

Ukraine Insta-Symposium: Crimea, Ukraine and Russia: Self-Determination, Intervention and International Law

by Robert McCorquodale

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Our responses to what has been happening in Ukraine and the reactions of various governments, may depend on how we view the politics of the region and the moral claims being made. The rule of law is also of direct relevance, as '[we] believe that preserving law and order in today's complex and turbulent world is one of the few ways to keep international relations from sliding into chaos. The law is still the law, and we must follow it whether we like it or not.' These words are those of President Putin, **written a few months ago** in order to prevent the US, UK and other governments from intervening in Syria. International law is crucial to the situation in the Ukraine. It is of particular relevance to the right of self-determination of the people of Crimea and whether Russia can lawfully intervene on the territory of Ukraine.

The right of self-determination, as enshrined in the UN Charter and international human rights treaties, enables a people to determine for themselves their political, economic, social and cultural status. It has been applied in recent years in the former Yugoslavia, East Timor and South Sudan. It is certainly arguable that the people in the Crimea have a distinct identity and territory, created over centuries and fostered by decisions of the USSR, Russia and Ukraine. This includes its status as an autonomous region within the state of Ukraine and by specific agreements about it between Russia and Ukraine. It is not unlawful for it to have a referendum and declare itself independent (or that it wishes to merge with Russia), as this was allowed by the International Court of Justice in its (poorly reasoned) **advisory opinion on the declaration of independence by Kosovo**.

However, such a declaration of independence or merging is not effective in international law by itself. There are two key factors that are relevant: the actions of the state within whose borders the people live; and the responses of the international community. In relation to the first factor, if that state is oppressing the people, discriminating against them, violating their human rights and not allowing them freely to be involved in the politics and internal affairs of the state (i.e. to exercise their internal self-determination), as was probably the situation in Kosovo, then international law allows them a range of possible actions, including independence and merging with another state.

If the people are able freely to participate in governance and are not being oppressed as a group, then these actions of secession are *not lawful*. This was made clear by the **Canadian Supreme Court in its advisory opinion in the secession of Quebec**. That Court's view was clear: the people of Quebec were not denied meaningful access to government to pursue their political, economic, cultural and social development and so the people of Quebec do not enjoy a right at international law to effect the secession of Quebec from Canada unilaterally. They went further to make clear that the referendum result by itself would have no legal effect on its own without further negotiation with the people of the rest of Canada (this is also of relevance to the people of Scotland as they vote in their referendum). The second factor of the responses of the international community can be significant in terms of the recognition (or not) of the entity as a state. Indeed, Russia has not recognised Kosovo as a state.

The situation in Ukraine is such that the new government is just starting to be in a position to govern. It is trying to restore law and order. It has taken no major military or other oppressive actions against the people of Crimea (or in other areas of Ukraine). There are at this time no clear actions by it that would be sufficient to justify under international law any independence or merger with another state by the people of Crimea. Thus there can be no *international legal effect* of any independence or merger declaration that might arise from a referendum.

The right of self-determination does not of itself give rise to a legal right for a state to intervene in the territory of another state, whether directly or through private actors. Where a people are being oppressed and force is being used against them by their own state, it is, I would argue, possible for them to seek and obtain military assistance of a defensive kind from another state. This is preferably through a resolution of the UN, as collective action by a number of states or as part of a self-defence agreement. However, a unilateral military action where there is no such oppression or force is unlawful. This was made clear by an **independent fact-finding commission in their report** on international law in relation to the military intervention by Russia in South Ossetia and Abkhazia in Georgia in 2008, which they considered to be generally contrary to international law.

If Russia, and all other states, are to comply with international law then they must first allow the new Ukrainian government (whether or not they are seen as the legitimate government) to resolve the situation in Crimea and ensure that the people of Crimea are allowed internal self-determination. Only if that does not occur then can other possibilities, such as secession and merging with Russia, be possible lawful responses. In any event, that decision is one for all the people of Crimea, and not just for those who are of Russian nationality or heritage (or there only for military purposes), and should not be subject to military or other pressure by any other state. After all, if international peace and security is to be maintained, it must be according to international law, otherwise we begin 'sliding into chaos'.