

THE CONUNDRUM OF CRIMEA: TO WHOM IT BELONGS TO?

Yordan Gunawan

Faculty of Law at Universitas Muhammadiyah Yogyakarta
email: yordangunawan@umy.ac.id

Jamilah Arifin

Faculty of Law at Universitas Muhammadiyah Yogyakarta
email: jamilah.arifin.law17@mail.umy.ac.id

Devi Seviyana

Faculty of Law at Universitas Muhammadiyah Yogyakarta
email: devi.seviyana.law17@mail.umy.ac.id

Ananda Prasetya Utami

Faculty of Law at Universitas Muhammadiyah Yogyakarta
email: ananda.prasetya.law17@mail.umy.ac.id

Elfatia Ayu Kinasih

Faculty of Law at Universitas Muhammadiyah Yogyakarta
email: elfatia.ayu.law17@mail.umy.ac.id

Abstract

The recent Russian-Ukrainian dispute over Crimea has been attracted wide international attention. The crisis in the territory of Crimea has been criticized by the other states and international organizations as wrongful annexation by Russia of part of the territory of Ukraine. A referendum held in Crimea and the majority of the population choose to join the Russian Federation. Nevertheless, on March 2014, according to the Ukraine Constitutional Court, only parliament of Ukraine has the authority to make a referendum. The United Nations General Assembly adopted a resolution A/RES/68/262 on Ukraine's territorial integrity that the annexation of Crimea, declared the referendum was invalid, and appealed to the international community not to recognize changes the status of Crimea. The research aim is to analyze whether Crimea belongs to Russia or Ukraine. The study is a normative legal research with Statute Approach and Case Approach. By using qualitative descriptive method, the research uses law as a foundation of norm and done through a library research with existing journal sources, internet, and books. The result shows that the annexation by Russia was invalid under international law perspective and Crimea should belong to Ukraine.

Keywords: *Annexation, Crimea, Federation of Russia, Ukraine.*

INTRODUCTION

Crimea is an autonomous territory that has its own parliament but physically and politically, Crimea remain under Ukraine's sovereign territory. Since 1921, Crimea was part of the Soviet Union (now it has been disband and renamed Russia) but in 1954, the Soviet Union's leader Nikita Khrushchev turned over Crimea to Ukraine.¹ The Crimea Peninsula, located in the south of Ukraine,

¹ David R. Maples and David F. Duke, 1995, Ukraine, Russia, and the Question of Crimea, Journal of Nationalism and Ethnicity, Vol. 23, No. 2, pg 261.

separates by the Azov Sea from the Black Sea, which makes its strategic location a struggle for the Ottoman Empire and Russia. Russia's desire to return Crimea into its territory remains one of Russia's goals to achieve its interests.

Since 1954, the desire of Russia to take back the Crimea into their territory continue. On March 18, 2014, The Crimea annexation by Russia occur.² The annexation begins when a referendum called All Crimean Referendum made by local legislative organ in Crimea. They made the Referendum about their territory status and it held on 16 March of 2014.³ There are two options of resolution presented either support the reunification of the Crimea with Russia or support the restoration of the Republic of Crimea Constitution 1992 and the status as a part of Ukraine.⁴ Crimea's election chief announced that the voters whose supporting the secession and join the Russia nearly 96.8 percent.⁵ The annexation of Crimea approved by Russian parliament and soon on 18 March the accession treaty with Crimea and Sevastopol leaders signed by President Putin.⁶

The annexation of Crimea by Russian has triggered the international community, which has indicated in the form of diplomatic such as protests, resolutions, and declarations passed by the international organizations.⁷ The conflict over Crimea has emerged in an international environment, which, apart from the two directly involved states, also included other important factors such as the European Union, NATO, OSCE, United Nations, USA, Germany, France, Poland, and others.⁸ On March 7, 2014, the president of Ukraine suspended his Crimean decision that called as referendum. In addition, a question submitted to the Constitutional Court of Ukraine. The Constitutional Court indicated that only under an all-Ukrainian referendum can proposed change to Ukraine's territory is handled legally and only the parliament of Ukraine who has the authority to make a referendum. As a result, the Constitutional Court mandated the Crimean authorities to revoke the referendum decree.⁹ On March 27, 2014, the UN General Assembly adopted a resolution A/RES/68/262 on Ukraine's territorial integrity that the annexation of Crimea, declared the referendum was invalid, and appealed to the international community not to recognize changes the status of Crimea.¹⁰ The Crimean situation shows how confused, contested, and chaotic the state of international law is when territorial claims to independent states arise. Based on the explanation, the author would like to know whether Crimea belongs to Russia or Ukraine.

² John Biersack and Shannon O'Lear, 2014, the Geopolitics of Russia's Annexation of Crimea: Narrative, Identity, Silences, and Energy, *Eurasian Geography and Economics*, Vol. 55, No. 3, pg 247.

³ S Tierney, 2015, Sovereignty and Crimea: How Referendum Democracy Complicates Constituent Power in Multinational-Societies, *German Law Journal*, Vol. 16, No. 3, pg 523.

⁴ Thomas D. Grant, 2015, Current Developments Annexation of Crimea, the *American Journal of International Law*, Vol. 109, No. 1, pg 69.

⁵ Karol Kujawa, et.al, 2014 *Crisis in Ukraine: Perspectives, Reflections, International Reverberations*, Gliwice: ASLAN Publishing House, 2015, pg 213.

⁶ Roy Allison, 2014, Russian 'Deniable' Intervention in Ukraine: How and Why Russia Broke The Rules, *International Affairs*, Vol. 90, No. 6, pg 1261.

⁷ Anton Bebler, 2014, Freezing a Conflict: The Russian-Ukrainian Struggle over Crimea, *Israel Journal of Foreign Affairs*, Vol. 8, No. 3, pg 71.

⁸ *Ibid.* pg 70.

⁹ Thomas D. Grant, *Loc.Cit.*

¹⁰ Christian Marxsen, 2014, the Crimea Crisis: an International Law Perspective, *Heidelberg Journal of International Law*, Vol. 74, No. 2, pg 390.

The study is a normative legal research with Statute Approach, Historical Approach, and Case Approach. By using the qualitative descriptive method, the research uses law as a foundation of norm and done through a library research with existing journal sources, internets, and books.

ANALYSIS AND DISCUSSION

History the Annexation of Crimea by Russia

The Crimea Peninsula, which has a population of 2.3 million, where most of the population is ethnic Russian and uses Russian in its daily life, is located south of Ukraine, separating the Azov Sea from the Black Sea which makes world powers want control over the maritime territory in the region. Its strategic location became a struggle for the Ottoman Empire and Russia and the two world powers left a strong footprint on the Crimea peninsula.¹¹ In the history of Crimea, from the 15th century to the 18th century, the Ottoman Empire's subordinate state, the Khanate of Crimea, had occupied the Crimea region. The Turkish ethnic group called the existing Crimean Tatars was then encouraged to settle down and make Crimea the place of origin of these Crimean Tatars.

In 1774, the region gained its independence from the Ottoman Empire, and Crimea was formed since 1783 as part of the Russian Empire.¹² Crimea was part of the Soviet Union from 1783 to 1954, even under the rule of Ukraine, Russia still "owns" Crimea where there is Russia's largest Military Fleet Base in the Black Sea. The Black Sea and its coastline have played an important role in the history of Eastern Europe and West Asia.

In October 1921, Crimea became part of the territory of the Russian Soviet Federative Socialist Republic as an autonomous territory of the Crimean Soviet Socialist Republic. In February 1954, then Soviet Union leader Nikita Krushchev transferred Crimea and Sevastopol from the Russian Soviet Federation Republic to the Ukrainian Soviet Socialist Republic, which was Nikita Krushchev's territory through a unilateral decision from the highest Soviet presidium.¹³ This was done by Nikita Krushchev as the 300th anniversary of the *Perevaslav Agreement*, namely the agreement of Ukraine joining the Soviet Union. On February 19, 1954, all interested parties in Russia, Ukraine and Crimea debated the issue that was quite contentious, including the heads of the Simferopol and Sevastopol city councils, and P. Lyalin, First Deputy of the Crimean Provincial Council. However, the transfer of the Crimea region was then justified by several criteria including: the same economic system and territorial proximity, which mean economic closeness and cultural relations between the Crimea Province and Ukraine. The decree legally approved on April 26, 1954 and approved by Krushchev as a sign of the legitimate transfer of Crimea to Ukraine. Meanwhile, in 1992, Vladimir Lukin, Chairman of the Committee

¹¹ Elena Mizrokhi, *Russian 'Separatism' in Crimea and NATO: Ukraine's Big Hope, Russia's Grand Gamble*, Université laval-Chaire de recherche du Canada sur les conflits identitaires et le terrorisme, 2009, accessed from: <https://www.csi.hei.ulaval.ca/sites/csi.hei.ulaval.ca/files/crimee.pdf>, on December 28, 2019.

¹² Jakob Hebenskog, *Crimea after the Georgian Crisis*, Swedish Defense Research Agency, 2008, accessed from: <https://www.foi.se/rest-api/report/FOI-R--2587--SE>, on December 25, 2019.

¹³ Ron Popeski, *Ukraine Dismisses Fears of Crimea Separatist Crisis*, (2008), accessed from: <https://www.reuters.com/article/us-georgia-ossetia-ukraine/ukraine-dismisses-fears-of-crimea-separatist-crisis-idUSLG37452820080816> on December 25, 2019.

on Foreign Relations and External Economic Relations stated his movement to Russian law enforcement that the decision made by the Supreme Soviet parliament of Russia in 1954 regarding the transfer of the Crimea region to Ukraine was invalid and had no legal force.¹⁴ During the 1992-1993 period, the Russian parliament increased its demands on Crimea and Sevastopol. Finally, on January 23, 1992, the Duma (Russian Assembly) and the Ministry of Foreign Affairs opposed the transfer of Crimea to Ukraine, which led to violent protests from Ukraine.¹⁵ Russian-Ukrainian relations deteriorated after this declaration. Then, the Russian Vice President Alexander Rutskoi visited Crimea in 1992 and called for the separation of territory from Ukraine and a month later the Russian parliament passed a resolution declaring that the transfer of Crimea to Ukraine in 1954 was illegal.¹⁶

The tensions between Ukraine and Russia heats up after the demonstration due to the cancellation of the cooperation agreement with the European Union and continued to the annexation of Crimea by Russia. The annexation of Crimea by Russia was happened during 2013 to 2014. On March 2014, Russia's annexation of Crimea occurs.

On November 2013, President Yanukovich suspended the Ukraine's preparations for European Union trade agreement and choose to make a closer tie with Russian instead.¹⁷ The agreement can increase the intensity of economic cooperation relations between the European Union (EU) and Ukraine. However, President Viktor F. Yanukovich appeared to be giving in to Russian pressure that came with a required \$15 billion loan.¹⁸ During the next three months, many protests took place with some physical confrontations occurring.¹⁹ It started as small protests in central Kyiv against the governments that suspend the association agreement and turned to Russia, turned into a larger protest. Due to its demands for closer relations with EU, the movement of the Protests called as Euromaidan.²⁰ The protests get into it peak in the middle of February 2014 when police responded to Euromaidan's supporters in a confrontational manner that made the wave of protests even greater. After the violence, President Yanukovich fled the country and then he was replaced by a temporary leader, Oleksandr Turchynov, who acted as president until they held an election. However, since he abusing his power, Yanukovich was impeached by the Ukrainians parliament.²¹

The annexation of Crimea by Russia began when armed men with no insignia, labelled as little green men, appeared on Crimea shortly after the impeachment of President Yanukovich.²² Russia's military interventions start with sending troops to Crimea on March 1, 2014.²³ On the same day, the Russian Council authorized the armed forces

¹⁴Tor Bukkvoli, 2010, Off the Cuff Politics—Explaining Russia's Lack of a Ukraine Strategy, *Europe-Asia Studies*, Vol. 53, No. 8, pg 1147.

¹⁵ Elena Mizrohki, *Loc.Cit*.

¹⁶ *Ibid*.

¹⁷ Trevor McDougal, 2015, a New Imperialism? Evaluating Russia's Acquisition of Crimea in the Context of National and International Law, *Brigham Young University Law Review*, Vol. 2015, Issue 6, pg 1847.

¹⁸ John Biersack and Shannon O'Lear, *OpgCit*, pg 1868.

¹⁹ Trevor McDougal, *Loc.Cit*

²⁰ *Ibid*.

²¹ Trevor McDougal, *Loc.Cit*

²² Amanda Paul, *Crimea One Year after Russian Annexation*, European Policy Centre, 2015, accessed from: http://aei.pitt.edu/62987/1/pub_5432_crimea_one_year_after_russian_annexation.pdf, on December 28, 2019.

²³ Emmanuel Karagiannis, 2014, The Russian Interventions in South Ossetia and Crimea Compared Military Performance, Legitimacy and Goals, *Contemporary Security Policy*, Vol. 15, No. 3, pg 408.

utilization on the territory of Ukraine and Russian armed force in Crimea reinforced and gathered at the Ukrainian border in the following weeks.²⁴ One of the reason of Russia's Military interventions is to send its troops to Crimea to protect the minority of Russian community in Crimea.²⁵ When armed men controlled Crimea, Crimean parliament voted to dismiss the Crimean government, replace the prime minister and call for a referendum on Crimean autonomy. On March 6, 2014, the Crimean parliament adopted a decree on the all Crimean Referendum.²⁶

On March 11, 2014, the Supreme National Council of Crimea declared that Crimea would become independent in the case of a reunification vote in referendum; such a result achieved in March 16.²⁷ There are two options of resolution presented: Do you support the reunification of the Crimea with Russia as a subject of the Russian Federation or do you support the restoration of the Constitution of the Republic of Crimea of 1992 and the status of the Crimea as a part of Ukraine.²⁸ The questions in the March 6 resolution put to voters in Crimea in a referendum on 16 of March 2014. The President of Russia's Council on Civil Society and Human Rights briefly posted an analysis on its website showed that not more than 60 percent of votes support the annexation and the voter turnout was as low as 30 percent and not higher than 50 percent.²⁹ Nevertheless, the reported result of the referendum held with 83 % of participation and the vote for annexation of Crimea by Russia is 96.8 %.³⁰ After the referendum, on 18 March the accession treaty with Crimean and Sevastopol leaders signed by President Putin and the Russian constitutional court ruled the next day that this complied with the Russian constitution.³¹

The Crimean annexation has triggered many reactions in the international community that has been manifest in the form of diplomatic such as resolutions and declarations passed by the international organizations. The conflict over Crimea has emerged in an international environment, which, apart from the two directly involved states, also included other important factors such as the European Union, NATO, OSCE, United Nations, USA, Germany, France, Poland, and others.³² On 7 March of 2014, the President of Ukraine suspended the Crimean decision that had made the referendum.³³ Moreover, The Ukrainian Constitutional Court showed that only under an all-Ukrainian referendum a proposed changes of Ukrainian territory could be handle legally and only the Ukrainian parliament had the authority to call such a referendum.³⁴

On March 27, 2014, the UN General Assembly adopted a resolution A/RES/68/262 regarding Ukraine's territorial integrity declared that the referendum was invalid, and

²⁴ Christian Marxsen, *Loc.Cit*

²⁵ *Ibid.*

²⁶ Thomas D. Grant, *OpgCit*, pg 68.

²⁷ Robin Geiß, 2015, Russia's Annexation of Crimea: The Mills of International Law Grind Slowly but They Do Grind, *International Law Studies*, Vol. 91, pg 430.

²⁸ Thomas D. Grant, *OpgCit*, pg 69.

²⁹ *Ibid.*

³⁰ Karol Kujawa, *Loc.Cit.*

³¹ Roy Allison, *OpgCit*, pg 1260.

³² Anton Bebler, *OpgCit*, pg 70.

³³ UN Security Council, UN Doc. S/2014/193, 2014, accessed from: <https://undocs.org/pdf?symbol=en/S/2014/193>, on December 25, 2019.

³⁴ Thomas D. Grant, *OpgCit*, pg 69.

ask the international community not to recognize the changes of Crimean status.³⁵ Russia did not accept the UN decision which assumed that Crimea to determine its own destiny to join Russia. On the other hand, support came from the European Union (EU). The European Union welcomes the resolution 68/262 of the United Nations and declares that the referendum on Crimea is illegal and will not accept the approval of Russian territories in Crimea and Sevastopol.³⁶

The Legal Basis to Acquire Territory Based on International Law

In the Montevideo Convention of Article 1 of 1933, the elements that must be fulfilled as a state are (a) permanent population, (b) a defined territory, (c) government, (d) a capacity to enter into international relations.³⁷ The territory is an important element in the tension between power and identity. The territory provides tangible evidence of the nation existence and historical roots, and the state needs a clear limit national territory to demand its state.³⁸

The state is a system that regulates the system of human involvement in carrying out activities. In international law, the formation of a country requires a constructive element. According to Oppenheim, a country's territory defined as a part of the earth's surface governed by the sovereignty of a country. A state cannot call as a state without territory because where a country gives the highest authority.³⁹

(a) Permanent population

Every country has a population that occupies the area within a certain period. This is important, because without an organized community, it will be difficult to determine the existence of a country.⁴⁰ The population is a collection of individuals consisting of two genders who live in a country through juridical and political relations and manifested in the form of citizenship.

(b) Defined territory

Territory is an absolute element for the formation of a state. Territory of a country consists of land, sea and air space. Oppenheim has noted,⁴¹ "a State without a territory is not possible." The idea that a state occupies a particular part of the earth on which it operates, subject to the limitations of International Law, its exclusive authority to exclude other states on the basis of International Law.⁴² The exercise of the highest authority by a State over its own territory is known in international law as "territorial sovereignty". There must be a reasonable stable political community and it must be in control of certain area. Territorial sovereignty is the right of a State to run its own territory, leaving aside the other State, the function of a State. It has positive and negative aspects. The first aspect relates to the exclusivity of the rights of the State in

³⁵ Christian Marxsen, OpgCit, pg 390.

³⁶ Halil Erdemir, *the EU-Russian Conflict on Crimea and Its Regional Implications*, Centre for European Studies, 2014, accessed from: http://cse.uaic.ro/eurint/proceedings/index_htm_files/EURINT2014_ERD.pdf, on December 25, 2019.

³⁷ Article 1 of Montevideo Convention 1933.

³⁸ Guntram H. Herb and David H. Kaplan, *Nested Identities: Nationalism, Territory, and Scale*, New York: Rowman & Littlefield Publisher, Inc., 1999, pg 134.

³⁹ L. Oppenheim, *International Law: A Treatise* 2nd edition, New York: Longmas, Green and Co., 2012, pg 230.

⁴⁰ James Crawford, *Brownlie's Principles of Public International Law*, 8th edition, New York: Oxford University Press, 2012, pg 128-129.

⁴¹ L. Oppenheim, Opg Cit., pg 231.

⁴² James Leslie Brierly, *Law of Nations*, 4th edition, Oxford: Oxford University Press, 1949, pg 142.

relation to its own territory, while the second aspect relates to the obligation to protect the rights of other States. A State exercises territorial sovereignty within its borders. Borders are imaginary lines that describe the territorial boundaries of a State.⁴³ Limits have three dimensions. They include State land and maritime territory of internal waters and territorial seas, airspace, and subsoil. The right to territorial sovereignty allows a State to take full steps of sovereignty over its land territory, major actions on its territorial waters and airspace, and smaller actions on its continental shelf and adjacent territories. In addition, it allows the State to exercise sovereignty over ships and aircraft flying its flag or carrying its citizenship, which is treated as its territory. In accordance with the rights resulting from territorial sovereignty, there are tasks which are imposed on a State. These tasks involve the obligation to protect within the territories the rights of other States, together with the rights that each State can claim for its citizens in foreign territories. A sovereign state can do anything in their territory as they wish, they can make their own regulation and they can sue anyone that violates their regulations.⁴⁴ The example for territorial sovereignty are the Island of Palmas Case.⁴⁵ This is a territorial dispute over the Island of Palmas (Miangas) between the United States and the Netherlands which was heard by the Permanent Court of Arbitration. This case is one of the most influential precedents dealing with the territorial conflict. Huber has determined “whether the Island of Palmas part of the Netherlands territory or part of the United States territory.” Therefore, the Arbitrator in conformity with Article I of the Special Agreement of 23 January 1925 decides that the Island of Palmas (Miangas) is a part of the Netherlands. Three precedents to settle the Island of Palma case were decided:

- Title based on contiguity does not have position in International Law;
- Title for discovery is only a small title;
- If other sovereignty begins, the sovereignty is continuous, public sovereignty openly and with a good title, but the discovery does not oppose the claim, claimed by leader that exercises authority greater than a title based on mere discovery.

(c) Government

The existence of the effective government, administrative and legislative organ is the best evidence of a stable political community. In international law, the government must have effective powers to carry out the duties and maintenance of security for the entire population and territory of the country.

(d) A capacity to enter into international relations

A capacity to enter into international relations means that the state must be capable to have what it needs to carry out its international duties and obligations. it also means that the government must be independent and not under the control of other states.⁴⁶ Independent means that it is not under the control of a foreign country;

⁴³ Robert Bledsoe, et al, *The International Law Dictionary*, England: Oxford, 1987, pg 143-144.

⁴⁴ Jan Klabbers, *International Law 2nd edition*, Cambridge: Cambridge University Press, 2017, pg 99.

⁴⁵ Philip C. Jessup, 1928, *The Palmas Island Arbitration*, *The American Journal of International Law*, Vol. 22, No. 4, pg 735-752.

⁴⁶ Michael Graham Fry, Erik Goldstein, and Richard Langhorne, *Guide to International Relations and Diplomacy*, London: Bloomsbury Publishing, 2002, pg 485.

the State is free to carry out various activities according to its own interests and does not conflict with international law.

International law recognizes several methods of acquiring the territory. There were numerous contentions with respect to who the sovereign controller is over islands, land subject to border disputes, and the cold and Antarctic areas. There are some methods of acquiring territory,⁴⁷ namely:

1) Occupation

Occupation refers to the demonstration of acquiring an area that is not under the power of another nation.⁴⁸ Generally, occupation necessitates that the area be terra nullius (nobody's land) and the allocation of the territory turned out to be genuine or effective. Genuine or effective possession normally requires a reported to secure and real settlement or occupation with the interest of governmental authority.⁴⁹

2) Accretion

Accretion refers to a natural process that the expansion of sediment territories on coastlines or volcanic eruptions on the islands (potentially creating a new island). Accretion also includes the slow changes in the river flow but not sudden activities that change the course of the river.⁵⁰

3) Cession

Cession is a legal method under International law which the a sovereignty under certain territory transferred from one country to another with the agreement between two countries. A right to territory may conferred by treaty, provided the transfer takes in accordance with the treaty.⁵¹ It is one of the modes which the State can legally acquire territories. Moreover, because it based on mutual agreement, perhaps this mode currently have the greatest practical relevance. Because it requires territorial change, surrender is a case if state succession, the replacement of one country with another in responsibility for the territory's International relations. Cession prefer to the modern methodology of obtaining territory through agreements with the previous owner of title to the territory. Previous secession of the territory is often part of peace agreement that the losing country is forced to sign whereas such agreement is valid within the past, modern treaties are invalid if they are acquired under the use of force.⁵² Ownership rights over territories often granted through purchases or in return for other benefits.

4) Annexation

Annexation is the acquisition of territory through force, especially by a country that win the war by the expense of the defeated country. Annexation is a technique of taking control the enemy's territory in a time of war by utilization of military forces.⁵³ Forced annexation has become a common method of acquisition.⁵⁴ Effective annexation occurs when the physical annexation of a territory if followed by subjugation (the

⁴⁷ Trevor McDougal, *Loc.Cit*

⁴⁸ Malcolm N. Shaw, *International Law*, Cambridge: Cambridge University Press, 2017, pg 372.

⁴⁹ *Ibid.*

⁵⁰ Trevor McDougal, *Loc.Cit*

⁵¹ James Crawford, *Opp Cit.*, pg 226.

⁵² Oppenheim, *Opp Cit.*, pg 681.

⁵³ D.H.N. Johnson, *Loc.Cit.*

⁵⁴ Gerhard Von Glahn and James Larry Taulbee, *Loc.Cit*

legal method of transferring rights). Sovereign state may resort to war at their wisdom and that the territorial and other benefits achieved by military victories will legally recognized.⁵⁵

5) Prescription

Prescription means the transition of rights after a second country peacefully and effectively control the territory. Prescription is the acquisition of a title to territory through continuous, public and peaceful control. The requirements of prescription are: (1) the state authority without the recognition of the other sovereign states; (2) public, peaceful, and undisturbed possession; and (3) permanent ownership.⁵⁶

The Validity of Crimea Annexation by Russia

1. Referendum

Referendum is a choice as a determinant of the wishes of citizens in Crimea to choose the path for their republic. The referendum was taken right in the middle of the ongoing political crisis between Russia and Ukraine.⁵⁷ The Crimea Parliament gave two choices either support the Crimean reunification with Russia as the subject of the Russian Federation or support the 1992 Constitution of the Crimean Republic restoration and the status of Crimea as part of Ukraine.⁵⁸ From the results of a referendum conducted by the Crimea resulting in 96.8 percent of the Crimean vote for its separation from Ukraine and for reunification with Russia.⁵⁹

The status of Crimea's annexation by Russia was unsuccessful under International law, Crimea still de jure part of Ukraine. International law does not prohibit or limit the sovereignty of a country's territory but must still follow the rules and procedures for the acquisition of a country's territory. Based on the procedure of obtaining territory of Crimea by Russia, Russia signs the document of accession treaty with Crimea and Sevastopol leaders in March 18, 2014.⁶⁰

On 7 March 2014, the President of Ukraine mentioned that the Crimean referendum did not comply with the Ukrainian Constitution and called the Crimea referendum illegal.⁶¹ Only Ukrainian referendum can make territorial changes in Ukraine. In addition, on March 14, 2014, the constitutional court indicated that the Ukrainian parliament had the authority to sign and to ratify the referendum, the Venetian Commission of the European Council and chair of the Organization for Security and Cooperation in Europe (OSCE) agreed that the referendum was contrary to the Ukrainian constitution.⁶²

This made the UN respond that the Crimean referendum was illegal and in this situation, the UN issued a non-binding resolution relating to the illegality of the Crimea referendum from Ukraine that was carried out on March 16 through Resolution 68/262.⁶³

⁵⁵ Oppenheim, *Opp Cit.*, pg 681.

⁵⁶ James Crawford, *Opp Cit.*, pg 231.

⁵⁷ Sovia Covandoli, 2016, The Unresolved Dilemma of Self-Determination: Crimea, Donetsk and Luhansk, The International Journal of Human Rights, Vol. 20, pg 881.

⁵⁸ Thomas D. Grant, *Opp.cit.*, pg 69.

⁵⁹ Anton Bebler, *Loc.Cit.*

⁶⁰ Roy Allison, *Loc.Cit.*

⁶¹ Tjomas D. Grant, *Loc. Cit.*

⁶² Julius Bodie, 2017, Modern Imperialism in Crimea and the Donbas, Loyola of Los Angeles International and Comparative Law Review, Vol. 40, No. 2, pg 299.

⁶³ See United Nation Resolution 68/262. *Territorial Integrity of Ukraine*, accessed from: <https://undocs.org/A/RES/68/262>, on December 29, 2019.

The UN resolution also received support from the EU. The EU agreed with the resolution 68/262 of the United Nations, stated that the Crimea referendum was illegal, and would not recognize the addition of Russian territory in Crimea and Sevastopol.⁶⁴

2. Russia's Military Interventions

The status of Crimea's annexation by Russia was unsuccessful under International law, then legally Crimea remain part of Ukraine. This is because of the unlawful use of force by Russia in annexation of Crimea. Without the intervention of Russia, the annexation of Crimea to be an independent state may ineffective permanently because of the intervention by Russia was broke the law.⁶⁵

As a self-defense, one of the reasons for Russia sending their troops is to protect Russian community in Crimea. Self-defense principle contained in Art 51 of the UN Charter and it is recognized in International Law. Attacks on citizens can be interpreted as attacks on the state, because one of the elements of state is population (in the sense of community). Sir Humphrey Waldock and Kilmuir Viscount determine several criteria or conditions that allow a country using of force in the context of protecting their citizens abroad, namely: (a) there is a threat that is expected to occur immediately to citizens;⁶⁶ (b) countries that have territorial sovereignty fail or unable to protect them;⁶⁷ (c) protective measures are only limited to actions to protect citizens from actions that are detrimental or harmed.⁶⁸

Russia's military intervention that led to the annexation of Crimea is an act that clearly violates the sovereignty of Ukraine and it is not in accordance with the principle of self-defense itself. Russia's military intervention into Crimea violates the provisions of international law by violating Article 2 paragraph 4 of the UN Charter on the prohibition of intervening in internal matters of the Ukrainian state, as well as the prohibition of using military force against other countries.⁶⁹ Only carry out the use of military force based on the provisions of Article 51 of the UN Charter and with the existence of requests for assistance from the intervened country.⁷⁰ Russian military intervention is not in accordance with the provisions of Article 51 of the UN Charter to intervene as a self-defense. Russia's military intervention as a self-defense was too weak to justify its actions.

3. Diplomatic Facts, International Agreements, and the State Treaties

The Annexation of Crimea by Russia has violated several International agreements such as the 1997 Partition Treaty on the Status and Conditions of the Black Sea Fleet, the 1997 bilateral Treaty of Friendship, the Conference on Security and Cooperation

⁶⁴ Halil Erdemir & Bugrahan Nuri Erdemir, OpgCit.

⁶⁵ Robin Geiß, *Loc.Cit.*

⁶⁶ Tom Ruys, 2008, The 'Protection of Nationals' Doctrine Revisited, *Journal of Conflict & Security Law*, Vol. 13, No. 2, pg 234-235.

⁶⁷ Tom Hiller, *Sourcebook on Public International Law*, London: Cavendish Publishing Limited, 1998, pg 609.

⁶⁸ Tom Ruys, OpgCit, pg 235.

⁶⁹ *See*, Article 2(4) of the UN Charter, "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence or any state, or in any other manner inconsistent with the Purpose the United Nations".

⁷⁰ *See*, Article 51 of the UN Charter, "Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security".

in Europe Final Act (the 1975 Helsinki Accords), the Statute of the Council of Europe (in 1996 Russia joined), and the 1994 Budapest Memorandum.⁷¹

Ukraine and Russia were signed two bilateral treaties in 1997, first Treaty of Friendship, Cooperation, and Partnership between the Ukraine and Russia and second Partition Treaty on the Status and Conditions of the Black Sea Fleet. The first treaty respect the parties territorial integrity and inviolability borders, while the second treaty concerned about the respect on each border include the Crimea as a part of Ukraine legally and territorially. However, on the night before the political referendum, Moscow summon up Sevastopol-based forces to seize control of some important part in Crimea. This action emerges to be a direct violation of the Treaty.

Final Act of the Conference on Security and Cooperation in Europe was signed by Ukraine and Russia.⁷² This act was trying to promote the policy of the Cold War era between the West and the East, the principles of European State sovereignty was described, the borders was inviolable, and all of the members were not able to interfere domestic affairs of other countries.⁷³ Its means that the states are mandated to refrain themselves from any claim or act of confiscation, and seize some or all part of the state participant of the territory.⁷⁴ The intervention of Russia in Crimea has violated this Act.⁷⁵ Article IV of the Accords, prohibits the state from making the territory of the others became the object of military occupation by indirect or direct military forces, there is no acquisition will acknowledge as valid. Therefore, the deployment military of Russia in Ukraine and the Crimea's annexation are infringed the territorial sovereignty of Ukraine.⁷⁶

Russia was joined to the Council of Europe in 1996 with others forty-seven countries, the institution manage some of International court and assemblies. Recently, the Parliamentary Assembly of the Council of Europe suspend Russia from participation in Assembly bodies, stated the annexation of Crimea was violated the Statute of the Council of Europe and declare that the Crimea's annexation is invalid under International law.⁷⁷

Budapest Memorandum was sign between the US, the Russia, Ukraine, and United Kingdom in December 1994. Budapest Memorandum on Security Assurance in Ukraine resulted in ownership of 1,800 nuclear heads in change as the border's International guarantee (include Crimea).⁷⁸ The agreement avoid the threat of force against the integrity of the territory of Belarus, Kazakhstan, and Ukraine of the infrastructure of the nuclear weapons. The agreement ask the parties to get a guidance from the UN Security Council to give an assistance Ukraine became a victim of the aggression.⁷⁹ Nevertheless, in passing the permission of the UN Security Council and annexing

⁷¹ Julius Bodie, *Loc.Cit.*

⁷² Spencil Kimball, *Bound by Treaty: Russia, Ukraine, and Crimea*, 2014, accessed from: <https://www.dw.com/en/bound-by-treaty-russia-ukraine-and-crimea/a-17487632>, on December 28, 2019.

⁷³ Julius Bodie, *OpgCit.*

⁷⁴ Jean Dominique Giulaini, *Russia, Ukraine, and International Law*, European Issues no. 344, 2015, accessed from: <https://www.robert-schuman.eu/en/doc/questions-d-europe/qe-344-en.pdf>, on December 24, 2019.

⁷⁵ *Ibid.*

⁷⁶ Julius Bodie, *Loc.Cit.*

⁷⁷ Jean Dominique Giulaini, *Loc.Cit.*

⁷⁸ *Ibid.*

⁷⁹ David S. Yost, 2015, *The Budapest Memorandum and Russia's Intervention in Ukraine*, International Affairs, Vol. 91, No. 3, pg 507.

sovereign territory of Ukraine, Russia's action violated the main principle of Budapest Memorandum.⁸⁰

CONCLUSION

Crimea should belong to Ukraine under International Law based on three considerations. The first is the annexation of Crimea by Russia has violated several International agreements such as the 1997 Partition Treaty on the Status and Conditions of the Black Sea Fleet, the 1997 bilateral Treaty of Friendship, the Conference on Security and Cooperation in Europe Final Act (the 1975 Helsinki Accords), the Statute of the Council of Europe (in 1996 Russia joined), and the 1994 Budapest Memorandum. On the other hand, the Referendum of Crimea is invalid because it contradicts the Ukraine Constitution. Only an all-Ukrainian referendum can make changes of territorial status. The use of force by Russia will only strengthen the evidence of invalid annexation to Crimea. According to the conclusion above, the author suggests the United Nations to put more concern regarding the problem of territorial conflict over Crimea and find the best solution over Crimea territory. In addition, UN needs to give advice to Russia to retreat the troops from Crimea and investigate the Russian violation in using the use of force to Crimean.

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⁸⁰ *Ibid.*

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