

## The Legitimacy of Russia's Actions in Ukraine

*In this post for LSE International History, Björn Alexander Düben analyses the recent outbreak of conflict in Ukraine. In the article, Dr Düben examines Russia's military campaign in Ukraine and its annexation of Ukrainian territory. Dr Düben argues that Russia's claims to parts of Ukraine and its annexation of territory in the country has little basis in history and the parameters of international law.*

### Legality

When Russia's President Vladimir Putin signed the treaty on the 'Restitution of Crimea and Sevastopol inside the Russian Federation' on 18 March 2014, Russia became the first state in continental Europe to have annexed part of another state's territory since the 1940s. The outbreak, shortly thereafter, of separatist violence in eastern Ukraine made it evident that Moscow's territorial pretensions did not exhaust themselves in the annexation of Crimea. The Russian government has consistently defended its startling moves in Ukraine, denying all accusations that its encroachments on the country's sovereignty have been illegitimate. Does it have any valid grounds for doing so?

**From a legal perspective**, the answer is clear: Having forcibly occupied parts of a sovereign country's territory, having formally annexed the occupied territory, and having flooded another part of the country with heavy weaponry and irregular combatants ('volunteers' who were permitted to cross the border in large numbers, as well as **regular soldiers**), Moscow has acted in violation of some of the most basic principles of international law. The clarity of this legal breach was underscored in dozens of UN Security Council sessions devoted to the Ukraine crisis, where Russia's ambassador, Vitaly Churkin, found himself completely isolated in his legal interpretation of the unfolding events. Russia's moves in Ukraine were not formally approved by more than a handful of states, and even some of Russia's closest allies have refused to recognise Crimea's *de facto* shift in jurisdiction. Russia's actions also violate its pledge in **the 1994 Budapest Memorandum** to respect Ukrainian sovereignty within its existing borders.

Moscow repeatedly **invoked the 'responsibility to protect'**, an increasingly popular concept in the West, as a justification for its intervention in Crimea. However, two factors set Russia's Ukrainian intervention apart from previous interventions carried out by the West: For one, the *formal annexation* of territory, which is entirely unjustifiable in terms of the 'responsibility to protect'. And secondly, the fact that there was objectively no humanitarian crisis that would have warranted invoking this responsibility. Notwithstanding the alarmist news broadcast on Russia's state-controlled media networks, at the time when Crimea was seized by Russian forces the peninsula was at peace and there was no discernible threat to the lives and well-being of its inhabitants (a fact that was later **confirmed by independent United Nations investigations**).

More recently, arguments focused on Russia's 'responsibility to protect' have featured particularly prominently in Moscow's demands with regard to eastern Ukraine and the ongoing conflict there. Unlike in Crimea, the humanitarian crisis in eastern Ukraine has been very real indeed. But Russian irregular combatants **were apparently involved** in spurring the conflict in eastern Ukraine from the very beginning, when heavily armed gunmen first began to seize administrative buildings across eastern Ukraine in April 2014, and there can be little doubt that Moscow **has been stoking it** ever since. Moscow has thus done its part to initiate and aggravate the very humanitarian crisis that it has since used as a justification for threatening further intervention.

Spurious though Moscow's claims for a 'responsibility to protect' may be, its intervention in Ukraine has ultimately been based in equal measure on *Russia's purported historical, ethnic, and cultural claims* to Crimea and (less explicitly) to large stretches of south-eastern Ukraine frequently

referred to as 'Novorossiya'. Few recent conflicts have been as centrally focused on historical claims and (mis)representations as the Ukraine crisis. Among the Russian public it is commonly regarded as self-evident that Crimea has historically been Russian territory, but also that all of Ukraine is in essence a historical part of Russia – a brother state that owes its existence to a mere accident of history. Leaving all legal concerns aside for a moment, could the case be made that Russia has a legitimate historical and cultural claim to Crimea, or any other part of Ukraine? What does the Russian case for its interventions in Ukraine look like when taking into account historical and cultural factors alone?

### Crimea: A “primordially Russian land”

The Crimean peninsula has traditionally had a special status within modern Ukraine. Unlike any other part of the country, it was organised as an 'Autonomous Republic', enjoying a certain degree of political autonomy. Prior to its formal transfer to the Ukrainian Soviet Socialist Republic in February 1954, Crimea had been a part of the Russian Soviet Federative Socialist Republic (RSFSR) within the Soviet Union. Among Russians, it is a commonly-held assumption that Crimea has 'always' been a part of Russia. Vladimir Putin himself, during his 18 March address to parliament marking Crimea's annexation to Russia, declared that “in people's hearts and minds, Crimea has always been an integral part of Russia”. The following month, an expedition of the Russian Military Historical Society visited the peninsula, with one of their stated intentions being “to remind the global community that Crimea has always been Russian.” As recently as late October, Nikolay Ryzhkov, a prominent member of Russia's upper house of parliament, claimed that Crimea “since ancient times ... was primordially Russian land”. This view is now extremely common in Russia. It is also totally false.

In actual fact, the Crimean peninsula, for most of its history, had nothing to do with Russia. Since antiquity, Crimea's mountainous south-eastern shores have been dominated by Tauri, Greek, Roman, Byzantine, Venetian, and Genoese principalities, before they were conquered by the Ottoman Empire in 1475. The vast inland steppes of Crimea were ruled and populated by Scythians, Greeks, Goths, Huns, Bulgars, Khazars, Mongols, and Karaites, and eventually, from 1441, formed the heartland of the Crimean Tatar Khanate, a tributary of the Ottoman Empire. The Ottomans and the Tatars continued to rule over their respective parts of the peninsula until 1783.

Throughout the pre-modern era, Crimea's only substantial historical connection to either Russia or Ukraine was the fact that the inland section of the peninsula was controlled by the Kievan Rus' – the precursor state of both modern Ukraine and Russia – from the mid-10<sup>th</sup> to the early 13<sup>th</sup> century. At the onset of Kievan rule (which did not extend to the mountainous south-eastern parts of the peninsula that contained its most important settlements and ports and remained under Byzantine control), the Crimean city of Chersonesos, now a part of Sevastopol, was the site where the leader of the Rus', Vladimir I. of Kiev, converted to Christianity. This was a seminal event in the development of the Eastern Orthodox churches (both in Russia and in Ukraine), since Vladimir then oversaw the conversion of the entire Kievan Rus' to the Orthodox faith. Notwithstanding the symbolic importance of this event, which was duly invoked by Vladimir Putin in his annexation speech on 18 March, the period of rule by the Kievan Rus' did not leave a deep cultural or political imprint on Crimea. In the centuries following the demise of the Rus' in the 1200s, the peninsula was the site of sporadic Cossack raids, but it remained firmly in Tatar and Ottoman hands. Throughout its history, Crimea has thus been a crucible of cultures. It was not until 1783 that it became Russian territory, following Catherine the Great's victory over the Ottomans and her conquest of the Tatar Khanate, and it remained Russian for the next 170 years.

In 1954, the Soviet leadership transferred Crimea from the RSFSR to the Ukrainian Soviet Socialist Republic (UkrSSR). In spite of frequent claims that the Soviet leader Nikita Khrushchev, bypassing all legal norms, single-handedly assigned the peninsula to Ukraine, the transfer was in fact carried out legally and in accordance with the 1936 Soviet Constitution (which, admittedly, was in essence a legal fiction). The measure was approved by the Presidium of the Soviet Communist Party, paving the way for an authorising resolution of the Presidium of the Supreme Soviet, which formally sealed the transfer; by all appearances, both the RSFSR and the UkrSSR gave their

consent via their republic parliaments. Vladimir Putin's claim, during his 18 March address to parliament, that the decision to transfer Crimea "was made in clear violation of the constitutional norms that were in place even then" is patently false. The 1954 transfer of Crimea was most likely motivated both by tactical considerations on the part of Khrushchev (who was then involved in an internal power struggle for the leadership of the Communist Party) and by economic and infrastructural considerations; the Meeting of the Presidium of the Supreme Soviet of the USSR on 19 February 1954 where the transfer was finalised made reference, among other things, to "the commonality of the economy, the territorial proximity, and the close economic and cultural ties between the Crimean Oblast' and the Ukrainian SSR".

For the next six decades, Crimea was formally a part of Ukraine. Its ties to Kiev always remained somewhat loose, but much the same can be said about its ties to Russia throughout the preceding seventeen decades when it had been a part of the Russian Empire and the RSFSR. Throughout most of these 170 years, while it was politically controlled by Russia, Crimea had remained culturally distinct, and its cultural connection with Russia was relatively tenuous. In spite of substantial Russian colonisation efforts throughout the 19<sup>th</sup> century, around 1900 the Tatars still formed the largest ethnic group on the peninsula. The demographic pre-eminence of ethnic Russians in Crimea was only firmly solidified following the mass deportation of the entire Crimean Tatar population, as well as the smaller populations of ethnic Armenians, Bulgars, and Greeks, at Joseph Stalin's behest in 1944. This *de facto* ethnic cleansing of the peninsula's native inhabitants led to the death of between 20 and 50 percent of the Crimean Tatar community; the remainder were only able to return to Crimea in the 1990s.

Crimea has long occupied a special place in the Russian national consciousness, but this should not obscure the fact that, while its historical and cultural connection to Ukraine has been weak, its historical and cultural connection to Russia has scarcely been any stronger. Even a cursory glance at its history reveals that the recurrent proclamations of various Russian officials regarding Crimea's "primordial" historical and cultural importance for Russia range from vast exaggeration to downright fantasy. Given that the Kremlin has invoked such claims in the attempt to justify a grave violation of international law and intrusion upon another sovereign state, it is important to spotlight how little they correspond to historical reality.

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March 4th, 2015 | [Uncategorized](#) | [1 Comment](#)

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