

## RIGHT TO SELF-DETERMINATION AND (REMEDIAL) SECESSION IN INTERNATIONAL LAW: CRIMEA'S CASE ANALYSIS

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### ABSTRACT

*This article addresses the ideas of peoples' right to self-determination and the principle of their right to self-determination to Crimea's eventual reunion with Russia and its unilateral separation from Ukraine. Among the many complicated questions, it addresses are the meaning of "the people," the validity of secession as a kind of self-determination, and the concept of "remedial secession." It also offers a concise historical synopsis of Crimea's rise to statehood. The essay explores the act's validity under public international law of separating Crimea from Ukraine. It investigates whether the Crimean Peninsula's split might be justified by the right to self-determination or a supposed right to corrective secession, as claimed by the Russian Federation and the Crimean authorities. The article clarifies that the right to self-determination does not automatically allow for unilateral secession outside of decolonization scenarios and that there is no recognized right to corrective secession under international law. It contends that, even in the particular instance of Crimea, the requirements for implementing such a right were not satisfied. Whether Crimea's unilateral secession violated international law is another topic covered in this article. It argues that although unilateral secession is generally discouraged by the principle of territorial integrity, it is not explicitly forbidden. Nonetheless, there are some situations in which a unilateral secession effort is prohibited. The article makes the case that Crimea qualifies for this exception. In conclusion, the paper explores the difficulties associated with self-determination and secession in the context of Crimea's breakaway from Ukraine. It contends that, despite the possibility of a legal foundation, the circumstances surrounding Crimea's breakaway constitute an exception in cases where such an act would be prohibited by international law.*

### INTRODUCTION

#### Historical Background

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Russia has long-standing ties to Crimea. The Crimean Peninsula was seized by the Russian Empire in 1783, and it remained a part of Russia until 1954, when Nikita Khrushchev, the party's then-general secretary, gave the peninsula to the Ukrainian Soviet Socialist Republic as a sign of goodwill.

Nevertheless, Crimea was incorporated into the newly independent Ukraine and became a part of that State after the collapse of the Soviet Union in 1991. The Ukrainian Constitution of 1996 gave the peninsula the official status of an Autonomous Republic inside the country.<sup>1</sup> This tension was consequently ended with the Treaty of Friendship, Cooperation, and Partnership.<sup>2</sup>

The Ukrainian Revolution of 2014 led to the differences between Russia and Ukraine, leading to Crimea's crisis. In February 2014 Russian troops were reported to have invaded Crimea and taken control over the whole of Crimea.<sup>3</sup>

On March 11, 2014, just two weeks after Russian soldiers entered Ukrainian territory, 78 out of 100 members of the Crimean Supreme Council voted in favor of a declaration of independence. The following is what the Declaration's preamble says:

"We, the members of the parliament of the Autonomous Republic of Crimea and the Sevastopol City Council, about the Charter of the United Nations and a whole range of other international documents and taking into consideration the confirmation of the status of Kosovo by the United Nations International Court of Justice on July 22, 2010, which says that [a] unilateral declaration of independence by a part of the country does not violate any international norms, make this decision jointly." <sup>4</sup>

Following this, Crimea demanded to become an independent State, which Putin further executed.<sup>5</sup> After this, an accession agreement was signed by President Putin confirming Crimea to be a part of the Russian Federation.<sup>6</sup>

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<sup>1</sup> See Chapters IX and X of the Ukrainian Constitution.

<sup>2</sup> Art. 2 Treaty of Friendship, Cooperation of Partnership between Ukraine and the Russian Federation, <http://www.dtic.mil/dtic/tr/fulltext/u2/a341002.pdf> (Annex, unofficial translation)

<sup>3</sup> For a timeline concerning the events, see 'Ukraine Crisis Timeline,' <http://www.bbc.com/news/world-middle-east-26248275>.

<sup>4</sup> 'Crimea parliament declares independence from Ukraine ahead of the referendum,' March 11, 2014, <http://rt.com/news/crimea-parliament-independence-Ukraine-086/>

<sup>5</sup> 'Executive Order on recognizing the Republic of Crimea,' March 17, 2014, available at <http://eng.kremlin.ru/news/6884>,

<sup>6</sup> 'Agreement on the accession of the Republic of Crimea to the Russian Federation signed,' March 18, 2014, available at <http://eng.kremlin.ru/news/6890>,

## Right to Self-Determination

The Friendly Relations Declaration (1970)<sup>7</sup> and the Declaration of Principles of Helsinki Final Act of the Conference on Security and Cooperation in Europe (1975) both articulated the legal content and standing of this principle in international law. All people have the right to choose their political status freely and pursue economic, social, and cultural development, as stated in the Friendly Relations Declaration of 1970. Every State is obligated to uphold this right following the UN Charter. The principle of self-determination of peoples in international law reflects the rights and obligations of both states and non-state actors, distinguishing it from other fundamental principles that focus on state rights.

The principle of equal rights and self-determination was first declared in the Declaration on the Granting of Independence to Colonial Countries and Peoples of 1960.<sup>8</sup> It granted all peoples the right to self-determination, allowing them to freely determine their political status and pursue their economic, social, and cultural development. However, the right to self-determination has since been stated in various international legal instruments, including treaties and declarations.

The International Court of Justice (ICJ) has established the legitimacy of peoples' rights to self-determination under international law.<sup>9</sup> The principle of self-determination in international law is widely accepted, granting people the right to freely determine their destiny and secede from the State without external interference. "All peoples have the right to self-determination," according to Common Article 1(1) of the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR). They can freely choose their political status and pursue their own economic, social, and cultural growth thanks to that right.<sup>10</sup>

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<sup>7</sup> Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States by the Charter of the United Nations, UN General Assembly Resolution 2625 (XXV), UN Doc. A/RES/2625 (XXV), Annex, October 24, 1970, Principle V, para. 4.

<sup>8</sup> Blay (2013), para. 1.

<sup>9</sup> South West Africa Case, ICJ Reports 1950; South West Africa Case, ICJ Reports 1971; Western Sahara Case, ICJ Reports 1975; East Timor Case, ICJ Reports 1995; Construction of a Wall Case, ICJ Reports 2004; Kosovo Case, ICJ Reports 2010, etc.

<sup>10</sup> International Covenant on Civil and Political Rights, December 16, 1966, 999 UNTS 171; International Covenant on Economic, Social and Cultural Rights, December 16, 1966, 999 UNTS 3.

## Relation to Crimea

The problem analysis should consider both states' rules of International Law legislation. Crimea is a part of the Russian Federation. Based on the idea that it can be regarded as a legitimate treaty reached between two international legal subjects under international law, the accord "On the accession of the Autonomous Republic of Crimea and the creation as new subjects of the Russian Federation" <sup>11</sup> between Russia and the Republic of Crimea provides the international legal framework for the unification of Crimea and Russia.<sup>12</sup>

The UN Charter's equal rights and peoples' right to self-determination serve as the primary international legal foundation for Crimea's accession to Russia. According to this principle, every State must uphold the inherent right of every person to choose their political status and to pursue their own socioeconomic and cultural development free from outside intervention.<sup>13</sup>

The people of Crimea achieved their right to self-determination on March 16, 2014, when they voted to rejoin Russia in a referendum. The Republic of Crimea and the city of Sevastopol approached Russia with an accession proposal after the referendum, which Russia approved. Some variables are emphasized to evaluate the legitimacy of this manifestation of the people's will. First of all, it's crucial to remember that Crimea already had a special autonomous status under Ukrainian constitutional law.<sup>14</sup> This came about due to the Crimean people's protracted fight for political, economic, and cultural autonomy.

The people of Crimea had continuously stated since 1991 that they wanted more freedom, first inside the Soviet Union and then inside Ukraine. The 1992 Crimean Constitution, which stressed the Crimean Republic's priority over its resources and rights inside its territory while admitting its role within Ukraine, cemented its readiness to remain a part of Ukraine.

Nevertheless, the Ukrainian central authority violently suppressed the Crimean State's growth, depriving it of numerous rights and limiting its political autonomy. In violation of the 1970 Friendly Relations Declaration's tenets, Ukraine denied the people of Crimea the opportunity

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<sup>11</sup>The Treaty between the Russian Federation and the Republic of Crimea on the accession of the Republic of Crimea to the Russian Federation and the creation of new subjects in the Russian Federation, in Collection of Legislation, 2014, No. 14, Art. 1570.

<sup>12</sup> Ibid.

<sup>13</sup> Blay (2013), para. 1.

<sup>14</sup> Constitution of Ukraine, text provided by the Ukrainian authorities on March 13, 2014, [http://www.Venice.coe.int/webforms/documents/?pdf=CDL-REF\(2014\)012-e](http://www.Venice.coe.int/webforms/documents/?pdf=CDL-REF(2014)012-e)

to exercise their right to internal self-determination through democratic processes like plebiscites and referendums.

The right to external self-determination was sparked by this disrespect for the people's right to self-determination and the use of force to quell their hopes for autonomy and self-governance. It gave Crimea the right to follow its course and, in compliance with international law, decide its historical destiny.

All of the ethnic groups that make up Crimea's population demonstrated their unity as a self-determining people during the independence referendum, and they decisively chose to be reunited with Russia.

Given that the people's will must be the primary factor in forming the government, any claims regarding the referendum's unconstitutionality are unaccepted, mainly because an unlawful coup overthrew the Ukrainian government.

One could also see the events in Crimea that resulted in the region's independence and accession to Russia as an instance of "remedial secession." The concept's application is commonly accepted to be contingent upon the specific context and circumstances of the case.

It is crucial to emphasize that the Russian military's first occupation of Crimea was authorized by the 1997 Black Sea Fleet Agreement between Russia and Ukraine, which allowed for the stationing of soldiers on the peninsula.<sup>15</sup> This deal, however, came with limitations: up to 25,000 personnel could only be stationed at military installations and were not permitted to meddle in Ukrainian internal matters. However, Russian forces went beyond these lines, taking control of major administrative structures, including the Crimean Supreme Council, airports, and military posts. The 1997 Agreement does not justify this increased military deployment.<sup>16</sup>

Thus, Ukraine's territorial integrity and non-interventionist principles were breached by Russia's invasion of Crimea and its armed backing for its unilateral independence. These acts can also be seen as using force or posing a threat, forbidden by UN Charter Article 2(4).<sup>17</sup> Some

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<sup>15</sup> This is not to say, however, that the Russian Federation did not violate the principle of territorial integrity. See Van den Driest (2015).

<sup>16</sup> In this respect, the 1997 Treaty of Friendship, Cooperation, and Partnership between Ukraine and the Russian Federation also guaranteed respect for Ukraine's territorial integrity and the inviolability of its borders. See Treaty of Friendship, Cooperation, and Partnership between Ukraine and the Russian Federation, May 31, 1997, reprinted in Black (1998), p. 217.

<sup>17</sup> See e.g., Бі 'lkova ' (2015), p. 32; Christakis (2014), pp. 750 et seq.

claim that following General Assembly Resolution 3314 (XXIX), the actions of the Russian Federation qualified as an act of aggression.<sup>18</sup>

## CONCLUSION

The purpose of this article was to evaluate Crimea's breakaway from Ukraine in light of the international legal framework about the right to secession and self-determination. To this aim, the question of whether the Crimean Peninsula may split legally based on a request for corrective secession or the right to self-determination was first investigated.

Instead, it is anticipated that this right will be applied internally, inside the confines of the current State. The paper showed that contrary to what is sometimes claimed in the literature, modern international law does not recognize a right to restorative secession. Consequently, the Crimean authorities could not assert their entitlement to reparative secession.

The essay investigates whether the unprovoked breakaway of Crimea from Ukraine was illegal under international law. It talks about how the idea of territorial integrity while discouraging unilateral attempts at secession, does not outright forbid them. However, it acknowledges the circumstances that could lead to unlawful secession and cites the Kosovo Advisory Opinion, which rules that declarations of independence are illegal when they are associated with the use of unjustified force or grave breaches of international legal principles.

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The essay makes the case that Russia's illegal military intervention caused Crimea's unilateral illicit secession. Consequently, it concludes that the justifications the Russian and Crimean authorities put up for the events in Crimea—self-determination and restorative secession—cannot be sustained. Instead, the paper argues that Crimea's autonomous breakaway from Ukraine was categorically unlawful in terms of international law.

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<sup>18</sup> See, e.g., Sari (2014) and Tancredi (2014). For an analysis of possible (progressive) justifications for the Russian intervention in Crimea, such as intervention by invitation, the protection of nationals abroad, and humanitarian intervention, see Bílková (2015), p. 49; Christakis (2014), pp. 750 et seq.; and Walter (2014), pp. 307–309.