

Territorial integrity and self-determination: rules and standards

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2015

The Ukrainian political crisis, aggravated by the change of Crimea's status and hostilities in Donbass caused the deepest confrontation between Russia and the West (the US and the European Union) since the end of the Cold War, the dissolution of the Warsaw Treaty and the collapse of the Soviet Union.

However, it has to be noted that aggravations in the relations between Moscow on the one hand and Washington and Brussels, on the other, happened before the current confrontation. Moreover, they tended to be particularly sharp and fierce in the periods when problems of national self-determination and territorial integrity were the focus of discussions and arguments. This was the case with Chechnya in 1998-1999 and Kosovo (the "Kosovo precedent") as well as the recognition of the independence of Abkhazia and South Ossetia in 2008, the Crimea referendum and differences over the interpretation of its outcome in 2014. Significantly, the Russian and Western positions on how to handle this or that ethno-political situation were not notable for universality or adherence to a constant set of criteria. Thus the US and its allies did everything to promote and support the unilateral declaration of independence of the former Serbian autonomous province of Kosovo, but condemned the unilateralism of the Russian side which recognized the independence of former autonomous entities within the Georgian SSR and made the autonomous republic of Crimea and Sebastopol parts of Russia.

Indeed, Moscow acted in many ways according to a similar algorithm. In November 1999 the First Russian President Boris Yeltsin, addressing the OSCE summit in Istanbul, focused on so-called "objective critics" of Russia and condemned external support of Chechen secession.¹ However, in January 2006 Vladimir Putin said that the self-determination of Kosovo could be used as a precedent by Abkhazia and South Ossetia.² Two and a half years later Russia recognized the independence of the two former autonomous entities of the Georgian SSR.

¹ OSCE Istanbul Summit. Speech by President Yeltsin of the Russian Federation on 18 November 1999
http://archive.mid.ru/bdomp/dip_vest.nsf/2b52bc67d48fb95643257e4500435ef7/30d93b83134c77aac3256886004d1ff51OpenDocument

² Transcript of the press conference by President Vladimir Putin of Russia for Russian and foreign journalists.
31 January 2006//
http://archive.kremlin.ru/appears/2006/01/31/1310_type63380type63381type82634_100848.shtml

While categorically rejecting the unilateral actions of the Kosovo Albanians and not recognizing the independence of the former autonomous province of Serbia, Moscow, however, repeatedly invokes the Balkan precedent³ which the West considers to be “a unique case.”

Thus, **Washington, Brussels, and Moscow each in turn were supporters of secession and “revisionism” and champions of the status quo and territorial integrity** against separatist aspirations. Both the West and Russia accuse each other of using “double standards.” In reality each side is concerned not so much about some ideal rules but is solving a specific political puzzle to promote its interests, while at the same time seeking to legitimize it. More often than not the principles of international law are invoked when it is thought to be expedient.

As a result we get two parallel political and legal realities that do not intersect. In one reality there are the independent states of Abkhazia, South Ossetia and Kosovo (although the numbers of states that have recognized them differ dramatically) which have diplomatic relations with those who have officially backed their self-determination. The other reality is “occupied” or “annexed” territories (which automatically downgrades national secession movements to the position of “puppets” of major players). There are either two constituent entities of the RF which have “reunited” with their Homeland and returned to the fold, and there is the territory of independent Ukraine which has been “annexed” by the neighbouring country pursuing an “imperial policy.”⁴ Against the background of growing mutual mistrust and a reluctance to seek compromises no one can tell where and how the instrument of supporting or deterring secession will be used. And yet there are many points in the Balkans and in the post-Soviet space where the principles of territorial integrity clashes with the struggle for self-determination. The most salient examples of such a clash are Transnistria and Nagorno-Karabakh which in turn are linked by dozens of threads with broader contexts (be it the Ukrainian crisis in respect of Transnistria, Russia-Turkey relations or “the Iran factor” in the case of the stand-off over Nagorno-Karabakh).

Secession and inviolability of borders: checks and balances

The year 2015 saw some high-profile jubilees. The 70th anniversary of the Yalta and Potsdam conferences and the 40th anniversary of the signing of the Final Act of the Conference on Security and Cooperation in Europe prompted a broad discussion on the effectiveness of the current world order. But the issue of the inviolability of borders and independence of multi-national states is the bedrock of every system of international relations.

In this context one has to admit that the mushrooming (described as a kind of “world record” by British expert Thomas de Waal)⁵ of unrecognized entities on the territories of the Soviet Union and Yugoslavia after their breakup in the early 1990s was a consequence above all of the systemic crisis of the Yalta-Potsdam world order. From the outset it was based on the contradiction between the principles of territorial integrity and inviolability of post-war borders on the one hand and the right to self-determination on the other sealed in all the UN declarations and pacts. The architects of the Yalta

³ This case was invoked in President Putin’s “Crimea speech” (18 March 2014 года) // <http://www.kremlin.ru/events/president/news/20603>

⁴ According to New Jersey Democratic Senator Robert Menendez, who chairs an influential Senate Foreign Relations Committee, “President Putin has upended the international order, and a slap on the wrist will not deter future Russian provocations”. // Cited on: Pace J. and Riechmann D. Obama, Ukraine President To Meet At White House // http://www.huffingtonpost.com/2014/09/18/obama-ukraine-poroshenko_n_5841892.html

⁵ Thomas de Waal, Threats for the South Caucasus security// The Herald of Europe, 2002. № 7-8. P. 35-38.

peace needed that system of checks and balances because by 1945 they were poised to become enemies again.

As a result both poles of the international system contributed to the strengthening of ethnic separatism, using it as an instrument to further their geopolitical ends. The withdrawal of the Soviet Union from Central and Eastern Europe followed by the collapse of the USSR and ultimately of the bipolar world opened the floodgates for the emergence of “new democracies” whose ideology was based on the principle of ethno-national self-determination. The break-up of the USSR and Yugoslavia marked the start of the formation of nation states, a process the West clearly underestimated. Never since the end of the First World War (which implemented Woodrow Wilson’s Fourteen Points and the Bolshevik political platform of “self-determination, including secession”) have there been so many countries based on an ethnic principle. Prominent Bulgarian political scientist Ivan Krastev had a point when he noted: “Europe likes to think of itself as a stable continent, but in reality in the two decades following 1989 it saw the creation and destruction of more states than any other region of the world at any time. It is even more than Africa in the period of decolonization in the 1960s. There appeared 15 new states in place of the USSR, 7 in place of the former Yugoslavia and two in place of Czechoslovakia. This not to speak of 4 “unrecognized republics” and others that would like to follow the same path.”⁶

Since gaining independence the new sovereign states of the former Soviet Union and Yugoslavia were covertly or overtly converting the principle of territorial integrity into the principle of the right of nations to self-determination. But, having gained that right, many of them, in their new capacity and within their new borders, immediately declared their “unity and indivisibility”, often without due account of the positions of the autonomies within them. This “change of milestones” led to ethno-political conflicts which entered a “hot phase” in some regions (notably in Transcaucasia and the Balkans).

Vague contours of the world order

After a substantial revision of the Yalta-Potsdam world order the contours of this order became very vague. Accordingly, the criteria of recognition/non-recognition became diluted. Hence the use of legal standards not so much as political expediency in the process of recognition. Moreover, the International Court of Justice proved to be unable to give a clear answer regarding the consequences of successful practice of secession in its Advisory Opinion on the legality of the Kosovo Declaration of Independence. Its main legal argument was that “general international law contains no applicable prohibition of declarations of independence”⁷.

Yet it is in accordance with this logic that the leaders of other ethno-national movements and de facto entities started building a case for their recognition⁸. What plays into their hands is the apparent legal uncertainty combined with the unilateral actions of the Western countries in the Kosovo case. A model according to which maximalist aspirations in relation to the “mother entity” (separation as an end in

⁶ Quoted from : Ivan Krastev on Russian Fears and the European Order // <http://www.caucasustimes.com/article.asp?id=20636>

⁷ See the full text of the Advisory Opinion of the International Court of Justice: // <http://www.icj-cij.org/docket/files/141/16010.pdf>

⁸ See an instance of such a reaction to the International Court of Justice Advisory Opinion (from the then prime minister of Abkhazia Sergey Shamba) <http://ria.ru/politics/20100723/257739398.html>

itself) gets significant outside support proves to be too effective to be overlooked or ignored by other players.

It is not by chance that Moscow constantly invokes the precedent and practical experience of Kosovo. What is the argument rolled out to prove that Kosovo is a unique case? That unlike in Abkhazia, South Ossetia and Crimea, self-determination was implemented under international control and supervision. But “international engagement” is not an abstract category. If the Kosovars had exercised their self-determination under Russian, Chinese or Indian supervision, the results might have been different from those achieved under US and Europe supervision with all the consequences that entails. The softening of Belgrade’s position (including de facto recognition of the current status quo) was not the result of some legal decisions, but of political and socio-economic expediency⁹.

It has to be said, however, that the “Kosovo precedent” is the result of the fact that the processes of the break-up of Yugoslavia and the Soviet Union were to a large extent attempts to shoehorn political decisions into legal formulas. Take, for instance, the self-determination of Croatia which was recognized as an independent state in December 1991 and admitted to the UN in May 1992, i.e. at the time when it controlled only 70% of its territory and had an unresolved conflict with the Serbs in Krajina. The International Tribunal for the Former Yugoslavia used these decisions to build its case against Slobodan Milosevic in solving the issue on the territory of which state – independent Croatia or the crumbling Yugoslavia – the war crimes had been perpetrated. As a result the self-determination of the former republic of federal Yugoslavia was interpreted not as an exercise of secession, but as the creation of a new state on the ruins of the old one because the central institutions of Yugoslavia allegedly had ceased to function.¹⁰ It would not be irrelevant to ask whether the central authorities of a united Ukraine are fully functioning considering the “separate districts of Donetsk and Luhansk regions.”¹¹?

Equally impressive is the example of Georgia which was recognized before the problems of South Ossetia, Abkhazia and Mingrelia (where a civil war broke out in late 1991 between supporters of President Zviad Gamsakhurdia and the State Council that toppled him) were settled. Neither the USA, nor Europe set any conditions for Tbilisi for admission to the UN, the IMF and the World Bank in the shape of ending internal conflicts or democratic legitimization through elections. Moreover, Georgia became a UN member in July 1992, less than a month before the start of hostilities in Abkhazia.

In search of uniform rules

One can argue incessantly that Russia has embarked on a dangerous and fraught game with Crimea, that the slogans of national self-determination cut both ways and can be used against the unity of Russia itself. But one cannot but see in Moscow’s actions today much the same logic as that the West tried out earlier in the Balkans and Transcaucasia. Except that the security of Serbia or Georgia are of marginal importance for the USA while for Russia (70% of whose Black Sea Fleet infrastructure is

⁹ See more on the “Kosovo precedent” for de facto entities in the post-Soviet space in: Harzl B. Nationalism and Politics of the Past: The cases of Kosovo and Abkhazia // Review of Central and East European Law (2011). # 36(2), pp. 53-77.

¹⁰ See the full text of the findings of the Arbitration Commission for the Former Yugoslavia (also known as the Badinter Commission”): Yugoslavia Through Documents. From its creation to its dissolution/ Ed. By Trifunovska S., Martinus Nijhoff Publishers. The Hague, 1996, P. 1020.

¹¹ This is how the complex of measures on compliance with the Minsk accords refers to territories controlled by unrecognized Donetsk and Luhansk People’s Republics // <http://www.osce.org/ru/cio/140221?download=true>

located in Crimea) the situation in Ukraine (or indeed any other post-Soviet country) is a key foreign policy priority which is in many ways linked with internal political affairs.

One can go along with Fyodor Lukyanov, a noted Russian international affairs scholar, that the model of relations between Russia and the West that evolved after 1991 (but was formed during the *perestroika* period) has exhausted itself. Within that model Moscow, notwithstanding all its disagreements with various moves of the USA and EU, tried to stay within the Western foreign policy discourse¹². This was the case even in August 2008 during the “five-day war” in Transcaucasia. However, this did not make the West regard Russia as an equal partner. The extremely ideological view of Russian interests, the stake of the “new democracies” which have declared their adherence to the pro-Western choice, created multiple bilateral problems which were not discovered until the Ukrainian crisis. The events in Kiev, Crimea and Donbass merely accelerated the reaction started by earlier contradictions over the Caucasus and the Balkans.

The impasse could be broken by an agreement between the West and Russia on some common rules of the game which would include more precise criteria of recognition of new states and legitimacy or otherwise of secession and the preservation of territorial integrity, as well as possible procedures of transition to a new status. However, this is unlikely to happen unless a broader *modus vivendi* between the two, if not a comprehensive compromise, is achieved.

¹² Lukyanov F.A. **Апология недосказанности** (In praise of not saying all)// <http://www.rg.ru/2014/12/23/lukianov.html>