



Analysis of the Legitimacy of the Crimean Referendum from the Perspective of the Right to Self-Determination in International Law

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Abstract. The right of self-determination in international law has long been entangled with the tension between sovereignty and territorial integrity. Especially in the context of the ongoing Russia-Ukraine war, the 2014 referendum in Crimea to join Russia can be seen as a prelude to the Russia-Ukraine war. This essay analyses the legitimacy of the Crimean referendum from the perspective of international law, and argues that the right to self-determination does not include secession in international law by analyzing UN Charter, the Advisory Opinion of the International Court of Justice (e.g., Kosovo 2010), state practice, and so on. However, there are clear geopolitical factors behind the Crimean referendum, which behind this referendum is a collision of ideologies under geopolitics. The outcome of this referendum has a significant impact on the current geopolitical situation between Russia and Ukraine. Meanwhile, it may trigger territorial disputes for states and non-state actors dissatisfied with their inherited borders.

Keywords: Crimean Referendum, Right to Self-Determination, International Law, Geopolitics.

1 Introduction

Russia launched its invasion of Ukraine on February 24, 2022. It invoked the right of collective self-defense of the two so-called sovereign states of Donetsk and Luhansk as justification for the *jus ad bellum*.^[1] This is reminiscent of what happened in southern Ukraine in 2014. The Crimean Peninsula has a long history of geopolitical complexity and importance, especially after the collapse of the Soviet Union.^[2] On March 16, 2014, after a controversial referendum, Crimea declared its independence and applied for a member in the Russian Federation. The following day, Russia recognized it as an independent state. This was followed by the signing of an agreement with Crimea, which became part of Russia. Relations between Russia and Ukraine have continued to deteriorate, finally leading to a full-scale military conflict in 2022. The events of Crimea's referendum not only demonstrate the complexity of geopolitics, but also reflect a range of issues of international law when addressing the self-determination.

2 The Right to Self-determination in International Law

The right to self-determination is a basic principle of international law. The principle of equality and self-determination of peoples is stipulated in Article 1 of *Charter of the United Nations*. However, the expression of the right to self-determination in the Charter merely recognizes this right which is the basis for interpreting the general meaning of this principle. Moreover, the right to self-determination is also divided into external and internal. In the decolonization context of the last century, the exercising of the right to external self-determination helped colonial peoples as well as peoples oppressed and occupied by foreign countries to strive for the independence of their nation states. However, with the dissolution of the colonial empire, the external dimension of the right of self-determination became dormant and gradually moved closer to its internal dimension, because there was hardly any colonial rule or oppression and occupation. From the current situation, the right to self-determination is more inclined to the internal dimension, namely, the right of people to freely participate in political, economic, cultural life as well as to pursue their own development in their sovereign states.^[3] In this sense, the right to self-determination means the right to self-government, and a right that needed to be taken seriously.

Referendums are generally seen as a democratic way of exercising the right to self-determination, because they are the free expression of the will of the people, thus guaranteeing the democratic legitimacy of self-determination. In practice, it is often closely linked to the right to self-determination and is mostly based on relevant provisions of international law and relies on specific provisions of domestic law for exercising.

3 The Geopolitical Context of the Crimean Referendum

The Crimea, geographically, lies on the Crimean Peninsula with the Black Sea to the west and south and the Sea of Azov to the eastern side. The Isthmus of Perekop connects it to Kherson, and the Kerch Strait separates it from the Kuban.^[4] Such a geographical position gives it an advantage in terms of sea, military and commerce. Its southwestern end is the port of Sevastopol, the chokepoint of the Crimean Peninsula and the station of the Russian Black Sea Fleet. For Russia, Crimea is not only a footing in the Black Sea, but also a line of defense for Russia to secure its western border.^[5]

Historically, the Crimean Peninsula belonged to the Russian Empire and the Soviet Union. After the dissolution of the Soviet Union, Crimea came to be part of Ukraine. Although Crimea is made up of many ethnic groups, including Russians, Ukrainians, and Tatars, Russians are the main demographic composition of Crimea, with Russian as the common language. During the decades that Crimea was in Ukraine, ethnic Russians on the peninsula never changed their identity, despite being sovereignly attached to Ukraine. It shares a common history, culture and identity with Russia, and nostalgia for the Soviet Union, the absence of Ukraine, and the antagonism and distrust of the Tatars, making it difficult to develop a new national identity and a unified regional and national identity by reconstructing historical narratives.^[6]

In this context, the pro-EU activities in Ukraine have made the geopolitical situation in Crimea more sensitive. In 2014, the Ukrainian government also approved a draft bill abolishing the 2012 law *On the principles of the state language policy*, which Ukrainian became the only official language, which strongly angered ethnic Russians and Russian-speakers in Crimea. That policy was seen as a threat to the ethnic Russian cultures and identity, fueling separatism in Crimea even more. Eventually, Crimea held a referendum in March of the same year.

4 Analysis of the Legitimacy

4.1 The Right to Self-determination Does Not Include the Right to Secession

In international practice, external self-determination right was highly prized for liberating colonial peoples from conquest, domination and exploitation. The right of self-determination generally applied only to Trust territories and Non-Self-Governing territories. However, in the post-decolonization era, the right of external self-determination often involves secession, which is often used by national separatist groups as a means of dismembering the territory of sovereign states, whereas territorial integrity is seen as a top priority. Article 2(4) of the Charter and Paragraph 6 of the UNGA Resolution 1514 both emphasize the need to maintain territorial integrity and national unity and oppose any attempt or act that undermines its integrity. The Supreme Court of Canada has stated that the exercise of the right to self-determination in international law is premised on respect for the territorial integrity of states. So under the current context, exercising the right to self-determination places greater emphasis on the guarantee by states of the rights of minorities within their territories, which gives them the right to self-government, but does not allow secession.

Based on the Constitution of Ukraine, Crimea is part of the territory of Ukraine and is the only region of Ukraine with the character of an autonomous republic. The political system of Ukraine highly recognizes the particularity of Crimea, and further confirms it by the Constitution, fully guaranteeing the right to internal self-determination within Crimea. Ukraine clearly does not exclude the people of Crimea from participating in state affairs and in the management of regional affairs. It is just that Kiev's policy towards Crimea may not be entirely satisfactory to the people of Crimea, especially the ethnic Russians, but this is an internal state matter between their region and the center. Meanwhile, there was no indication that the status of Crimea as an autonomous republic of Ukraine is insufficient for effective exercise of its right of internal self-determination. Not to mention, customary international law does not authorize secession.

4.2 Does it Apply to Remedial Secession?

So are there special circumstances permitting secession? It involves remedial secession. The ICJ's Advisory Opinion on Kosovo appears to have become a special case of contemporary remedial secession. First, there are still numerous questions about whether international law confers a right of remedial secession. It is considered to be a safeguard

clause derived from the Declaration on Friendly Relations. However, it has not become an international practice and consensus. In the case of Kosovo, states were so inconsistent and sharply difference of opinions about the lawful basis of Kosovo secession that it is difficult to think of it as evidence of and consensus in international law in support of remedial secession. Secondly, the ICJ did not explicitly recognize the legality of remedial secession in Kosovo's advisory opinion. In its advisory opinion on Kosovo's declaration of independence, the ICJ merely acknowledged that the declaration of independence is not prohibited under general international law and was very careful concerning the right of remedial secession to avoid possible additional effects. The legitimacy of Kosovo independence comes more from the recognition of other states than from the legitimacy conferred by international law.

Finally, if the Kosovo case was a precedent of some sort, it had instead limited the right to secession, and it provided a higher standard and requirement for the right of external self-determination in a post-decolonial context. If Crimea applies, it must at least be demonstrated that a minority group and individual have been subjected to a prolonged period of oppression or violations, and that this situation has been exacerbated without appropriate international reaction, that the right to internal self-determination has been denied, and that Crimea has no alternative but to independence. On the contrary, there are no reports or documents indicating any discrimination by the Ukrainian authorities against Crimeans or violating the human rights of ethnic Russians in Crimea. Moreover, the special status of Crimea is largely recognized by the Ukrainian political system. The fact is the Ukrainian Constitution has achieved it relatively full political autonomy. Crimea has the status of an autonomous republic, and the system of exercising internal self-determination was well established. It is just that a bill by the Ukrainian authorities approving Ukrainian as the only official language in Ukraine could be seen as infringing on the interests of ethnic Russians or Russian-speaking people in Crimea. It would also indeed exacerbate concerns of ethnic Russians and Russian-speakers in Crimea about their racist treatment and oppression. But it could not be thought that this satisfies the high standards of remedial secession. Not to mention that, subsequently, acting Ukrainian President Turchynov vetoed a proposal to abolish the language law in an attempt to reconcile with Crimea's Russian-speaking population, although the damage had already been done.

4.3 Legitimacy of the Referendum

Although there are questions in international law about a secession referendum exercising the right of external self-determination, referendums also are valid if the country's domestic law has clear provisions on such issues. But there are indications that this referendum is illegitimate. Firstly, the Ukrainian Constitution firmly preserves the unity and integrity of the national territory. There is no provision granting Crimea the right to territorial secession, emphasizing that Crimea is an integral part of it. In addition, the constitution stipulates that the only way to change the territory of Ukraine is by referendum. If a referendum is required, the voters should be the citizens of Ukraine as a whole, and not only citizens of the Crimean region. And, according to international practice, if a referendum involves independence, it requires the endorsement of its home

country. For example, the South Sudan seceded from Sudan through a referendum and gained international independence and recognition because South Sudan's secession was carried out with the consent of Sudan, while Crimea did not have the consent of the Kiev government.

Besides, there are also inappropriate with the questions of this referendum. It offered only two options, one was to secede from Ukraine and join Russia, or the other was Crimea would remain part of Ukraine, but restore the 1992 constitution of the Republic of Crimea. It is important to note that there is no option of maintaining the status quo or of its becoming an independent sovereign state. There is also controversy over the 1992 Crimean Constitution, which exists in two versions, and not explicitly stated. Moreover, freedom and justice for the referendum do not seem to have been guaranteed. Suspected Russian special forces reportedly took control of Crimea and its public infrastructure. The presence of Russian troops has called into question the legitimacy of the referendum and whether there is a possibility of coercion by force. The referendum was therefore not only a violation of domestic law, but also incompatible with the standards of international law.

5 The Geopolitical Implications Crimea's Accession to Russia

It is interesting that Russia has been a loyal advocate of the principle of respecting the territorial integrity of the state for many years. But in the Crimea Referendum, it declared that the right to self-determination of the peoples of the region is higher than the territorial integrity of Ukraine. This seems to show Russia's contradictory position, and it is not difficult to find Russia's actual intentions. It is trying to prevent the United States from gaining more political influence in Ukraine and meanwhile expanding its own political map,^[7] and supporting Crimea referendum is just one step. The approach in which Russia acquired Crimea in this way might set a precedent, especially for states and non-state actors dissatisfied with its inherited borders, potentially triggering more territorial disputes and conflicts.^[8]

Although the international community did not recognize the legality of the Crimean referendum, finally, Crimea joined Russia, and has become part of Russia, changing the geopolitical situation in the Black Sea. Russia can continue to use the naval base in Sevastopol without any more payments to Ukraine. However, although Russia's behavior has been questioned, this does not mean the condemnation led by the US and EU is completely correct. There is no doubt that Russia's actions are full of geopolitical visions, but the encroachment of NATO and the EU on Russia's scope and interests is also part of geopolitics. The confrontation between the two is more like an imperial competition under geopolitics, a collision of different ideologies, and is a contest between the Euro-Atlantic narrative and the pro-Russian narrative.^[9] However, international law, as the embodiment of "justice" judgment, is also an expression of the hegemony of the United States and Western Europe.^[10] The recognition of Kosovo's status was an example of this. Western countries claimed Kosovo as a special case, blurring the concept of self-determination and leaving room for Russia.

6 Conclusion

Overall, the Crimean referendum is not legitimate from the perspective of the right to self-determination in international law. Firstly, the exercise of the right to self-determination does not include secession. In addition, even if Crimea applies the remedial secession, it would not meet the high standards it required, not to mention that remedial secession is highly controversial in international law. Whereas Crimea can fully exercise its right to internal self-determination. Also, the referendum violates the Constitution of Ukraine and is not approved and agreed by the government of sovereign state. The fairness and freedom of the referendum is also controversial because of the suspected appearance of Russian troops. However, Russia's strong support for the Crimean referendum is more due to geopolitical considerations, particularly in the backdrop of the current Russia-Ukraine war, from which it can derive greater geopolitical benefits.

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