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## CRIMEAN CONFLICT: JURIDICAL ASPECTS AND POLITICAL IMPLICATIONS IN LIGHT OF INTERNATIONAL LAW

*Beyond any personal opinions, the dispute between Russia and Ukraine for the territory of Republic of Crimea provides jurists with several causes for reflection. This article aims to analyse the main aspects and to solve the core of the problem: can the annexation of Crimea be explained in light of International Law principles?*

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## Introduction

The aim of this exposition is to provide the readers with a general, but complete picture of the conflict between Russia and Ukraine over Crimea and to explain juridical implications in light of International Law principles. The situation of Crimea, the intricate geo-political context and the position of contenders are undoubtedly well-known due to the relevant economic interests and the broad media coverage of the conflict; for this reason, for a summary we suggest that you read the article written by Alessandra Parrilli on our journal. Considering the events as already known by our readers, this article focuses on three aspects, with the purpose of formulating a legal evaluation about the dispute between Russia and Ukraine:

Does the annexation of Crimea have juridical basis in the field of international Law? Does Russia have the duty to give the territory back? Which legal instruments could be useful for a juridical resolution of the dispute? It is clear that these three questions are aspects of the same subject, that is to say, the legitimacy or illegitimacy of Russian intervention in support of secession and the secession itself, with regard to the effects on international Law.

**Does the annexation of Crimea have juridical basis in the field of international Law?** Before answering the above-mentioned question, it is useful to explain the reasons why the annexation of Crimea could be considered as the separation of parts of territory, rather than as a “secession”. The independence referendum, held in March 2014 (1), was preceded by two significant events, which testify Crimea members of Parliament’s will to annex their region to the Russian Federation:

The declaration of March 4th, with which the Parliament officially asked for the annexation to Russia in case of independence; The declaration of March 11th, with which the Parliament ratified the secession from Ukraine. (2) If we consider the decision to make Russian the official language in Sevastopol from 10th March on, and the decision made by Duma to formulate a legislative decree about the annexation of Crimea, it would be clear that it was not a process of secession or the institution of an independent State (therefore effective and self-governing), rather it was rather the result of a political manoeuvre, not so veiled, whose result is the separation of a part of the Ukrainian territory: this situation could be defined with an expression taken from treaty law: “**border mobility**”. In addition, if we consider other aspects, such as the formulation of the question of the referendum (Are you in favour of the reunification of Crimea with

Russia as federal subject of Russian Federation?), the Ukrainian prime Minister's warnings about pro-Russian soldiers' operation (3), Vladimir Putin's declarations and the opinions of several international specialists, the annexation of Crimea to Russian Federation seems to be undeniable. (4, 5)

After the explanation of this preliminary aspect, we will analyse the core of the argument: has does the Russian annexation have a juridical basis in the field of international law? Finding a clear and definite answer to this question proves to be very difficult, for this reason it would be useful to refer to President Putin's statements (6), in order to define the position of the country according to its main spokesperson: "In Crimea, the referendum was held in full compliance with democratic procedures and international legal norms [...], declaring its independence, holding the referendum, the Supreme Council of Crimea has referred to the United Nations Charter and to the principle of self-determination of nations [...], furthermore, Crimean people referred to the Kosovo dispute [...] is our freedom less important than theirs?"

Thus, from the Russian point of view, the independence of Crimean territory should be judged according to the right of nations to self-determination – principle of common international law and *jus cogens*, stated in the United Nations Charter (Art. 1, par. 2), in several Declarations of the United Nations' Assemblies and in several judgments of the International Court of Justice (among which the judgment about the independence of Kosovo of July 22nd 2010.) The juridical core of the above-mentioned principle is the right of every nation subject to domination to become independent (the so-called right to **external self-determination**); moreover, this principle depends on an essential condition: it can be applied if and only if the condition of subjection of the country (except for colonial territories) does not date back to the period before Second World War, when this principle was formulated.

Before proving that the principle of self-determination is applicable to the dispute about Crimea, we should exclude two similar cases from our analysis, as they have no juridical basis: the former is the internal self-determination of nations and the latter is the remedial secession. By internal self-determination, we generally mean the utopic aspiration to an international community whose national spokespersons are chosen based on the principles of democracy and freedom: it is not difficult to deduce that this idea does not correspond to reality, since a great number of States (some of which have a significant economic and geopolitical role) has an authoritarian character, and its realization is impossible. Democracy itself, despite being ideally fair, is a model that was created during a given historical context and cannot be achieved in any time and everywhere, without consequences (consider, for instance, the effects of conflicts in Afghanistan and Iraq). Moreover, it is not irrelevant the fact that the role of international community is to collaborate with the bureaucracy of some countries to guarantee democratic elections

(especially after serious political and military crisis), rather than to impose prearranged political systems. (7)

By “remedial secession”, we generally refer to a presumed right of minority groups to self-determination in case they are subject to unbearable discriminations. (Conforti) This condition is the topic of an authoritative interpretation (Tancredi), which tends to exclude the juridical relevance of “remedial secession”: [...] We should observe how the dispute about Crimea confirms what we have already stated, that is to say, the “remedial secession” has heterogeneous purposes: although it was conceived as an exceptional remedy to serious violations of internal self-determination and fundamental human rights against minority groups, it may convey the concept of ethnic purity as ideological basis of statehood in the XX century. [...] Russia has tried to demonstrate that the conditions of remedial secession (that is to say, a constant negation of internal self-determination and considerable violations of human rights) were present in the case of Crimea. [...] It would seem that the intervention of the Russian spokesperson during the UN Security Council (March 15th 2014) lacks an effective attempt to demonstrate the recurrence of a ‘severe oppression’ to the detriment of Crimean population. [...]”

Thus, Crimea dispute cannot be considered as a “remedial secession”, and more significantly it lacks an important and necessary condition of remedial secession: the persecution of Russian-speaking population in Crimea. As a matter of fact, even if by virtue of political disorder in Ukraine in 2013-2014 Russian-speaking community of Crimea had feared or felt the worsening of their condition as juridically recognised minority group, the process to guarantee the end of this situation should have a) respected the rules of Ukrainian Constitution; b) taken place without any external interferences, especially without Russian army’s intervention. Therefore, the application of self-determination principle seems to be very unlikely, as it is contrary to March 2014 referendum’s procedure. As a matter of fact, considering that a popular consultation has effects on international relations if and in only it respects the regulations of national Constitution (8), it should not be forgotten that the referendum in Crimea saw the participation of Russian Army, after the occupation of the territory: this aspect invalidates the result of the referendum, in spite of the overwhelming majority in favour of annexation to Russian Federation. (9)

On the field of treaty law, it is worth emphasizing that Russia violated at least three treaties: the bilateral treaty (1990), which established the national borders; the agreement of foundation of CIS (Minsk and Alma-Ata Protocol) and the treaty of cooperation with Ukraine (1997). As already stated, Russia often opted for military intervention, not attempting internal or diplomatic resolutions: it implies that the choices made by the Russian Federation are totally “extra ordinem” and have no juridical foundations, with reference to international law.

**Does Russia have the duty to give the territory back? Which legal instruments could be useful for a juridical resolution of the dispute?** As for these last two questions, we should observe that Russian Federation might have the duty to give the Crimean territory back. Nevertheless, the coercibility of duty is nearly null. Moreover, the lack of a supranational institution which is able to impose its will (as UN is not able to) implicates the general application of the rule of “balance of power” to all those situations in which the diplomacy does not manage to find a resolution. This rule, however brutal, is a sword of Damocles, hanging over international law and its credibility, and the only solution should be a universal government, unfortunately still unrealizable.

Considering the current situation, we should not underrate the political role of the strongest disputant: as member of UN Security Council, the Russian Federation has the right to veto, with which it can change the decisions of the Council. A similar situation took place in March 2014: Russia voted against the adoption of a resolution concerning the illegitimacy of the annexation of Crimea. On that occasion, the UN General Assembly approved a proposal, respecting the limits of its competency. To date, in view of the complex international state of affairs and the growing role of the Russian Federation in the geopolitical field, it would seem that the only solution should be the intervention and the mediation of neutral characters, such as in the recent case of the negotiation between USA and Cuba. Nevertheless, this option appears to be arduous and dubious, and unilateral initiatives – such as Ukraine’s appeal to the International Court of Justice – might result in inflexible and strict sentences, but at the same time might be very difficult to achieve.

## NOTES

- 1 The article on NY Times is exemplary: extremely negative tones of the American newspaper prelude the conflict between Obama and Putin. Generally speaking, it would seem that according to the American public opinion it is an extra-juridical matter and that the role of pro-Russian forces is undeniable.
- 2 Corriere della Sera, March 11th 2014
- 3 Huffington Post, February 27th 2014

4 Dario Quintavalle on Limes, March 6th 2014

5 Edward Luttwak on Huffington Post, March 2nd 2014. Luttwak's opinion should be cautiously rated, since he has collaborated with the US Government, in the field of military strategy.

6 Corriere della Sera, March 18th 2014 ([https/URL](#))

7 In this field, a significant role is played by OSCE ([https/URL](#))

8 The most recent and significant instance is the referendum held in Montenegro, thanks to which it declared its independence from Serbia in 2006.

9 We have often referred to the reunification of territory rather than annexation: for this reason, it is worth giving an excursus to explain from a historical point of view the reason why we choose to use this expression. Crimea peninsula was conquered in 1783 and then was part of the Russian Empire until 1954, when Nikita Khrushchev (the first Secretary of the Central Committee of the Communist Party of the Soviet Union) gave back the territory to the Ukrainian Soviet Socialist Republic. Nevertheless, pro-Russian sentiment of a great majority of the population and nationalist aspirations never decreased: as a matter of fact, after the collapse of Soviet Union in 1991 national independence movements started but the Ukrainian government granted the region more freedom and special concessions.

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