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The Annexation of Crimea by the Russian Federation. Before, behind and beyond the Conflict

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- In February 2014, following a series of protests that ousted Ukrainian president Viktor Yanukovich and overthrew the government, a violent conflict inflamed Crimea, an autonomous republic within Ukraine.
- Through the *Declaration of Independence of the Autonomous Republic of Crimea and Sevastopol*, a joint resolution adopted on March 11 by the Supreme Council of Crimea and the Sevastopol City Council, these self-government bodies expressed their intention to join Russia, in the event of a *Yes* vote in a snap referendum that was to be held on March 16.
- On March 15, the Russian Federation and China vetoed a US-drafted Security Council resolution declaring Crimea's upcoming secession referendum invalid.
- On March 21 the State Duma, the lower house of the Federal Assembly of Russia (Parliament), passed a Federal Law Admitting to the Russian Federation the Republic of Crimea and the federal city of Sevastopol.
- The incorporation of Crimea to the Russian Federation is not recognized by the NATO (2018, 2019), the European Union and the US, *inter alia* (Pompeo, 2018).



Lawfulness of the declaration of independence

Primary Source History

Declaration of Independence

Author: Thomas Jefferson | Year Published: 1776 | Original Language: English

MAIN IDEAS

The Rise of a New Nation

Meant to defend the legality of independence against accusations of treason, the Declaration of Independence justifies the Continental Congress's decision to separate from the British Empire in July 1776. The declaration is primarily remembered today for its preamble that proclaims "all men are created equal."

- The preamble of the *Declaration of Independence of the Autonomous Republic of Crimea and Sevastopol* recalls the advisory opinion by the International Court of Justice (ICJ) of July 22, 2010 on the status of Kosovo. The ICJ advisory opinion affirms that **Kosovo's unilateral declaration of independence did not violate general principles of international law.**
- Nevertheless, the independence of Kosovo is recognized only by 96 out of 193 (49.7%) UN member states, 22 out of 27 (81%) EU member states and 26 out of 30 (87%) NATO member states.
- It is noteworthy that the most known American Declaration of Independence of July 4, 1776 was not officially recognized by the United Kingdom until the signing the Treaty of Paris on September 3, 1783.

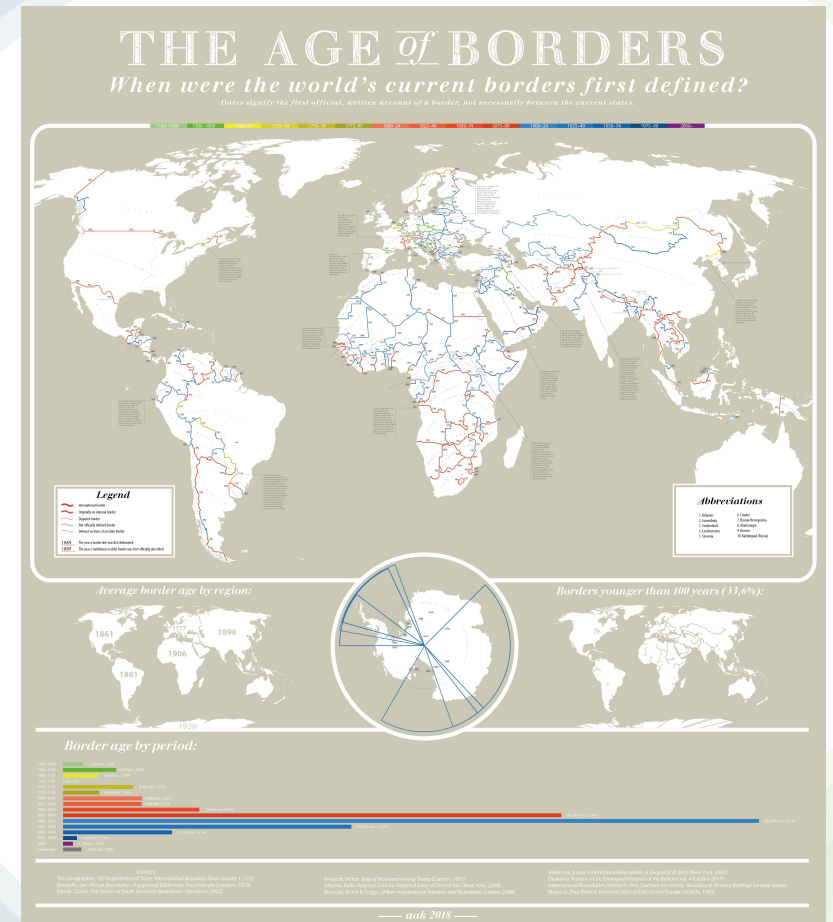
Referendum. A tool for annexation

- Referendum is a tool historically accepted in international practise to ascertain the will of a population to get independence or to go under the control of another state, even during or following a military occupation.
- After the military conquer of the Italian Peninsula by the Kingdom of Piedmont-Sardinia, the new rulers held plebiscites (1848-70) among the populations, to ask whether they want to be part of the new Kingdom of Italy under the monarchs of the House of Savoy. Subsequently, the Parliament of the Kingdom passed a law that annexed those territories within the new state.
- A plebiscite was held in Austria on April 10, 1938, to decide the *Anschluss* (unification) with Nazi Germany. When, on March 18, 1938, the German government communicated to the Secretary-General of the League of Nations the text of a Law, dated March 13, providing for the inclusion of Austria, a member of the League, in Nazi Germany, nobody complained or protested.

YES
NO

The international customary law principle on respect of borders

- The fundamental principle of respect for frontiers (*uti possidetis juris*) is a principle of customary international law (IL), affirmed by the ICJ in the 1986 case *Burkina-Faso v Mali*, which provides that newly formed sovereign states should have the same borders that their preceding dependent area had before their independence.
- *Uti possidetis juris* (Latin for "as you possess under law") it is often applied to prevent disputes that could emerge with the possibility of redrawing the borders of new states after their independence and has been applied in modern history to regions such as the former USSR area.
- This principle enables a belligerent party to claim territory that it has acquired by war.





Disputed possession.

A shortcoming of international law

- The issue of "disputed possession", in its specific application to the establishment and loss of territorial sovereignty, demonstrates one of the congenital shortcomings of IL that lacks effective means (Kohen, 1997). The absence of a mandatory outcome of an arbitral or judicial process explains the duration of certain territorial disputes.
- Classic IL aims to prevent the absence of the will or real consent, although tacit, of the dispossessed, holder of valid title, by referring to his behavior, in conjunction with that of the effective possessor, to detect tacit or "constructive" consent.
- Kohen (1997) acknowledges that the right of peoples to self-determination introduces a new legality that prevails over effectiveness but remember us that annexation is unrecognized as a title and that the UN Charter imposes to the international community an obligation of non-recognition of such situations resulting from the use of force. Nevertheless, he concludes that contemporary IL lacks adequate means to effectively address and resolve territorial disputes.

Comparative case studies in international practice

- Some states simply were incorporated within other states upon their own request, and ceased to exist as independent – e.g., the Indian princely state of Skimm became part of the Indian Union in 1975.
- In 1961 India invaded and conquered the Portuguese enclaves of Goa, Daman and Diu. The incorporation became legal due to the veto to the condemnation of the action by the Soviet Union within the UNSC (draft resolution S/5033 of December 18, 1961).
- Some nations were seized and annexed by force, before regaining independence. In 1896 the French protectorate over Madagascar, established under the treaty of December 17, 1885, was converted by France into an annexation, until Madagascar regained full independence in 1960. East Timor was occupied by Indonesia from 1975 until 2002; Kuwait was invaded and annexed by Iraq in 1990.
- The loss of the UN seat does not equal the loss of sovereignty: the Republic of China (Taiwan), which lost the status of a member of the UN in 1971, is still unanimously recognized as an independent state.
- Some states existed *de facto* before their admission to the UN (e.g., the German Democratic Republic or DDR, that was largely unrecognized by the West and by most of the Third World countries until 1973).
- Some territories have been occupied but not annexed for a long time, until the occupation became a *de facto* sovereignty. An unlawfully prolonged occupation arises when an occupying state seeks to permanently transform the international status, government or demographic character of a foreign territory, including through *de jure* or *de facto* annexation (Azarova, 2017) – see the Israeli-Palestinian question.



The Israeli-Palestinian Question

- Following the 1967 Six-Day War fought against Egypt, Jordan and Syria, **Israel occupied the West Bank** from Jordan **and the Golan Heights** from Syria.
- The **occupation and following annexation by Israel of East Jerusalem, a part of the West Bank, was declared null and void by UNSC Resolutions 252, 267, 271, 298, 465, 476 and 478** – only Costa Rica recognized Israel's annexation of East Jerusalem, and those countries who maintained embassies in Israel did not move them to Jerusalem (Lustick, 1997).
- The **Golan Heights Law of 1981** extended Israeli law, jurisdiction, and administration to the area. **This declaration was declared null and void and without international legal effect by UNSC Resolution 497.**
- The ICJ (2004) concluded that events that came after the 1967 occupation of the West Bank by Israel did not change the status of the **West Bank (including East Jerusalem) as occupied territory with Israel as the occupying power.**
- The international community **considers Israeli settlements in the West Bank, including East Jerusalem, illegal under international law** (Roberts, 1990; Drew, 1997).



The Palestinian territories have been suffering the Israeli occupation since 1967, even if the right of the Palestinian people to self-determination and independence has been recalled by many UN General Assembly resolutions (see, e.g.: A/RES/49/149; A/RES/50/140; A/RES/52/114).

The U.S. double standard over annexation

- Israel and the U.S. do not recognize independence and sovereignty of the State of Palestine.
- In Dec. 2017, U.S. President Donald J. Trump officially recognized Jerusalem the capital of Israel.
- Speaking three days before the legislative election of April 2019, Israeli PM Netanyahu vowed to **"impose sovereignty" on the occupied West Bank settlements** if he was returned to office. In September, just one week before fresh snap legislative elections, Netanyahu announced his intention, after the establishment of a new government **"to apply Israeli sovereignty to the Jordan Valley and the northern Dead Sea"**, that Israel captured during the 1967 six-day war.
- In March 2019, President Trump recognized Israel's sovereignty over the Golan Heights, in violation of the UNSC resolution. U.S. Secretary of State, Mike Pompeo, claimed that President Trump simply **"recognize[d] the reality on the ground"**. This is a double-standard policy, considering the posture on Crimea, that he characterized as an "attempt to legitimize the illegitimate" by the RF (Pompeo, 2020).
- The UN warned Netanyahu that his **plan to annex the Jordan Valley in the West Bank would have no "international legal effect"**. UN spokesman Stéphane Dujarric said that **"any Israeli decision to impose its laws, jurisdictions and administration in the occupied West Bank is without any international legal effect"**.
- The UN Special Rapporteur on the situation of human rights in the Occupied Palestinian Territory, Michael Lynk, commented that **the plan "would turn the rules-based international order"**, and that "the abandonment of these legal principles" abets **"realpolitik over rights, power over justice"** (OHCHR, 2020).
- A referendum on the annexation of the Palestinian territories was not held, neither is scheduled, and that **Israel is widely deemed as (illegal) occupying power** (Azarova, 2017; Shalom, 2009; Smuh, 2013-14) – it has been characterized **"the longest-lasting military occupation in the modern world"** (OHCHR, 2017). The endorsement of Israel's acquisition of territory by force legitimizes "might over right", and leaves a Palestinian state with *de facto* no real sovereignty.



Upsizing the US. A double standard

- The US has enlarged by acquiring territories and the population within.
- The US purchased Louisiana – considered the greatest real estate deal in history – from Napoleonic France (April 30, 1803). The Louisiana Treaty doubled the size of the US by adding some 13 states.
- The US purchased Alaska from the Russian Empire (March 30, 1867). Farrar (1937) characterized this acquisition as an "annexation".
- Joint resolutions of U.S. Congress were the means by which the federal republic annexed Texas in 1845 and Hawaii in 1898.
- The US acquired Puerto Rico, Guam and the Philippine Islands from Spain after the victory in the Spanish-American War in 1898 and paid 20 USD million for infrastructure owned by Spain as a result of the Treaty of Paris of 1898 (Beede, 1994).



Conclusions

- Due to the shortcomings of IL, that lacks effective means to settle territorial disputes, it seems impossible for Ukraine to regain the territory *de facto* annexed by the Russian Federation. It seems that both the parties prefer a situation of waged war to any negotiated solution.
- The outcome of the Ukrainian application to the ICJ is uncertain and eventually ineffective due to the right of veto exercised by Russia in the UN Security Council.
- It is foreseeable that this situation will crystallize over time, thus leading to the usucapion or *de jure* sovereignty by the Russian Federation. Similar *de facto* situations in the past have ended with crystallization and being accepted as legal (e.g., the DDR, People's Republic of China and, more recently, the occupied territories of Palestine).
- A political settlement, including financial compensation for the loss of the Crimean territory, would be the best solution for both parties to close the question and start a new era of good and peaceful relations.

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References

**YOUR
QUESTION
TIME**

“That’s all Folks!”

**Thanks for your attention
Obrigado pela atenção**

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