

CRIMEA AND INTERNATIONAL LAW

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The situation of Crimea represents an opportunity to analyze some principles of international law and its contemporary relevance. The acts of Crimea are legal under international law? Is there a right to independence? When a new State begins to exist? In order to answer these questions, one must first analyze the background of the situation (I). It is important also to analyze the facts in light of the international law (II) and after that, we are going to provide our conclusions (III).

I. Background.

On March 11, 2014 the Autonomous Republic of Crimea issued a declaration of independence that stated that “Crimea will be a democratic, laic and multinational state, with an obligation to maintain peace, international and intersectorian consent in its territory.” In addition, the declaration established Crimea as an independent and sovereign State and called for a referendum with the objective of being part of the Russian Federation.

The referendum was carried out on March 16, 2014 and the official results were that more than 95% of the votes decided to leave Ukraine and join Russia. On March 21, 2014 Russia announced that Putin signed¹ the laws that established the official annexation of Crimea into the Russian Federation.

The U.N. Security Council could not adopt a resolution due to a negative vote of Russia. It is important to remember that under article 27 of the U.N. Charter “decisions of the Security Council on all other matters shall be made by an affirmative vote of nine members including the concurring votes of the permanent members”. Thus, the Security

¹ Federal Constitutional Law On Admitting to the Russian Federation the Republic of Crimea and Establishing within the Russian Federation the New Constituent Entities of the Republic of Crimea and the City of Federal Importance Sevastopol, and Federal Law On Ratifying the Agreement between the Russian Federation and the Republic of Crimea on Admitting to the Russian Federation the Republic of Crimea and Establishing within the Russian Federation New Constituent Entities.

Council failed to produce a resolution that was intended to reaffirm the sovereignty, independence, unity and territorial integrity of Ukraine.

In March 27, 2014, the General Assembly of the United Nations adopted resolution 68/262², which in the important part, established the following:

“1. Affirms its commitment to the sovereignty, political independence, unity and territorial integrity of Ukraine within its internationally recognized borders;

2. Calls upon all States to desist and refrain from actions aimed at the partial or total disruption of the national unity and territorial integrity of Ukraine:

...

5. Underscores that the referendum held in Autonomous Republic of Crimea and the City of Sevastopol on 16 March 2014, having no validity, cannot form the basis for any alteration of the status of the Autonomous Republic of Crimea or of the city of Sevastopol”

On the discussions they were several opinions: Russia annexed Crimea by the use of force (Ukraine), Crimea had been part of Russia and is its voluntary choice (Russia), the referendum was illegal and violated the Constitution of Ukraine (European Union), Self-determination cannot be obtained by coercion and Crimea is part of Ukraine (United States)

II. International Law.

In the XIX Century, Bluntschli wrote about how a State can take legal possession of the territory of another State. According to this jurist, there are three options³:

- When the State renounces to its previous sovereign rights.
- When the people of that territory overthrow its government in order to freely join another State.
- When the progress and the public welfare request the formation of a bigger State.

One can indicate that the second option is the one that can be applied to our case of study. Instead of overthrow a government, in Crimea they decided to make a referendum. It is certain that the referendum contravened article 73 of the Constitution of Ukraine that establishes that the issues of altering the territory must be resolved by an all Ukrainian referendum, but in my opinion this situation must be faced by the national law. In other words, there is no relevance under international law if the independence and later

² 100 votes in favor, 11 against and 58 abstentions.

³ Bluntschli. El derecho internacional codificado. (Imprenta José Batiza. México, 1871). P. 168-169.

annexation of Crimea was made due to an illegal (under national law) referendum. Thus, the independence of a State is mainly a matter of fact, and in order to be considered illegal under international law, it is necessary a violation of a norm or international law as the *ius cogens*.

Pérez Gomar, an historic author from the XIX Century, is also of the opinion that the only judge of the Independence of a nation is the nation itself⁴. As we have established, in general terms international law has no role in judging the validity or not of an independence. For Pérez Gomar, independence is the conscience of justice. Under this perspective, the importance is when the independence is an accomplished fact.

The International Court of Justice arrived to a similar conclusion in the Kosovo case when decided that “international law contained no prohibition of declarations of independence”⁵. But in the other hand, if a declaration of independence may not be prohibited under international law, other political problems may occur. For example, in 1836 President Jackson mentioned, in relation to the independence of Texas, that an early recognition of a State may be seen as a hostile act for other State⁶.

III. Conclusions.

Under the classic doctrine of international law, there is not a prohibition of a declaration of independence. When there are movements of secessions or insurrections there are legal obligations for all States, for example neutrality, that we can assume that Russia is not following in this case, but this is a subject for other topic.

If there is not a general prohibition for independence, the other States may wait a “de facto” situation in order to recognize a new State⁷. In my opinion, the real legal question in the case of Crimea is not about the independence but about the actions of third States. Of course, this is a question that involves a more profound study with both a perspective in law and international relations.

⁴ G Pérez Gomar. *Curso elemental de derecho de gentes*. (Imprenta Tip a vapor. Montevideo, 1864) P. 29.

⁵ Accordance with international law of the unilateral declaration of independence in respect of Kosovo, Advisory Opinion, I.C.J. Reports 2010, p. 436.

⁶ Carlos Calvo. *Derecho internacional teórico y práctico de Europa y América* (Librairie diplomatique. Paris, 1868) P. 127.

⁷ *Ibidem*. Pag 122