



BULLETIN

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Law and Lawlessness: The Secession and Russia's Absorption of Crimea

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The vast majority of those in the international community have not recognised the secession of the Crimean peninsula from Ukraine and its subsequent annexation by Russia. This fact, however, does not seem to have had any impact on Moscow and its course of action. The West, however, should not accept this as fait accompli. Maintaining a persistent objection to Russia's illegal actions is of major importance for Ukraine, but it is also crucial to ensuring the stability of international order and avoiding possible controversy regarding instances of secession in the future.

The Illegal Character of the Events in Crimea. On 21 March, the Russian parliament ratified an agreement between Crimea and the Russian Federation, and signed by President Vladimir Putin and representatives of the Autonomous Republic of Crimea (ARC). According to the agreement, Crimea will be fully incorporated into the Federation by 1 January 2015. Russian and Crimean advocates of the agreement argue that it came about as a result of the referendum on the future status of the peninsula held on 16 March 2014. The "official" polls point to an 81% turnout and to more than 95% of votes in favour of secession from Ukraine and joining Russia. A vote to maintain the *status quo* of the autonomous peninsula was not an option. The referendum was held against the will of the Ukrainian government and in the context of a *de facto* occupation of the peninsula by Russian forces, thus undermining the legality of any action taken by the authorities of the occupied territory, in particular, when a declaration of independence and subsequent incorporation into another state are at stake. Although Russia had not made territorial claims with respect to Ukraine, the deployment and presence of its unmarked "stabilisation forces" is against the law as it breaches Ukraine's sovereignty. These facts confirm allegations that the referendum was inspired and conducted under the supervision of the Kremlin. Furthermore, the rush with which Moscow acted was obviously aimed at thwarting any attempts at actual negotiations on the status of Crimea between the central government and ARC.

Secession and Territorial Integrity. When Moscow recognised the secession of the peninsula as consistent with international law, the well-established principle of sovereign equality of states and the right of peoples to self-determination embedded in the UN Charter and stated in the Final Act of CSCE, Russia found itself alone against the vast majority of states.

International law recognises a right to secession in the context of decolonisation, as a form of exercising people's right to self-determination. Secession, although not prohibited, is somewhat at odds with the state sovereignty principle, which guards territorial integrity and the security of state borders. Generally, Russia is a strong advocate of the principle, as proved in the course of the Syrian crisis. Furthermore, the legality of secessionist acts should be considered with respect to the governing national constitutional laws. Finally, secession, in order to come into actual effect, must gain recognition from the international community.

It is accepted that secession is possible in exceptional situations or as a last resort measure, that is, in instances when self-determination cannot be exercised within the structures of a given state. This applies to colonies or oppressed people, or in situations in which a given group of people is prevented from pursuing their political, cultural and economic development in the country or region they inhabit. The Supreme Court of Canada took this stance in 1998 in its opinion on the possible secession of Quebec, rejecting the separatist aspirations of the province. In 2010, the International Court of Justice (ICJ), having delivered its advisory opinion on the legality of Kosovo's declaration of

independence, limited its considerations to this issue and refrained from discussing the question of the right to unilateral secession.

Russia's Stance in Breach of International Law. With the above facts in hand and contrary to Moscow's position, Crimea's secession cannot be justified by arguing that it is supported by its people's right to self-determination whether in terms of international law or by the laws of Ukraine.

Russia cites as precedent the secession of Kosovo to justify the actions in Crimea, even though Russia itself does not recognise Kosovo's independence. Moscow's anti-secession argument against Kosovo was that the right to self-determination by way of secession may be exercised only by means of exception, in situations where violence is perpetrated against a group, and as a last resort when no other ways to resolve the conflict exist. However, this interpretation does not appear to apply in relation to the conduct of Russia regarding Crimea. The argument that there were increases of nationalism and anti-Russian sentiments in Ukraine posed only a hypothetical threat. Despite the change of government and the general destabilisation of its institutions, Kyiv's policy towards the Russian population of Crimea cannot be construed as colonial, characterised by persecution or discrimination. So far, the most serious instance of the authorities' discriminatory actions was an attempt to revoke a 2012 act regulating the official status of minority languages in Ukraine. The vote was vetoed by acting President Oleksandr Turchynov.

One may also ask whether all possible solutions to the conflict were explored. Additionally, given the mosaic of ethnicities and cultures inhabiting Crimea, it is problematic to determine who is entitled to exercise their right to self-determination. On the other hand, the mere fact that the peninsula had autonomous status and a structure of well-functioning local authorities implies that the right to self-determination of the population of Crimea already existed within Ukraine's sovereign borders.

According to the constitution of Crimea, any decisions concerning the territorial status of the peninsula should take into account the results of a local referendum and the decisions of the local parliament. At the same time, it must comply with the constitution of Ukraine. The latter leaves no doubt that decisions regarding territorial integrity should be the subject of a nationwide referendum. Therefore, the Crimean parliament's decision to leave Ukraine and join Russia contravenes the law of Ukraine. This was confirmed by the Constitutional Court of Ukraine and the Venice Commission.

Nevertheless, this reasoning based on the constitutionality of the actions in question is ignored by Russia. Although the former president of Ukraine, Viktor Yanukovich, left the country and his office, seemingly voluntarily, Putin has repeatedly claimed that Yanukovich was unlawfully removed from power through a *coup d'état*. Russia rejects the argument that Yanukovich, while residing in Russia, exercises no presidential power in Ukraine, or that the government in Kyiv, described by Moscow as illegal, has been recognised by most countries by now.

With respect to the recognition of secession, according to the requirements envisaged by international law, Crimea does not meet the criteria for statehood set out, inter alia, in the 1933 Montevideo Convention on the rights and obligations of states (permanent population, sovereign authority, defined territory, the ability to enter into international relations). Considering the facts against this backdrop, it seems that the only guarantor of the separatist movement in Crimea was and still is the presence of Russian forces. Therefore, it is also the mere recognition of the secession of the peninsula by the Russian Federation that constitutes interference in the sovereignty and territorial integrity of Ukraine.

Conclusions and Recommendations. The international community's non-recognition of the secession and absorption of Crime has had no bearing on Moscow's behaviour or attitude. Non-recognition of the peninsula's new status by the member states of the EU and NATO, including the United States, raises questions as to the approach to be taken by these states in advancing their relations with Ukraine. Any attempts to develop these relations, for example, by Ukraine's progressive integration into the EU, should take note of the unlawful decision of the secession of Crimea and its annexation by Russia. The lack of understanding within the international community concerning secession and its legality might be furthered if the West eventually recognises the secession. The current situation creates apt opportunity for the ICJ to clarify the law in this regard, for instance, in an advisory opinion.

Strong support for Ukraine in its dialogue with Russia from organisations such as the OSCE and the Council of Europe is of key importance, both in terms of resolving the Crimean crisis and in strengthening the stabilisation of Ukraine. The OSCE mission, currently consisting of 100 observers deployed to nine cities in Ukraine, is disproportionate to the need. Given the number of inhabitants in critical cities—Kherson, 350,000; Donetsk, 928,000, Odessa, 1 million; Kharkiv, 1.5 million people (roughly)—even if expanded by a total of up to 400 additional monitors as envisaged by the OSCE, does not seem to be sufficient. With the upcoming elections and increased risk of pro-separatist provocations, the international presence must be effective and not just symbolic, otherwise it may only contribute to the legitimisation of future secessionist actions.

Given the worrying reports from Crimea on the situation of minorities, freedom of expression and changes in the law, the non-recognition of the secession and annexation should not preclude the international community from monitoring ongoing changes in the peninsula in terms of compliance with international democratic standards to which Russia has also committed.