

FALSE CONSENT AND UNLAWFUL TITLE: ANNEXATION REFERENDA AND THE CONSTRAINTS OF TERRITORIAL TRANSFORMATION

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Abstract

This article examines whether territorial change can acquire legal validity when it is produced through referenda held under the military occupation or coercive control of a foreign state. Focusing on Russia's claimed annexations of Ukrainian territory, the article tests the hypothesis that self-determination cannot generate lawful territorial title where the conditions of political choice are created by aggression, occupation, or external domination. The argument is grounded in the prohibition of the use of force, territorial integrity, the law of occupation, self-determination, and the duty of non-recognition. The article advances a doctrinal claim: annexation referenda under foreign military dominance are not merely procedurally defective; they are legally incapable of transferring title. Their invalidity arises from the structure of the situation itself, because consent cannot be produced by the power that controls the territory and benefits from the result. Domestic incorporation laws, recognition decrees, and referendum results cannot transform unlawful possession into sovereignty. The central finding is that international law prohibits both conquest by arms and conquest by legal form. In cases of coercive territorial transformation, legal title remains with the territorial state, while the occupying or annexing state acquires only unlawful control, international responsibility, and an obligation to withdraw.

Keywords: territorial integrity; annexation referenda; military occupation; self-determination; non-use of force; non-recognition; unlawful territorial acquisition; sovereignty; Ukraine; international law

1. Introduction

The basic principle underlying the modern system of international law is quite straightforward and strict: no territorial changes shall be created through the use of force. Such an approach is not restricted to only the initial invasion. Rather, it covers all the legal mechanisms following such an act as well, including the holding of referenda, recognition decisions, constitutional absorption, administration reform, and historical revision. While a country can control certain territory using its military forces, it cannot turn this control into sovereignty through a political ceremony under such conditions.

The issue is addressed here through the lawfulness of annexation referendums that take place when territory is under military occupation or domination by a foreign military power. The direct context concerns the annexations by Russia of territories belonging to Ukraine, which include the annexation of Crimea in 2014 and more recent assertions relating to annexation of

Donestk, Luhansk, Kherson, and Zaporizhzhia. However, the wider issue involves doctrine and application to other cases.

The article provides a negative response to the question. The problem is not just that there is a problem with the procedural legality, regularity, or political manipulation of these referendums. What should be emphasized from a more legal perspective is that they simply could not have been capable of achieving the stated legal effect for the annexing party. A referendum conducted within the factual jurisdiction of a foreign military entity is simply incapable of validating any initial illegality committed through the use of force, cannot transfer territorial title away from the state already present on the territory, and is not capable of giving the necessary free consent.

The article thus elaborates on the idea of “false consent.” “False consent” occurs when there is a coercive power that manipulates the situation of choice-making, dominates the territorial space, determines the range of political choices available to the people, and then interprets the outcome of the voting process as an independent authorization of the act of annexation. The problem with the process lies in the fact that it is self-referential. It involves the creation of facts using unlawful force and the use of political acts produced in this situation to prove legal title. The key point raised in the article relates to a doctrine-based test applicable to annexation referendums conducted during the period of occupation. Such a test determines if the referendum occurred following, or was conducted simultaneously with, coercion on the part of foreign powers; if the territorial state had given consent to such conduct; whether the population had the ability to conduct self-determination without any interference from the annexing power; whether the results were used by the annexing power for recognition and incorporation purposes; and whether other countries must refrain from recognizing the annexation. It explains why counting votes or appealing to democracy or past grievances fails to settle the question of legality.

2. Research Question, Hypothesis, and Method

The research question is precise: can territorial title be transformed through a referendum organized under the occupation or coercive control of a foreign state? The article's hypothesis is that such a referendum cannot create valid title because self-determination requires an environment of free political choice, while occupation and annexation pressure create a condition of legal incapacity. A population may possess the right of self-determination, but that right cannot be operationalized by the state that has militarily displaced the territorial authority and seeks to acquire the territory for itself.

This analysis relies on a doctrinal approach. The paper examines the underlying legal norms as constituting an interconnected system, not merely individual norms. The ban on the use of force serves to ensure that territory cannot be acquired through coercion. Territorial integrity ensures that the legal boundaries of a state remain protected from any foreign changes. Occupation law serves to prevent the occupier from changing its factual control into sovereignty. Self-determination serves to protect nations, although this principle cannot serve as annexation by another party.

The doctrine approach in this context is scientific in the sense that it posits a legal theory and then tests it for logical validity within the framework of international law. In the case that the law permitted the holding of a referendum under occupation as an action that creates title, then occupation can be considered as a means of establishing sovereignty through transition. But in the case that the prohibition against conquest includes both military takeover and subsequent legal process, then the referendum cannot have the claimed effect.

3. Territorial Transformation and the Anti-Conquest Rule

Not all territorial changes are prohibited by international law. States' territory can change by agreements, decolonization, union, dismemberment, boundary delimitation, or any other process, provided that these are compatible with the consent of the parties involved and do not violate international law. What the international legal order bars is any territorial change made under threat or the actual use of force. Article 2(4) of the United Nations Charter guarantees states protection against threats or uses of force aimed at altering their territory or political independence. The declaration on Friendly Relations reiterates the prohibition against the recognition of territorial acquisition through the use of force.

Firstly, there is the physical side to the non-conquest rule. It states that a state may not employ coercion, invasion, or occupation of territory. Secondly, there is the juridical side. A state may not legitimize the consequences of the employment of force by later acts. This second prong is crucial. Otherwise, if a state's illegitimate act by force could later be legitimized by a vote or a decree, non-conquest would be rendered conditional. A state could commit unlawful acts and then legitimize them by political means.

In other words, the law forbids the marriage of control and title in this case. While military occupation provides an occupier with practical power over territory, it does not confer sovereignty on him. The powers of an occupant are merely administrative and are limited in time. Moreover, they do not constitute acquiring title to territory since the title holder continues to be the territorial state regardless of factual control over the territory. Furthermore, the principle of anti-conquest also restricts the function of effectiveness. In older territorial title doctrines, effectiveness may have played an evidentiary function under certain circumstances. However, in the contemporary Charter regime, the effectiveness generated by illegitimate force does not lead to legal title. The maxim "*ex injuria jus non oritur*" applies to this situation because legal entitlements should not emerge from illegitimate activities. Territorial control established by aggression or occupation is, therefore, not a basis for title but evidence of violation.

In light of the Russian annexation of parts of Ukraine, this rule can be put to direct test. What is important is not whether Russia exercised control of the territory on certain occasions. What matters is whether control acquired or maintained by force can be converted into sovereignty by means of referenda and incorporation. The anti-conquest rule indicates that it cannot.

4. Self-Determination and the Problem of Coercive Choice

Self-determination is among the key elements of the modern international law regime, yet it is highly susceptible to manipulation. Self-determination ensures protection against domination and promotes political participation. In the absence of classical colonization, the main emphasis is laid on internal self-determination, which implies participation in political affairs in a state, cultural security, autonomy, and democracy. External self-determination and territorial secession are exceptional phenomena that cannot turn into grounds for a universal right to incorporate territory into one's jurisdiction.

Only in case of free, legal and institutional independence of the circumstances leading to a referendum can it be considered as an act of self-determination. Simply having a ballot on people's hands does not mean self-determination. Legal significance of any referendum lies in its organizers, legality, security, voting options, interests represented. Voting under the occupation of a foreign army cannot be regarded as a manifestation of the population's political will for determining territorial sovereignty.

This is not because of any coercive factor, which could affect the individual voter. It is rather the change of legal status of the whole decision-making process. The territorial state is gone; the occupying power takes care of the security; political opponents may find themselves limited;

public opinion forms under fear, dependence, and administrative pressure, and the result is already foreseen by the party interested in the annexation. In such conditions, the referendum can hardly be considered as a neutral manifestation of the general will.

Another condition that can never be separated from self-determination is territorial integrity. Even the Friendly Relations Declaration, while recognizing the right to self-determination, cautions about possible measures undertaken to undermine the territorial integrity or political unity of a state that guarantees equal rights and self-determination to all its peoples. Such an approach makes sure that the right is not used for disintegration purposes. Indeed, one cannot use the right of a people in one state when he holds this state territorially in his hands. The Kosovo advisory opinion is often improperly cited here. In the case of Kosovo, the International Court of Justice determined whether there was a breach of international law in a unilateral declaration of independence. There was no creation of a right of unilateral secession, and there was certainly nothing that would make it legal for one country to annex territory following the process. In the Ukraine case, there is a clear distinction to be made between simple declarations of political intent and actual referendums and annexations done under military control of another country.

5. Occupation Law and the Incapacity to Transfer Sovereignty

Occupation law supports the above conclusion that referendums held in conditions of military supremacy do not result in acquiring the title. According to the Hague Regulations, an occupant must restore and maintain law and order, and civil life, in conformity with the laws in force in the said territories unless such restoration and maintenance be absolutely impossible. The aforementioned requirement implies that occupation is only a temporary condition. An occupant acquires only certain administrative powers but not sovereignty over the occupied territories.

Article 47 of the Fourth Geneva Convention is especially significant as it safeguards the persons within the occupied territories from depriving them of the provisions of the Convention through any form of annexation or through modification due to the state of occupation. It is based on another general rule that annexation does not transform occupation. The state cannot evade the provisions of occupation law through annexation because no national law can affect the international status.

This is crucial in determining whether annexation plebiscites are permitted. An occupying power lacking sovereign authority to annex territory would equally lack the ability to establish procedures aimed at legitimizing the act of annexation. Although the occupying power is allowed to manage the territory on the basis of occupation laws, it is not empowered to acquire sovereignty in such territory. Consequently, the plebiscite does not only fail as a legitimate political process; it amounts to *ultra vires* of occupation laws since the occupation power does not have the competence.

Lack of competence cannot be addressed by local cooperation or involvement of the *de facto* authorities. Such authorities will still operate within the framework established by the occupying power, and thus will not contribute towards obtaining free consent by the territorial state. Furthermore, the process of decolonization does not apply since self-determination cannot be used to promote incorporation into the state conducting the occupation. Occupation law thus recognizes the validity of the occupation-referendum principle set forth in this article – that any referendum intended to change the international ownership of territory can be neither legal nor valid if held under the jurisdiction, protection, or predominant influence of the state acquiring the territory. This follows from the nature of occupation being temporary, the sovereignty of the territorial state remaining in force, and the proscription against annexation.

6. Russia's Annexation Claims in Ukraine

Russia's annexation cases within Ukraine demonstrate how the process of territorial legalization takes place in an especially pronounced way. Thus, the events in Crimea in 2014 saw the seizure of important installations and organization of the referendum amid the influence of foreign troops and weakening of Ukrainian sovereignty. Russia subsequently integrated Crimea into the country's domestic jurisdiction. As a result, the United Nations General Assembly declared the territorial integrity of Ukraine and declared that the referendum could not be a legal justification for changing the status of Crimea.

Subsequent claims regarding annexation of Donetsk, Luhansk, Kherson, and Zaporizhzhia were essentially repeats of the same practice of territorial legalization amid a situation of open warfare. In particular, the referenda took place in the territories partially or fully seized by Russian troops after an attack on Ukraine. Subsequently, Russia declared integration of the regions into its territory. The General Assembly did not recognize such actions.

The legal failure of these annexation claims can be stated in four steps. First, the territorial environment was created by force or coercive military control. Second, the territorial state, Ukraine, did not consent to the change. Third, the claimed expression of local will occurred under the decisive influence of the state seeking title. Fourth, the result was used by that state to support recognition and incorporation. These steps reveal a circular structure: unlawful control creates the conditions of the vote, the vote purports to validate the control, and domestic incorporation seeks to transform the result into sovereignty.

This kind of circular reasoning is not compatible with international law. The referendum cannot be separated from the coercive chain of events that brought it about. It does not take place within a neutral international context; rather, it is part of the process of annexation. Insofar as the process is initiated through coercion and ends in incorporation by the same state, no intermediate title can ever be created.

There is also a problem of confusion between domestic effects and international titles in the case of the purported annexations. A state might change its constitution or incorporate laws recognizing the new territory, but this does not affect the international legality of any of these actions with regard to territory which belongs to another state. Domestic law may be used as evidence of a state's claims but does not affect its international title.

7. The Doctrinal Test: False Consent and Unlawful Title

Such an analysis may also be stated as a five-pronged doctrinal test to be applied to annexation referendums held during foreign military control. The test is intended to assist in future legal analyses of cases in addition to application to the Ukraine case. It does not depend on demonstrating the subjective intent of each individual voter. Instead, it considers whether the legal context is one that could generate a legally valid territory consent.

The first prong of this inquiry involves considering whether the referendum is held in an environment of coercive foreign military control. This is considered to be military occupation, military invasion, proxy domination, or coercive external military control in some other form. Where there is coercive control over the territorial environment, then the referendum starts out with a presumption of legal incapacity.

Secondly, the territorial consent aspect looks into whether the state exercising jurisdiction on the territory in question agreed to the holding of the referendums and the possibility of the territory changing hands. Under international law, it is unacceptable for voting in one's territory be done by foreigners in the place without the prior consent of the territorial government. When this is not the case, a vote intended to effect secession and annexation will only be violating territorial integrity.

Lastly, the self-determination aspect looks into whether the people were able to exercise their democratic choices free from the powers that are seeking to annex them. This is beyond just voting since the people have to enjoy some rights for a proper voting process to take place. This includes the right to a legitimate body, security, freedom to express themselves, free observation, and the availability of real options.

The fourth inquiry involves the use of the results of the referenda to determine if recognition, incorporation, or annexation by the controlling state takes place. The most serious aspect of this inquiry involves the move from control to claim of legal ownership, and where the outcome of the referenda leads to this, it represents an attempt at illegitimate conversion of title.

The fifth inquiry focuses on whether other states have a legal duty to withhold recognition from the situation. Where territory is acquired through coercion, withholding recognition of this situation cannot be regarded as purely political action. Rather, this amounts to a legal obligation to avoid the legitimization of an illegitimate situation.

The test leads to a clear conclusion. If all or most of these elements are present, the referendum cannot create lawful title. The result may be politically asserted by the annexing state, but it remains legally void at the international level. The territorial state retains sovereignty; the annexing state bears responsibility; and third states must not assist in consolidating the unlawful territorial situation.

8. Non-Recognition and the Legal Consequences of Invalid Annexation

Non-recognition is commonly mistaken for a purely diplomatic act. With regard to an illegal acquisition of territory, the role of this principle becomes stricter and more rigorous. Non-recognition serves to prevent illegal facts from evolving into legal situations. By treating the annexation as lawful, the rule against conquest loses its validity in terms of both the initial perpetrator as well as international community's actions. As a result, non-recognition becomes a legal safeguard of international law system.

The ICJ's Namibia advisory opinion provides a good example of such a situation in the field of international law. A similar line can be traced in the law of state responsibility. According to Articles 40 and 41 of the ILC Articles on State Responsibility, serious breach of obligation arising from peremptory norms gives rise to the duty of cooperation, non-recognition, and non-assistance. Illegal territorial acquisition constitutes just one such example.

In terms of Ukraine, the implication is that such acts do not constitute an alternative claim, but rather an unlawful situation where Ukraine maintains its sovereignty. For Russia, which carries out the annexation in violation of law and by the use of coercion in referendums, such acts do not enable it to acquire any sovereignty. Other states are required not to recognize the unlawful act as a legal one, help maintain the unlawful situation, and work towards restoring legality.

Invalidity, as opposed to responsibility, is also another crucial point. In the first place, invalidity implies that the legal act has not led to the claimed change in title. On the other hand, responsibility entails the imposition of duties of cessation, non-repetition, and reparation. The two implications are cumulative. Void annexation does not become innocent just because it is invalid. Non-recognition also serves a function with respect to evidence. It demonstrates the fact that the international community does not recognize the version of law put forward by the annexing state. Resolutions passed by the United Nations General Assembly are not rulings handed down by courts, but nonetheless have legal significance as collective expressions on matters of principle.

9. Objections and Counterarguments

The initial criticism is that this is a democratic decision, and if the citizens of Ukraine decide to join Russia through a referendum, then why is international law opposed to this decision? The answer is that democracy can never be separated from legality and liberty. A decision taken under the influence of a foreign power through military force is neither neutral nor fair since such powers shape the environment within which the vote has been taken and gain from it. International law supports self-determination, but it opposes coercive plebiscites.

Secondly, there is an objection to historical right. Historically, Russia has made several claims regarding Ukraine based on civilization, culture, language, and history. This could perhaps help explain their political narrative, but it does not provide them with any legal title. Under modern international law, boundaries once recognized and set are not allowed to change simply by virtue of historical claims and through military intervention by one state.

The third objection rests on the case of Kosovo. This comparison is flawed for various reasons. Kosovo lacked the character of annexation by the state intervening. The ICJ did not acknowledge the existence of a general right of unilateral secession. Moreover, it was a question of assessing whether the declaration was lawful rather than the legality of the territory acquired through military action. In Ukraine's case, however, we see a chain of actions: occupation, referendum, recognition, and subsequent annexation. The comparison here confuses the matter. The fourth objection relates to the doctrine of effectiveness and states that since the annexing state controls the territory, the law must eventually reflect reality. This cannot be reconciled with the Charter order since recognition of effectiveness created as a result of aggression would mean recognizing the very actions the law prohibits. Modern international law repudiated the doctrine of effectiveness through success. The doctrine of effective control could impose some obligations, but it will not create title.

The fifth argument is humanitarian, in the sense that annexation can be justified on the grounds of protecting a local population. The mere existence of such protection issues does not justify the practice of annexation. International law provides procedures and processes for human rights protection, protection of minorities, humanitarian intervention, peacekeeping, adjudication, and Security Council actions. Annexation cannot be used by one country to solve these humanitarian problems.

10. Findings and Contribution

Four major conclusions emerge from this paper. Firstly, annexation referenda held under a regime of foreign military occupation are legally impossible acts. Such impossibility is neither purely procedural nor substantive in nature. It is not merely that the vote itself is improper, but that the legal context is entirely unsuitable for legitimate territorial consent.

Secondly, the principle of self-determination must never be invoked to undermine its very object. Self-determination protects peoples from domination. It certainly does not empower an occupying force to manufacture an atmosphere of coercion, conduct a vote, and then annex the territory. This represents the anti-inversion role of self-determination, where a protective principle cannot be perverted into an instrument of domination.

Thirdly, occupation law retains the separation between control and ownership. Occupation gives the occupying force temporary and provisional control, but not ownership of the territory. Annexation legislation, recognition decisions, and voting outcomes cannot strip away the legal title vested in the territory. This would involve a legal title generated through force and coercive control.

Fourth, non-recognition is crucial for the legal effects of invalid annexation. It guarantees that illegal territorial conditions are not legitimized by virtue of diplomatic practice. In this respect,

non-recognition is not merely a passive position of neutrality. Instead, non-recognition is a legal obligation to maintain the anti-conquest principle.

The main novelty of this article is the framing of the problem in terms of legal form conquest. A complete ban on the conquest would be meaningless if it considered only the tanks, troops, and frontiers, but disregarded the legal means of establishing such conquest after it had been made.

11. Conclusion

Territorial integrity is not safeguarded just at the point of invasion, but against the legal methods which seek to secure the legal consequences of the act of invasion. Referenda under foreign military occupation to annex the territory are among the most damaging techniques because, while they ape democratic procedures, they do so within the context of an imposed system by the invading state.

The major finding in this paper is that these referenda cannot establish legitimate title to the territory involved. Self-determination requires freedom from domination, and the effect of occupation is domination. Recognition is simply recognition of legal fact, and it cannot confer title when the situation is illegitimate. Incorporation is a way of declaring title; it cannot make the international legal system accept the results of aggression.

As regards the annexation claims made by Russia with respect to Ukraine, the principles are quite straightforward. The referendums and incorporation were illegal acts that further violated the territorial integrity of Ukraine and had legal implications for Russia as well as for other countries. The internationally recognized territory of Ukraine enjoys the legal sovereignty of Ukraine. Russia, wherever it has sovereignty, has an unlawful sovereignty.

The last principle, in summary, thus is very straightforward: it is not permissible under international law either to conquer territories by military force or by legal means. It is illegal for a country to create consent under occupation and subsequently consider itself as having sovereignty through this illegitimate means.

References

- [1] Cassese, A. (1995). *Self-determination of peoples: A legal reappraisal*. Cambridge University Press.
- [2] Corten, O. (2021). *The law against war: The prohibition on the use of force in contemporary international law* (2nd ed.). Hart Publishing.
- [3] Crawford, J. (2006). *The creation of states in international law* (2nd ed.). Oxford University Press.
- [4] Gray, C. (2018). *International law and the use of force* (4th ed.). Oxford University Press.
- [5] Hague Convention IV. (1907). *Regulations concerning the Laws and Customs of War on Land*.
- [6] International Committee of the Red Cross. (1949). *Geneva Convention IV relative to the Protection of Civilian Persons in Time of War*.
- [7] International Court of Justice. (1971). *Legal consequences for States of the continued presence of South Africa in Namibia, Advisory Opinion*.
- [8] International Court of Justice. (2004). *Legal consequences of the construction of a wall in the occupied Palestinian territory, Advisory Opinion*.
- [9] International Court of Justice. (2010). *Accordance with international law of the unilateral declaration of independence in respect of Kosovo, Advisory Opinion*.
- [10] International Law Commission. (2001). *Articles on Responsibility of States for Internationally Wrongful Acts*.
- [11] Orakhelashvili, A. (2008). *Peremptory norms in international law*. Oxford University Press.
- [12] Shaw, M. N. (2021). *International law* (9th ed.). Cambridge University Press.
- [13] Talmon, S. (2005). *The duty not to recognize as lawful a situation created by the illegal use of force or other serious breaches of a jus cogens obligation*. In C. Tomuschat & J.-M. Thouvenin (Eds.), *The fundamental rules of the international legal order*. Martinus Nijhoff.
- [14] United Nations. (1945). *Charter of the United Nations*.

- [15] United Nations General Assembly. (1970). Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, Resolution 2625 (XXV).
- [16] United Nations General Assembly. (2014). Territorial integrity of Ukraine, Resolution 68/262.
- [17] United Nations General Assembly. (2022). Territorial integrity of Ukraine: Defending the principles of the Charter of the United Nations, Resolution ES-11/4.
- [18] Vidmar, J. (2013). Democratic statehood in international law: The emergence of new states in post-Cold War practice. Hart Publishing.