were also negotiated concurrently with this treaty, allowing Russia a long-term lease on Crimean military facilities and establishing two independent national naval fleets based in Sevastopol.

Twenty years later, on March 16, 2014, Crimea conducted a vote to determine whether it should separate from Ukraine and join Russia. The referendum took place in the midst of an ongoing political crisis between Russia and Ukraine. In late February 2014, after months of protests against the government of Ukraine and days of violent violence between police and protestors in Kiev, President Yanukovich fled the capital and was overwhelmingly dismissed from power by the parliament. Following the impeachment of Yanukovich, Olexander Turchynov was chosen interim president of Ukraine, and Arsenly Yatsenyuk was elected prime minister of the newly proposed government. Vladimir Putin, the president of Russia, condemned the impeachment of Yanukovich as unconstitutional and compared the events in Kiev to a coup d'état. On February 26, pro-Russian forces invaded Crimea and seized critical buildings in Simferopol, its capital. The Ukrainian government has accused Russia of invading Ukrainian territory, and a number of nations, including the United States, have warned Russia against military intervention in Ukraine. Russia replied that its military activities in Crimea were consistent with prior agreements to safeguard its Black Sea fleet. On March 1, the Russian parliament backed Putin's call to use force in Ukraine to preserve Russian interests and the Russian-speaking population of Eastern Ukraine and Crimea. The Crimean Supreme Council voted on March 6 to officially join the Russian Federation. Within days, a referendum would determine whether or not the Crimean people were in accordance with the decision of the Supreme Council. The Ukrainian government instantly condemned this action as illegitimate and unlawful. The US and the EU echoed and supported this stance. The Secretary General of the United Nations,

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<sup>9</sup> "UNTC." UNTC, 2014, [treaties.un.org/Pages/showDetails.aspx?objid=08000002803e6fae&clang=\\_en](http://treaties.un.org/Pages/showDetails.aspx?objid=08000002803e6fae&clang=_en).

Ban Ki-Moon, raised grave concerns about the referendum, calling it a troubling and dangerous trend. The scheduled referendum took place on March 16, despite the concerns. Voters were asked if they wished to re-join Russia as a federal subject or restore the 1992 Crimean constitution and Crimea's position as part of Ukraine. There was no option to retain the status quo. According to election observers of the Eurasian Observatory for Democracy & Elections (EODE), who were invited by President Putin, voter participation in this referendum was allegedly at an all-time high. The president of the referendum commission claimed that 96.8 percent of voters were in favour of joining Russia. The United States and the European Union promptly disputed the results of Crimea's referendum and levied sanctions against a number of Ukrainian and Russian leaders.

The Crimean parliament formally declared its independence from Ukraine and petitioned to join the Russian Federation on March 17. The next day, President Putin gave a speech defending Russia's activities in Ukraine and the annexation of Crimea by the Russian Federation. He described Russia's deep historical links with the Crimean area and asserted that Russia was responding to Crimea's appeal for assistance because its Russian-speaking population feared repression as a result of recent events in Ukraine. Putin then refuted allegations that Russia was operating in violation of international law. Putin said that Crimea's referendum and subsequent declaration of independence were just people exercising their right to self-determination, which is written into the UN Charter. He said that Ukraine and Kosovo set a similar example when they broke away from the USSR and Serbia, respectively<sup>10</sup>. Putin subsequently signed a treaty recognising Crimea as an official member of the Russian Federation. The treaty has been deemed invalid by Ukraine, the United States, and the European Union Council. Due to its activities, Russia was expelled from the G-8. The group's action was defended by the following statement:

International law prohibits the acquisition of part or all of another state's territory through coercion or force. To do so violates the principles upon which the international system is built. We condemn the illegal referendum held in Crimea in violation of Ukraine's constitution. We also strongly

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<sup>10</sup> Salushev, S. (2014). Annexation of Crimea: Causes, Analysis and Global Implications. *Global Societies Journal*, 2. Retrieved from <https://escholarship.org/uc/item/5vb3n9tc>

condemn Russia's illegal attempt to annex Crimea in contravention of international law and specific international obligations.<sup>11</sup>

Shortly after the referendum, Ukraine filed a resolution calling on the UN General Assembly to declare Crimea's referendum unlawful, a document that resembled the language of a similar declaration that Russia vetoed in early March. The proposed statement condemned the referendum as "null and void" and stated that it "cannot serve as the basis for any change to the status of the Autonomous Republic of Crimea or of the City of Sevastopol." On March 27, 2014, the United Nations General Assembly passed a resolution entitled "Territorial Integrity of Ukraine". Despite the fact that the resolution is not legally binding, it sent a powerful political statement to Russia, condemning its actions in Crimea and Ukraine.

- ***Donetsk and Luhansk***

Donetsk Oblast and Luhansk Oblast are provinces in eastern Ukraine's Donbass area. Donetsk and Luhansk have a different relationship with Russia than Crimea. Crimea was a part of Russia until 1954, and the majority of its population is of Russian ancestry. On the other hand, Donetsk and Luhansk, on the other hand, historically belonged to Ukraine and are populated primarily by Ukrainians. During the Czarist era of 19th century imperialism, south-eastern Ukraine was conquered and incorporated into the Russian empire. This entire region, including Donetsk Oblast and Luhansk Oblast, was referred to as Novorossiia, which translates to "New Russia" in English. In April 2014, over a month after Russia had seized and annexed Crimea, President Putin used this word, implying that the annexation was justified because Crimea was in Novorossiia and so intrinsically Russian. Later in the year, when addressing separatists in eastern Ukraine, Putin referred to them as the "militia of Novorossiia. Putin's usage of the term "Novorossiia" sparked concern and speculation that Russia's ultimate objective was to reclaim former provinces of the New Russia<sup>12</sup>. In fact, pro-Russian rebels began taking over government buildings in Donetsk and Luhansk in the east of Ukraine in April 2014 as a way to protest what they saw as an illegitimate government in Kiev. The rebels demanded that an independence referendum be held in both cities and publicly requested that Russia

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<sup>11</sup> "Russia Just Quit the G8 for Good." The Independent, 2017, [www.independent.co.uk/news/world/politics/russia-g8-kremlin-crimea-ukraine-vladimir-putin-g7-g20-a7525836.html](http://www.independent.co.uk/news/world/politics/russia-g8-kremlin-crimea-ukraine-vladimir-putin-g7-g20-a7525836.html).

<sup>12</sup> Taylor, Adam. "'Novorossiia,' the Latest Historical Concept to Worry About in Ukraine." Washington Post, 2014, [www.washingtonpost.com/news/worldviews/wp/2014/04/18/understanding-novorossiia-the-latest-historical-concept-to-get-worried-about-in-ukraine](http://www.washingtonpost.com/news/worldviews/wp/2014/04/18/understanding-novorossiia-the-latest-historical-concept-to-get-worried-about-in-ukraine).

send "peacekeepers" to safeguard them. Anti-terrorist military operations were initiated by Ukrainian forces against rebels who had begun controlling an increasing area of Donetsk and Luhansk. On May 11, 2014, rebels held a hastily organised referendum despite Russian President Putin's request that it be postponed. One question appeared on the ballots in Ukrainian and Russian: "Do you support the Act of State Self-rule of the Donetsk People's Republic/Luhansk People's Republic?" According to reports of a high voter turnout, over 90 percent of Donetsk and Luhansk voters supported sovereignty and independence from Kiev<sup>13</sup>. Rebel separatists later declared the People's Republic of Luhansk and the People's Republic of Donetsk to be quasi-independent entities. Ukraine, the EU, and the United States all criticised and deemed illegitimate the referendum procedure and its conclusion. The Kremlin Press Service declared, "Moscow respected the conclusion of the referendum and called for the peaceful "practical implementation" of the will of the people in eastern Ukrainian districts. Within hours of declaring independence, the Republic of Donetsk submitted an application to join the Russian Federation, urging Moscow to heed the vote of the people. Following the two referendums, deadly fighting ensued between separatist rebels and Ukrainian militia. This resulted in the emergence of civil unrest in the eastern area of Ukraine, which has claimed the lives of tens of thousands of people and forced countless others to flee their homes. The Ukraine and pro-Russian rebels reached a peace agreement to stop months of warfare on September 5, 2014. As part of the peace agreement, on September 16, 2014, Ukraine awarded Donetsk and Luhansk self-rule and extended amnesty to separatist rebels active in the conflict in eastern Ukraine who had not been responsible for serious crimes. For a temporary three-year period, parts of the rebel-held Donetsk and Luhansk regions in eastern Ukraine were to be given "special status" and more freedom.

The president of Ukraine, Petro Poroshenko, stated that the laws will ensure Ukraine's "sovereignty, territorial integrity, and independence" while setting the path for the decentralisation of administration, which was among the objectives of the insurgents. Representatives of the Donetsk and Luhansk Republics welcomed the laws as the start of a peaceful dialogue with Ukraine. However, they were adamantly opposed to Donetsk and Luhansk remaining part of the country, claiming that "the eastern region has nothing to do with Ukraine." The truce that began in September 2014 abruptly ended in October of the same year. Since then, on February 12, 2015, a new ceasefire was declared

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<sup>13</sup> "Rebels Declare Victory in East Ukraine Vote on Self-rule." CNBC, 2014, [www.cnbc.com/2014/05/11/are-victory-in-east-ukraine-vote-on-self-rule.html](http://www.cnbc.com/2014/05/11/are-victory-in-east-ukraine-vote-on-self-rule.html).

with the guarantee of decentralisation and permanent special status for separatist-held administrations . Russia has frequently asserted that it has nothing to do with the pro-Russian rebels in eastern Ukraine and that its citizens and soldiers fighting alongside the rebels are acting voluntarily. On the other hand, the Ukraine and countries in the West have said that Russia is working together to fund and fight illegal separatists in a country that is not its own.

The Russian State Duma voted on February 15, 2022, to request that President Vladimir Putin recognise the self-proclaimed Donetsk and Luhansk People's Republics in Ukraine as independent entities. The Communist Party proposed the measure. The Russian State Duma officially recognised the self-proclaimed Donetsk People's Republic and Luhansk People's Republic in Eastern Ukraine as independent entities on February 21, 2022. President Vladimir Putin authorised the law. On the same day, Putin signed decrees recognising the Donetsk and Luhansk People's Republics; on the same day, he signed agreements of friendship, collaboration, and aid with the republics. Putin authorised Russian forces to enter Donbas the same evening on a "peacekeeping operation." Several members of the United Nations Security Council denounced Russia's February 21 involvement in the Donbass region, while none expressed support. On February 22, early dawn video footage captured the movement of Russian armed units and tanks in the Donbas region. The Federation Council authorised the employment of armed forces abroad. Zelenskyy activated army reservists, and the Ukrainian parliament declared a 30-day state of national emergency. Russia pulled its ambassador out of Kiev. On February 23, Zelenskyy delivered a speech in Russian in which he urged Russian citizens to avert conflict. He denied the existence of neo-Nazis in the Ukrainian administration and stated that he had no plans to assault Donbas. Dmitry Peskov, a spokesman for the Kremlin, stated on February 23 that rebel leaders in Donetsk and Luhansk had addressed a letter to Putin stating that Ukrainian bombardment had resulted in civilian deaths and requesting military assistance from Russia. Ukraine sought an emergency meeting of the UN Security Council. Putin announced the launch of military operations in Ukraine, proclaiming that Russia sought the "demilitarisation and denazification" of the country. 30 minutes into the emergency meeting. Late in September 2022, Moscow officials in Ukraine organised referendums on the annexation of Ukraine's occupied territories, including Donetsk People's Republic and the Luhansk People's Republic in the Russian-occupied Donetsk and Luhansk oblasts of Ukraine, as well as the Russian-appointed military administrations of Kherson Oblast and Zaporizhzhia Oblast. The final results of the elections, which the Ukrainian government

and its allies denounced as shams, revealed huge majorities in favour of annexation. In a statement to both chambers of the Russian parliament on 30 September 2022, Vladimir Putin declared the annexation of the Donetsk, Luhansk, Kherson, and Zaporizhzhia provinces of Ukraine. The annexation was opposed by Ukraine, the United States, the European Union, and the United Nations.

## **6. LEGALITY OF RECOGNISING OF CRIMEA, DONETSK AND LUHANSK**

Russia maintains historical links to Crimea since the reign of Catherine the Great, they founded the city of Sevastopol, the largest city in the region and the homeport of Russian black sea fleet. As soon as Crimea was formally annexed in 2014 after unilateral declaration independence, Russia recognized it, most countries in the world see Crimea as a part of Ukraine. So far, Syria, Afghanistan, Cuba, Venezuela, North Korea And Sudan have recognized Crimea as a part of Russia. On 21 February 2022, Putin in his televised address to the nation address concerning the events in Ukraine” announced Russia as officially recognized the Donetsk People's Republic and the Luhansk People's Republic. On 23 February 2022, Vladimir Putin called for the international community to recognize Crimea as part of Russia. On 24 February Russia declared and launched a “special military operation” to free the new republics, he said:

“We have been left no other option to protect Russia and our people, but for the one that we will be forced to use today. The situation requires us to take decisive and immediate action. The people's republics of Donbas turned to Russia with a request for help. ... In this regard, in accordance with Article 51 of Part 7 of the UN Charter, with the sanction of the Federation Council of Russia and in pursuance of the treaties of friendship and mutual assistance ratified by the Federal Assembly on 22 February of this year with the Donetsk People's Republic and the Luhansk People's Republic, I have decided to conduct a special military operation.”

States bare rights to recognize a new state, this does not mean a new state cannot be a state without recognition, tiwan being the most notable example. Father of contemporary international law Lassa Oppenheim said that a state "becomes an International Person solely and exclusively via recognition." The comment made by Oppenheim appears to contravene article 3 of the Montevideo Convention. Legal experts continue to discuss whether a state may get full status without the acknowledgment of

other states. The discrepancy is nonetheless just apparent. State as a fact is distinct from state as an international legal personality. First, an entity must meet the Montevideo criteria in order to become a state in fact, and then it must accept the responsibilities of a state (including obeying international law). There is nothing intrinsically wrong about recognising that an entity is in fact a state and has adopted the responsibilities of a state under international law. The recognising state recognises nothing other than the fact that the embryonic state must perform the responsibilities of a state and be granted the state-specific powers to do so. However, Russia's recognition is illegitimate. If the breakaway republics are ultimately dependent on Russia, then they are not in fact nations, and Russia was aware of this when it recognised their sovereignty. This is a violation of international customary law. Both the United Nations Charter and customary international law prevent states from intervening in the domestic affairs of other nations. As both republics claim Ukrainian land as their own, this is being argued as a reason why Russia's recognition of Donetsk and Luhansk is unlawful. Premature recognition, while generally lawful, can constitute unlawful interference. There is no definition of premature recognition in international law. A state's recognition of an organisation it knows lacks all the qualifications for statehood is, however, by definition premature.

## **7. DISTINGUISHING CRIMEA, LUHANSK AND DONETSK from KOSOVO**

Crimea, Luhansk, and Donetsk are part of the sovereign territory of Ukraine. The Ukrainian constitution does not include a right to secession, but Article 73 stipulates that any changes to the country's territory must be approved by a referendum in which all eligible voters may participate. The referendums in March and May of 2014 were held independently of the Ukrainian government and were restricted to residents of the affected districts. Even if Ukraine had agreed to the referendums, it would have taken more than a few weeks to carry out the necessary preparations and allow for genuine debates on the issues being voted upon. President Putin used the referendums in Scotland and Catalonia to support his argument regarding the legality of Crimea's referendum. However, they would not be applicable in this case. According to the constitution, both of the referendums that Vladimir Putin mentioned took place after extensive debate and discussion over an extended period of time.

As we have discussed several times in this paper, international law permits secession as a means of self-determination only in cases of human rights violations, ethnic and religious persecution, colonial subjugation, and aggression. Corrective secession is permissible and can be invoked. This argument was also used to defend Kosovo's independence from Serbia, where it was argued that the relationship between the two parties was simply too volatile to be resolved through internal political mechanisms. However, the situations in Crimea, Donetsk, and Lugansk are distinct. The politicians of Crimea asserted that the Ukrainian government had committed widespread violations of human rights in Crimea, and that the illegal change of government in Kiev posed a grave threat to the safety of the citizens, despite the lack of evidence to support these claims. Instead, the Ukrainian government has demonstrated that it is willing to respect the internal autonomy of these areas' residents and grant them greater freedom. In the early 1990s, for instance, it negotiated Crimea's status as an independent entity with its own constitution and local laws, which had been passed by the Crimean parliament. During recent peace talks with rebels in Donetsk and Luhansk, the Ukrainian government capitulated to pressure and agreed to decentralise power and grant greater autonomy to the separatist Donbass regions of Donetsk and Luhansk.

Russia has been instrumental in the escalation of the conflict in Ukraine. In February 2014, the Russian military invaded Ukrainian territory in order to "assist" Crimea's transition to independence and protect its Russian-speaking population. Russia violated Article 2(4) of the United Nations Charter's *jus cogens* prohibition against the use of force<sup>14</sup>. In addition, it violated the United Nations General Assembly's 1970 "Declaration of the Principles of International Law," which prohibited the acquisition of territory through the threat or use of force. According to the Kosovo Advisory Opinion of the International Court of Justice, the illegality of the declarations of independence stemmed from the fact that they were or would have been linked to "the unlawful use of force or other egregious violations of norms of general international law, particularly those of a peremptory nature (*jus cogens*)". Even if a state agrees with a group of people who desire independence, it has no right to intervene on the territory of another country. When Russia sent military forces onto Ukraine's sovereign territory to "assist" Crimea in achieving independence and joining the Russian Federation, it was evident that Ukraine was under attack from without.

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<sup>14</sup> "United Nations Charter." United Nations. Accessed 11 Feb. 2023.

Kosovo was under international control at the time it declared independence. The UN Interim Administration Mission in Kosovo (UNIAM) was established by the Security Council (14 votes in favour, including Russia, with only China abstaining). In addition to reaffirming Yugoslavia's sovereignty and territorial integrity, the adopted resolution demanded that Kosovo be granted significant autonomy and genuine self-government. The international community continued to recognise Serbia's authority over Kosovo and awaited the discovery of a political solution to determine Kosovo's final status. In contrast, Crimea was still subject to Russia's unilateral and illegal rule when the referendum was held and independence was declared (many places and things were captured by Russian soldiers).

Donetsk and Luhansk have both declared independence from Ukraine, but their legal status has not been recognised internationally. In an effort to end the current conflict, Ukraine has pledged to grant autonomy and special status to both regions. However, no agreement has yet been reached on this issue. In none of these locations existed exceptional circumstances that could be used to justify secession under international law. Not only do these random acts of separatism contradict the concept of territorial integrity, but they also increase the likelihood that citizens of a multinational state will fight over territory. Russia has consistently opposed the independence of Kosovo. During the ICJ hearings, Russia took a relatively restrained stance regarding the right to self-determination and the right to secession. In the case of Crimea, however, Russia reversed its position and utilised the arguments advanced by the United States (and rejected by Russia) during the proceedings. Russia's written submission to the ICJ was marked by extreme conservatism. Russia was of the opinion that Serbia's territorial sovereignty should be respected and that remedial secession should be exercised only in exceptional cases. However, only the most dire scenarios, such as an openly armed attack by the parent state that threatens the lives of the affected population, should be considered. Otherwise, every effort must be made to resolve the conflict between the parent state and the relevant ethnic community within the current state's framework. This stark contrast in Russia's response to the unilateral declarations of independence by Crimea, Donetsk, and Luhansk demonstrates that Russia's political objective is to maintain control over former Soviet territories.

## 8. CONCLUSION

International law recognises unilateral declarations of independence because what renders a unilateral declaration of independence illegal is not its unilateral nature, but the surrounding circumstances. Under international law, a unilateral proclamation of independence will only be deemed illegal if the preceding events constituted a violation of the laws of international law. The 17 February 2008 unilateral declaration of independence by Kosovo from Serbia was compliant with international law because the circumstances surrounding its adoption did not violate any rule of international law. In contrast, Crimea and •Donetsk and Luhansk’s unilateral declaration of independence is a clear violation of international law due to Russia's use of force against the territorial integrity and political sovereignty of Ukraine in violation of the United Nations Charter and the Budapest Memorandum of 1994 between Russia and Ukraine. Therefore, it is suggested that the UNGA seek the advisory opinion of the ICJ on the legitimacy of Crimea's declaration of independence so that it can be declared null and void; failing to do so would set a dangerous precedent for other separatist parties around the world.

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