

The Kosovan Precedent for the Annexation of Crimea

Written by Daniel Millar

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DANIEL MILLAR, MAR 18 2019

Nation-states have become the most important form of political organisation within the international system. Typically dominated by one particular *ethnos*— a people drawn together by cultural, ethnolinguistic or civic ties — states and their administration are critical to any study of world politics. On the domestic level, nation-states' governance requires establishing laws and institutions: creating judicial, political and social systems; directing policing and military activity; constructing the context for relations between societal groups; and overseeing cultural development. On the super-national level, governments form the basis for international relations and represent the constituent members of strategic alliances, International Organisations, and an international legal system. The imbalance between states' assets and capabilities begets global inequalities; their disagreements and skirmishes prompt international conflict.

As such, the nation-state remains the principal unit of analysis in much of the academic study of international relations. However, despite their centrality to the discipline's classical traditions — both realist and liberal scholars hold states to be the sole significant actors of world politics — there has been comparatively little analysis of what nation-states comprise, how they come into being, and the consequences of their rare fragmentation. This perhaps results from the relative stability of the nation-state system. The majority of the (primarily Western) states most referenced in traditional international relations literature predate the organised study of international relations. By the time the first International Politics Department was established in Aberystwyth in 1919, the European Westphalian system had been in place for nearly three centuries. This overall stability has seen the nation-state increase its predominance as a form of polity through wars, border disputes, and population shifts. Such constancy complicates the interrogation of how new states come into being as others fall apart.

Two such cases have occurred in Europe in the twenty-first century. In February 2008, following decades of severe violence and repression in the aftermath of the Yugoslav Republic's disintegration, Kosovo declared its independence from Serbia. In Spring 2014, following a pro-European revolution in Kyiv, Crimea unilaterally broke from Ukraine, acceding to — or being annexed by — the Russian Federation.[1] Neither instance of secession is universally recognised. As of January 2019, Kosovo has gained diplomatic recognition by over 100 United Nations (UN) Member States.[2] The transfer of Crimea to Russia has been supported by a far smaller number. Both cases fall uncertainly within the canon of international law — an uncertainty unlikely to be resolved in the near future.

The instances of self-determination in Kosovo and Crimea share certain attributes. Both can be seen as long-term results of the imperfect disintegration of large socialist states (Yugoslavia and the Soviet Union respectively) in the 1990s. The majority of both territories' populations are ethnolinguistically different to those of the states from which they broke away (Serbia and Ukraine). In each, this majority population felt threatened by their metropolises. Both cases featured a varyingly controversial intervention from a third-party state or alliance (the North Atlantic Treaty Organisation (NATO) and Russia). Yet these similarities are largely superficial. The Kosovan population was subject to sustained discrimination and ethnic cleansing, incomparably more concrete and severe than the perceived hardships undergone by the citizens of Crimea. The NATO engagement in Kosovo was transparent, targeted, and supported by the international community represented by the UN Security Council. The Russian military involvement in Crimea was covert, unsanctioned, and widely internationally condemned. Furthermore, whereas Kosovo set out to implement its own independent state system, based on the region's *de facto* government of decades — Crimea moved to accede to the Russian Federation.

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In spite of these differences, Russian politicians have repeatedly invoked the example of Kosovo as precedent for the “accession” of Crimea.[3] Speaking in March 2014, for instance, Russian President Vladimir Putin attested the similarities between the cases, arguing ‘things that Kosovo Albanians (and we have full respect for them) were permitted to do, Russians, Ukrainians and Crimean Tatars in Crimea are not allowed.’[4] In this essay, I will argue – contrary to the case laid out by Putin and others – that the two cases are insufficiently similar for the secession of Kosovo to offer a meaningful precedent to the annexation of Crimea. Despite their outwardly similar backgrounds as minority regions of post-socialist states, the regions’ varying degrees of autonomy and structure clearly divide the Kosovan and Crimean examples. Furthermore, the two are distinguished by the level of conflict and threat endured by the regions, as well as the broad international acceptance of Kosovo’s secession as compared to that of the Russian engagement in Ukraine. In my conclusion, I will return to the persistent Russian claims of the two cases’ similarity, and highlight potential political benefits derived from this line of discourse.

Few areas of international law are clearly defined, universally accepted, and manifestly enforceable. Instead, they are often expressed in nebulous jargon, detached from the practice of statecraft, and unable to apolitically constrain or direct states’ behaviour. This extends to legislation concerning self-determination and secession. Chapter One of the 1945 UN Charter affirms that the organisation aims to ‘develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples.’[5] Later documents further develop the point. The 1970 Declaration on Principles of International Law, for instance, states that ‘all peoples have the right freely to determine, without external influence, their political status and to pursue their economic, social and cultural development.’[6] Both texts seem to point towards the right to self-determination of “peoples” – the national component of the nation-state. None, however, clearly lay out criteria in which secessionism can and should take place, especially in cases, as in Kosovo and Crimea, characterised by the seceding territories failure to secure the consent of their respective metropolises. They lack, moreover, precise definitions of to which “peoples” the concept should be applied. This unclarity is compounded when weighed against states’ sovereignty and territorial integrity – also guaranteed by, *inter alia*, the UN Charter.[7]

More transparent, however, are the conditions in which states are held to be legitimate polities. The 1933 Montevideo Convention, which has accrued the status of Customary International Law, suggests that states should possess ‘(a) a permanent population; (b) a defined territory; (c) government; and (d) capacity to enter into relations with other states.’[8] While also vague, these conditions can be seen as baseline criteria for the legitimacy of any secessionist region. Kosovo, in contrast to other disputed territories, met at least the first three of these conditions before its 2008 Declaration of Independence. Under both the 1946 and 1963 Yugoslav constitutions, Kosovo was demarked an ‘autonomous province’.[9] One of only two such regions in Yugoslavia (the other the northern Serbian Vojvodina region), this status clearly demarked the Kosovan borders and population – a population approximately 68% ethnically Albanian in 1948, 92% by 2006.[10] It further granted significant levels of self-government and relative independence from the Belgrade regime. A 1974 amendment to the constitution further allowed Kosovo to develop ‘its own central bank, education and health-care systems, police, courts and independent cultural institutions’ – competencies which could not be overturned without the region’s provincial assembly’s consent.[11]

By 1990, these guarantees had been repealed. A ‘Serbization’ programme was instituted, whereby ‘tens of thousands of Kosovo Albanian doctors, municipal officials, teachers and industrial workers were sacked from their jobs’, replaced by ethnic Serbs.[12] This was commensurate with a rise in Serbian ethnonationalism, as typified by Serb leader Slobodan Milošević’s 1987 insistence, referring to the Kosovar Albanians, that ‘no one will ever dare beat [the Serbs] again.’[13] Excluded from official Serbian political structures, the Albanian population moved to establish a ‘parallel state’, providing services in education, health, social support, justice, and human rights, as well as a market, banking and tax system. The state building process was further accelerated by the 1998-1999 Kosovan War, triggered by the brutal Serbian attacks on, *inter alia*, the villages of Drenica and Račak.[14] These prompted the passing of UN Security Council Resolution 1244, and in turn the establishment of UNMIK (the UN Interim Administration Mission in Kosovo). Since 1999, UNMIK has helped coordinate efforts by the UN, Organisation for Security and Co-operation in Europe (OSCE), and European Union (EU) to develop four pillars: ‘police and justice’, ‘civil administration’, democratization and institution building, and reconstruction and economic development.[15] By 2008 Kosovo could be regarded as an ‘independent dependent state’: functionally self-governing but unable to fully engage in world politics due to the continued dispute with Serbia.[16] It had demonstrated its legitimacy as a polity

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prior to its Declaration of Independence.

Kosovo's clear and long-standing path to state-building and independence stands in contrast to that of Crimea. While it would be unfair to judge Crimea solely against the same Montevidean standards for functional independence from the Ukrainian metropole – Crimea's self-determination took the path of 'accession' to another state, not the foundation of a new independent state – indications of the region's readiness and desire for 'accession' to Russia could have otherwise been made manifestly clear. Crimea, like Kosovo, has a defined territory. Clearly demarcated by its peninsular geography, it was absorbed into the Russian Empire in 1783, and, after the Russian Revolution and Civil War, conferred the status of Autonomous Socialist Soviet Republic within the Russian SFSR. In 1954, the region was transferred as an Oblast to the Ukrainian SSR – a move of little consequence under the Soviet federal system – by Nikita Khrushchev after an alleged mere 15 minutes of deliberation.[17] Crimea was pronounced an Autonomous Republic of Ukraine (alongside the Sevastopol 'city with special status') during the collapse of the Soviet Union in 1991.

While its territory has remained constant throughout its political development, Crimea's population has not. The Russian Empire and Soviet Union were complicit in the ethnic cleansing and mass-deportation of Crimea's indigenous Tatar population between the 18th and early 20th centuries.[18] In the 2001 Ukrainian census – the most recently held – ethnic Russians made up 58.5% of the population of the Crimean Autonomous Republic, Ukrainians 24.4% and Crimean Tatars 12.1%.[19] Although higher than other regions, the proportion of Russians is far from overwhelming. As Putin himself highlighted, 'Crimea is a unique blend of different peoples, cultures and traditions.'[20] Its diversity certainly does not indicate the presence of a homogenous *ethnos*, justifying – at least when considered in isolation – either independence or union with Russia. It contrasts unfavourably with the 92% Albanian ethnic composition of Kosovo. In this regard, the case of Kosovo is too singular to offer a precedent for the annexation of Crimea.

The political cause of Crimean independence or 'accession' to the Russian Federation also lacks the depth of historical support of the Kosovan campaign for independence. The only referendum held in Crimea after 1991 was in support of maintained federal rights, pursuant to the 1992 Ukrainian constitution. In Kosovo, by contrast, a ballot was staged in September 1991 indicating 99% support for independence – albeit with the Serb minority excluded.[21] Indeed, up until 2014, no Crimean political party explicitly advocated union with Russia, including the Russian Unity Party which later merged with Putin's United Russia. Limited polling conducted by the UN Development Programme suggests that as recently as late 2011, only 65.6% of the Crimean population favoured 'accession' to the Russian Federation.[22] This figure is dwarfed by that in favour of Kosovan independence in 1991. Taken in isolation, it by no means confers legitimacy upon the project: the 2017 Catalan bid for independence from Spain, for example, failed despite 90.1% support in a regional referendum.[23] This is not to say that there was no support for the transfer of Crimea to Russia. The 65.6% represents substantial backing, especially when combined with a limited pro-accession protest movement led by the politician Sergei Tsekov.[24] The Kosovan precedent of clearly documented and long-standing popular desire for self-determination did not apply in Crimea.

It is likely that this contrast of support for the self-determination projects in Kosovo and Crimea was directly related to the level of violence and threat endured by each territory. The magnitude of the war crimes committed in Kosovo and elsewhere during the Yugoslav Wars prompted the establishment of the International Criminal Tribunal for the former Yugoslavia (ICTY). The first such *ad hoc* court since the end of the Second World War, ICTY only had a mandate to prosecute crimes against humanity, genocide, grave breaches of the 1949 Geneva Conventions and violations of the laws or customs of war – the most severe infringements of international law. Among the cases ICTY investigated was that of Vučitrn, a municipality in northern Kosovo, in which Serb forces forcibly removed approximately 20,000 Kosovar Albanians, allegedly killing more than 100 civilians.[25] In nearby Srbica, Serb forces allegedly shelled several villages, confining women and children in a barn before sexually abusing and killing them, disposing of their bodies in wells.[26] A large number of ethnic Albanian men were separately shot. In Priština, hundreds of Kosovo Albanian residents were forced onto overcrowded buses and trains bound for the Macedonian border. Several were killed or sexually assaulted.[27]

The organised violence suffered by the Kosovar Albanian population during the war represented a brutal layer of

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criminality after years of state-sponsored racism and subjugation. It would be inaccurate to claim that the Crimean population escaped political misfortune entirely. The 1998 Crimean constitution, for instance, reduced its legal status and the autonomy of the Crimean parliament.[28] But, in the four years prior to 2014, the pro-Russian Party of Regions – the most popular party in Crimea – and its leader Viktor Yanukovich had held power.[29] Against this relatively friendly medium-term political background, Crimea's 2014 'accession' to Russia emerged catalysed by the Euromaidan Revolution. From March 2013, protests in the majority ethnic-Ukrainian Kyiv rallied against a Yanukovich decision to seek closer trade ties with Russia over an Association Agreement with the EU.[30] By February 2014, the fervency of the protests – particularly concentrated on the central *Maidan Nezalezhnosti* – had risen to fever-pitch, spurred on by an attempted police crackdown.[31] Government offices were raided, and pressure brought to bear on the regime. Yanukovich was forced from office into exile in Russia on 22nd February, replaced in time by the pro-Western chocolate magnate Petro Poroshenko.[32]

The Euromaidan Revolution was reviled in Crimea, as elsewhere in Eastern and Southern Ukraine and in the Kremlin.[33] It was seen as an unconstitutional, pro-Western coup, ousting their preferred Party of Regions without consultation or representation. There is undoubtedly some truth to this allegation, even if claims the protests were led by 'nationalists, neo-Nazis Russophobes and anti-Semites' are largely unfounded.[34] A legally contested referendum, called by the newly installed pro-Russian government under Sergei Aksyonov, was held in Crimea and Sevastopol on 16th March. Approximately 96.8% of voters are alleged to have backed union with Russia.[35] The peninsula's 'accession' was confirmed by an 18th March Agreement signed by Crimean and Russian representatives.[36] While meaningful, the political consequences of the Revolution 600km from Crimea are of a different magnitude to the suffering endured by the Kosovar Albanian population during the 1998-1999 War. Again, the precedent of Kosovo seems inapplicable.

The violence experienced during the collapse of Yugoslavia resulted in the 1999 UN Security Council Resolution 1244, which called for the rapid Yugoslav withdrawal from Kosovo, the demilitarization of the region, the establishment of UNMIK (as referenced above) and sanctioned NATO-led peacekeeping.[37] It also pointed towards a future resolution of the Kosovan situation based on self-government and stabilisation. The Yugoslav war crimes likely also contributed to the broad international recognition of Kosovo's independence. Proclaimed through a Declaration on 17th February 2008, Kosovo was recognised by sixteen UN members within five days, 53 by the end of 2008, and over 100 by 2019.[38] The legality of its Declaration was also approved by an – albeit somewhat nebulous – 2010 International Court of Justice ruling.[39] In the case of Crimea, no such international acceptance has been achieved. The UN General Assembly passed a Resolution suggesting the 2014 referendum had 'no validity', and that it 'cannot form the basis for any alteration of the status of the Autonomous Republic of Crimea or of the city of Sevastopol.'[40] The alleged presence of unmarked Russian special forces in the region before and during the ballot, as well as the Russian support for the unfolding conflict in the Donbas region in the East of Ukraine, further stoked international condemnation.[41]

A further point of difference which invalidates the relevance of the Kosovan precedent is the alternative goals of self-determination in Kosovo and Crimea. The desire of the Kosovan population was clear – even as illustrated by the 1991 referendum: independence from Belgrade. The Crimean referendum went a step further, calling not only for secession but also for the immediate transfer to a third-party state. There is no precedent for such a geopolitical manoeuvre. Its legality – as a singularity in the modern history of statecraft – would have been uncertain even before the 2014 General Assembly Resolution. It is also deeply unpalatable, both to other states in Russia's near abroad which fear similar territorial infringement, and to those in the West whose relations with the Putin regime were already tense. Although not legally relevant, these states' opinions and policies are significant. In response to the 'annexation' of Crimea, a group of Western states levied sanctions on Russia, including three of the five permanent members of the UN Security Council.[42] Any future diplomatic resolution of the Crimean situation – through this most important forum at least – seems unlikely.

The Kosovan and Crimean situations are intractably multifaceted, yet of fundamental importance to Europe's stability. They challenge the permanence of the state-based political order and have erected barriers between the West and Serbia and Russia respectively. Both cases are indeed superficially similar, but commentators – particularly in Russia – are wrong to claim that a Kosovan precedent can be applied to Crimea. Kosovo's secession

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was unique. Its history of self-governance, the violence and repression it endured, and the manifest popularity of a break from Belgrade made an exceptionally strong case for remedial secession. Even considering these circumstances, due to the centrality of state sovereignty to the international system, the International Court of Justice was still unwilling to pass a clear verdict showing its support.[43] The same standards were not met in the case of Crimea. Unlike Kosovo, the Crimean population had failed to demonstrate long-standing support for self-determination, and any repression experienced was incomparable. Perhaps most importantly on a practical level, the territories' goals were incompatible: Kosovo's desire for statehood was far more agreeable to the international community than a Crimean 'accession' to a potentially hostile third-party.

Nonetheless, Russian politicians continue to emphasise the salience of the Kosovan precedent, casting the West as hypocritical for its failure to acknowledge its relevance.[44] This seems baseless until wider geopolitical and discursive considerations are taken into account. Russia benefits from maintaining control of – and access to – Crimea without protracted negotiations with an increasingly pro-Western Kyiv. The seizure of the peninsula and the “annexation” of Sevastopol as a Federal City represents a stand against NATO expansion in Eastern Europe, a perennial Russian preoccupation.[45] Sevastopol is also the home port to the vast Russian Black Sea Fleet, particularly important for its continued engagement in the War in Syria. Moreover, the “annexation” has been presented by United Russia as the protection of Russian heritage, and Crimean ‘residents in distress’.[46] Putin especially has highlighted the interwoven history and shared identity of Crimean and Russians citizens since the imperial era. Its ‘reunification’ with Russia presented an opportunity for a ‘national rebirth’ of a more assertive post-Soviet Russia.[47] The desire to couch the “accession” in terms of precedent and legalistic norms are perhaps also not surprising. It corresponds with, *inter alia*, Ted Hopf's assertion that a ‘Liberal Essentialist’ regime is seeking legitimacy through engagement with just such international institutions.[48] Considering this political backdrop, any attempt to draw parallels between the Kosovan and Russian case would have been problematic. The differences between the two territories make the comparison impossible.

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Notes

[1] This terminology is highly significant. "Accession" indicates a willing transfer of the Crimean polity to the Russian Federation. "Annexation", on the other hand, could imply Russian aggression – or perhaps the unimportance of the level of local support for the cause. For the sake of continuity, in this essay I will use the term "accession". I show through inverted commas my desire to distance myself from the term's political connotations. The exact nature of Russian's involvement in Crimea is still contested, and I do not believe – as I intend to demonstrate in this essay – that taking a side is necessary to gauge the applicability of the Kosovan precedent.

[2] "International recognitions of the Republic of Kosovo," Republic of Kosovo Ministry of Foreign Affairs, accessed

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[7] Per the Charter, even the UN is prohibited from intervening "in matters which are essentially within the domestic jurisdiction of any state". "Chapter I."

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