Chapter 10

Territorial (Se)Cession in Light of Recent Events in Crimea

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The chapter assesses the rules on territorial (se)cession that apply under current international law, in light of the recent events in Crimea. The first section focuses on (se)cession as a legal basis for territorial changes. It discusses whether a state may lawfully incorporate a part of the territory of another state in the absence of an effective government in the latter state; and under what conditions the cession of part of a state’s territory may occur on the basis of a bilateral treaty.

The second section deals with territorial referendums and their role in the process of (se)cession. It considers whether a referendum is a necessary and/or sufficient condition for the lawfulness of (se)cession and what procedural standards, if any, apply to its course. The case of Crimea serves a double purpose in this chapter. First, it sets the limits of the topic in that only those questions relating to (se)cession that arose with respect to the recent events in Crimea are discussed here. Second, it offers a concrete and topical case study that is assessed against the background of general rules applicable to (se)cession.

The chapter draws on two opinions of the Venice Commission of the Council of Europe (European Commission for Democracy through Law) that were adopted at the 98 Plenary Session of the Commission held in March 2014. The first opinion, Opinion No. 763 on the compatibility with international law of an amendment to the Federal Constitutional Law of the RF on the Procedure of Admission to the Russian Federation and Creation of a New Subject within the RF, discusses some of the issues covered in the first section of this chapter. The second opinion, Opinion No. 762 on the constitutionality of the Decision by the

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Supreme Council of the Autonomous Republic of Crimea to organize a referendum on becoming a constituent territory of the RF, concentrates on the lawfulness of the referendum held in Crimea on 16 March 2014, though it considers it primarily from the perspective of constitutional rather than international law. Since I was one of the rapporteurs drafting the first opinion, I have used my original comments, including those that were later incorporated into the opinion.

1 Territorial (Se)Cession and the Incorporation of Crimea into the Russian Federation

On 18 March 2014, the Russian Federation incorporated the territory of Crimea, an autonomous republic within Ukraine, into its own territory. The incorporation took place under Federal Constitutional Law No. 6-FKZ on the Procedure of Admission to the Russian Federation and Creation of a New Subject within the Russian Federation, adopted on 17 December 2001. The Law implements Article 65(2) of the Constitution of the Russian Federation, which stipulates that "accession to the Russian Federation and formation of a new subject of the Russian Federation within it shall be carried out as envisaged by the federal constitutional law". From the point of view of international law, the main legal basis that the Russian Federation relied on was the cession of a territory by a foreign state or, more correctly, an accession of this foreign state as a whole, by virtue of a bilateral treaty between the Russian Federation and the so-called Republic of Crimea. Prior to the events of March 2014, an alternative legal basis was considered, and finally rejected, by a segment of the Russian political representation—the cession of a territory in the absence of an effective government. This section discusses the two arguments, assessing them first at the general level and then in the specific context of the events in Crimea.


3 Федеральный конституционный закон No. 6-ФЗ О порядке принятия в Российскую Федерацию и образования в ее составе нового субъекта Российской Федерации, 17 декабря 2001. [Federal Constitutional Law No. 6-FKZ on the Procedure of Admission to the Russian Federation and Creation of a New Subject within the Russian Federation, 17 December 2001].