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TO BE OR NOT TO BE, THAT IS THE STATEHOOD QUESTION

Alexandra Rickart*

The Montevideo Convention on the Rights and Duties of States lists the four necessary qualifications in order to become a recognized state: a) permanent population; b) defined territory; c) government; and d) capacity to enter into relations with other States.¹ However, how does a territory become its own state or part of a new state if it is already a section of another state? There are two different ways this can happen: secession and annexation. While both of these processes are recognized as ways to attain statehood in international law, they are not generally accepted as viable options except in dire circumstances, such as when the people of an area are oppressed and suffering from a lack of self-determination.²

Emerging from the Peace of Westphalia in 1648, the principles of state sovereignty and non-intervention reigned supreme.³ During this era of reformed statehood, states were in control of their own actions and responsible for governing their own citizens with no interference from outside states. As modern international rule emerged in the mid to late 1900s, the idea of a Westphalian Society started to slowly dissolve as states realized that they must cooperate with one another in order to create a more comprehensive world. Despite the modernization of statehood, there still remained the theory that states'

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1. Montevideo Convention on the Rights and Duties of States art. 1, *opened for signature* Dec. 26, 1933, 165 L.N.T.S. 19 (entered into force Dec. 26, 1934) (considered to be customary international law that applies to all States).
2. International Convention on Civil and Political Rights art. 1, *opened for signature* Dec. 16, 1966, 999 U.N.T.S. 171 (entered into force Mar. 23, 1976) (oppression occurs when there is a prolonged unjust treatment of a people and a lack of self-determination is when a people are treated unequally and are unable to freely choose their own political status).
3. Dan Philpott, "Sovereignty", *The Stanford Encyclopedia of Philosophy* (Summer 2014 Edition), <http://plato.stanford.edu/archives/sum2014/entries/sovereignty>.

boundaries are etched into history forever and cannot be easily changed. This concept brings about some difficulty in attempting to annex into, or secede from, an existing state, which causes major changes in state boundaries.

Secession

“No people and no part of a people shall be held against its will in a political association that it does not want.”⁴ This quote by famous economist Ludwig von Mises sums up the feelings of those who favor secession, and explains why they should be allowed to do so. According to Black’s Law Dictionary, secession is “[t]he process or act of withdrawing, especially from a religious or political association.”⁵ However, there is no right to secede stated in any instrument of international law.

In the 1998 case, *Reference re Secession of Quebec*, the Canadian Supreme Court held that one part of a state does not have the right to unilaterally secede from the parent state. The Canadian Supreme Court also stated that if a referendum were held by the part of the state wishing to secede, and the referendum were to show clear intentions to secede, the parent state should hold discussions with the part of the state wishing to secede.⁶

This is in slight contrast to the International Court of Justice’s (ICJ) advisory opinion in 2010 regarding the unilateral declaration of independence of Kosovo. There, the ICJ held that the declaration of independence by Kosovo did not violate international law because there were no prohibitions against such a declaration.⁷ Yet, the Court mentions that the declaration of independence does not give state status to Kosovo, leaving open the possibility that the secession itself is

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4. Ludwig von Mises, *Nation, State, and Economy*, (1919), http://mises.org/sites/default/files/Nation%2C%20State%2C%20and%20Economy_3.pdf
 5. SECESSION, Black’s Law Dictionary (9th ed. 2009).
 6. *Reference re Secession of Quebec* (1998), 2 S.C.R. 217.
 7. *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*, Advisory Opinion, 2010 I.C.J. 141 (July 22).

not actually congruent with international law, setting no precedent for future cases.⁸

Two more recent issues regarding secession deal with Scotland's vote to break away from the United Kingdom and Catalonia's wish to be independent from Spain. Scotland made waves as it announced its wish to part ways with the United Kingdom-with the blessing of the United Kingdom-if the "Scottish Independence Referendum" was passed by a majority of Scottish citizens.⁹ Unfortunately for those in Scotland who wished to have their own official state, though the votes were quite close, the referendum did not pass.

Following suit, despite the failure of Scottish independence, Catalonia, a region in Spain, held their own non-binding referendum for independence in the late fall of 2014. Unlike Scotland, Catalonia did not have the support of Spain to hold such a referendum, causing Madrid, Spain's capital and location of its central government, to threaten court action if the region forged ahead with the "illegal" referendum.¹⁰ Despite Madrid's threats and the fear of government troops interfering, the referendum was held on November 9, 2014, with 81 percent of voters voting "yes" to an independent Catalan state. However, the voter turnout was low; with less than half of the eligible voters in the region participating.¹¹ Ultimately, Madrid refused to recognize the vote as anything more than an illegal action.¹² While secession is one viable option for a region wishing to gain autonomy from the parent state, another option involves annexation into a different parent state of the region's choosing.

8. *Id.* Additionally, the International Court of Justice does not practice the international law principle of *stare decisis* which means that no law held by them is binding upon anything other than the case at bar as applied to the State parties to the case.

9. *Salmon Calls for Independence Referendum in 2014*, BBC NEWS, (Jan. 10, 2012), <http://www.bbc.co.uk/news/uk-scotland-16478121>.

10. Elena Gyldenkerne, *Catalonia Call Independence Vote Despite Scottish 'no'*, REUTERS, (Sept. 19, 2014), <http://www.reuters.com/article/2014/09/19/us-spain-catalonia-idUSKBN0HE11T20140919>.

11. Lauren Frayer, *Catalonia Votes for Independence; Spain says it won't Happen*, NPR, (Nov. 10, 2014), <http://www.npr.org/blogs/parallels/2014/11/10/362952892/referendums-outcome-indicates-catalonias-desire-for-independence>.

12. *Id.*

Annexation

The opposite of secession is annexation, which is the joining of part of a state (or possibly even a whole state) with another, already established state. It is defined as “a formal act by which a nation, state, or municipality incorporates land within its dominion.”¹³ States can secede before being annexed by another country, thus disengaging itself from its current parent state before transferring to a new parent state. Historically, before the Peace of Westphalia or the development of modern international law, land and territory were annexed into states mainly by conquest. The state with the most power and resources was able to expand its territorial boundary without the legal consequences they would face today.

The most recent instance of annexation, which has raised much debate over its legality, is the attempted annexation of Crimea by Russia. Crimea held a referendum on March 16, 2014, to unilaterally secede from Ukraine before it could then be annexed into the Russian Federation.¹⁴ The government in Russia claimed that this vote had an almost unanimous result, indicating a desire that the Crimean people undoubtedly wanted to be annexed into Russia, claiming a percentage of 96.7% voting in favor of the secession.¹⁵ It was later released, briefly, that only about 30% of the population came out for the vote and in actuality, only about half of that 30% voted in favor of the annexation.¹⁶

In accordance with the Advisory Opinion on the Declaration of Independence of Kosovo, Ukraine must have domestic laws within its own government system that allow for secession.¹⁷ Without laws

13. ANNEXATION, Black’s Law Dictionary (9th ed. 2009).

14. Ilya Somin, *Russian Government Agency Reveals Fraudulent Nature of the Crimean Referendum Results*, WASH. POST (May 6, 2014), <http://www.washingtonpost.com/news/volokh-conspiracy/wp/2014/05/06/russian-government-agency-reveals-fraudulent-nature-of-the-crimean-referendum-results/>; see also Matt Smith & Alla Eshchenko, *Ukraine Cries ‘Robbery’ as Russia Annexes Crimea*, CNN (March 18, 2014), <http://www.cnn.com/2014/03/18/world/europe/ukraine-crisis/>.

15. *Id.*

16. *Id.*

17. Ron Synovitz, *Crimea: Annexation and Recognition – the Legal Battles Ahead*, RFERL (Feb. 14, 2015), <http://www.rferl.org/content/law-arguments-crimea-annexation-referendum-ukraine-russia/25299060.html> (“Under international law, for

providing for secession, Russia and Crimea encountered their first hurdle in their attempt to pursue secession and annexation legally. The Ukrainian Constitution has a specific provision, Article 73, which states: “Alterations to the territory of Ukraine shall be resolved exclusively by the All-Ukrainian referendum.”¹⁸ The Crimean referendum that was held on March 16, 2014 was only for the Crimean citizens’ votes and not the entirety of the Ukrainian population. This creates an inconsistency of the referendum with the domestic law of Ukraine by the Crimean people.¹⁹

The referendum itself, despite its illegality under domestic law, was clearly an unfair referendum as only two options were given to the Crimean people: (1) secede from Ukraine or (2) secede and be annexed into Russia.²⁰ There was no option for the Crimean people to vote to stay within the current regime and remain a part of Ukraine, causing the referendum, despite the turnout of voters, to always rule in favor of leaving Ukraine. This may be affected by the fact that the majority of Crimea is ethnic Russian and the home of Russia’s Black Sea Fleet (a naval fleet), inferring that the people of Crimea may want to reintegrate into their historical home country.²¹

Conclusion

Recognition by other state powers is one way to gain legitimacy as a newly seceded, annexed, or independent country. In the case of Kosovo, ninety-six countries have recognized its unilateral secession as legitimate and recognized Kosovo as its own state, yet it is still not granted full statehood in order for it to be a part of the United

any part of a country to secede, it has to go through whatever constitutional processes are set up to enable it to secede,” Barry Kellman, a professor of international law).

18. *Whether Secession in Crimea Would be Legal*, THE ECONOMIST, (Mar. 12, 2014), <http://www.economist.com/blogs/economist-explains/2014/03/economist-explains-10>.
19. Lea Brilmayer, *Why the Crimean Referendum is Illegal*, THE GUARDIAN (March 14, 2014), <http://www.theguardian.com/commentisfree/2014/mar/14/crimean-referendum-illegal-international-law>.
20. *Whether Secession in Crimea Would be Legal*, THE ECONOMIST, (Mar. 12, 2014), <http://www.economist.com/blogs/economist-explains/2014/03/economist-explains-10>.
21. Adam Taylor, *To Understand Crimea, Take a Look Back at its Complicated History*, WASH. POST (Feb. 27, 2014), <http://www.washingtonpost.com/blogs/worldviews/wp/2014/02/27/to-understand-crimea-take-a-look-back-at-its-complicated-history/>.

Nations.²² In the case of Crimea, the United Nations specifically adopted a resolution calling for states to *not* recognize the annexation of Crimea into Russia.²³ Nevertheless, at least two countries openly support the annexation: Venezuela and Syria.²⁴

With or without recognition, the initial argument still remains – was the secession of Crimea legal? If the people were truly oppressed and lacked self-determination, the secession may be legitimately justifiable, if not legal. At which point, the next step would be to determine the legality of the annexation of Crimea into Russia. If both of these criteria are met, then recognition can be looked at to justify the annexation of the territory in the eyes of international law. This could change the working international law theory of statehood as it is currently known, creating an entire new outlook of the fluidity of state boundaries, when and how boundaries can be changed, and what is even considered a state.

22. MINISTRY OF FOREIGN AFFAIRS, *Countries that have Recognized the Republic of Kosovo* (2014), <http://www.mfa-ks.net/?page=2,33>.

23. General Assembly Adopts Resolution Calling upon States not to Recognize Changes in Status of Crimea Region, UNITED NATIONS (March 27, 2014), <http://www.un.org/press/en/2014/ga11493.doc.htm> (emphasis added).

24. Joshua Keating, *Who's on Team Putin?*, SLATE (March 20, 2014), http://www.slate.com/blogs/the_world_/2014/03/20/the_small_group_of_countries_supporting_russia_s_position_in_ukraine_venezuela.html.