

RUSSIA'S ANNEXATION OF CRIMEA II

GUEST EDITED BY

GERGANA DIMOVA AND ANDREAS UMLAND

Introduction

Russia's 2014 Annexation of Crimea in Historical Context: Discourses and Controversies

Gergana Dimova and Andreas Umland

This is the second installment of a series of JSPPS special sections dedicated to various historical, legal, and political aspects of Russia's annexation of Crimea in February–March 2014.¹ The first section, published in 2019, focused on judicial issues including the sanctions regime imposed on the annexed peninsula.² The introduction to that section includes references to most of the academic studies on the topic published to date.³ The articles in this second installment are built on and list some further relevant secondary sources.⁴

¹ See also earlier, in this journal: Andrew Wilson, "The Crimean Tatar Question: A Prism for Changing and Rival Versions of Eurasianism," *Journal of Soviet and Post-Soviet Politics and Society* 3, no. 2 (2017): 1–46.

² Agata Kleczkowska, "The Obligation of Non-Recognition: The Case of the Annexation of Crimea;" Dasha Dubinsky and Peter Rutland, "Russia's Legal Position on the Annexation of Crimea;" and Maria Shagina, "Business as Usual: Sanctions Circumvention by Western Firms in Crimea," *Journal of Soviet and Post-Soviet Politics and Society* 5, no. 1 (2019): 7–120.

³ Gergana Dimova, "Legal Loopholes and Judicial Debates: Essays on Russia's 2014 Annexation of Crimea and Its Consequences for International Law," *Journal of Soviet and Post-Soviet Politics and Society* 5, no. 1 (2019): 1–6. See also: Andreas Umland, "Whom Does Crimea Belong to? Russia's Annexation of the Ukrainian Peninsula and the Question of Historical Justice," *VoxUkraine*, 29 August 2018, voxukraine.org/en/were-there-any-real-historical-grounds-for-the-annexation-of-crimea-by-russia-no/.

⁴ Larger collections of relevant essays include, in chronological order of their publication: Władysław Czapliński, Sławomir Dębski, Rafał Tarnogórski and Karolina Wierczyńska (eds.), *The Case of Crimea's Annexation under International Law* (Warsaw: Wydawnictwo Naukowe Scholar, 2017); Pål Kolstø and Helge Blakkisrud (eds.), *Russia Before and After Crimea: Nationalism and*

This second special section is less focused on legal dimensions related to Moscow's 2014 land grab *per se*. Instead it discusses how to *interpret* and *contextualize* some salient judicial, historical, and political issues concerning the annexation.⁵ The articles also document how these issues have been interpreted and contextualized by various relevant public actors including politicians, journalists, and scholars, in Ukraine, Russia, and the West.⁶

Natalya Belitser's article "The Status of the Crimean Tatars in Ukrainian and International Law" sheds new light on the Crimean Tatars' long legal and political fight to acquire the special status of indigenous people. The crux of the issue is whether the Crimean

Identity, 2010–17 (Edinburgh: University of Edinburgh Press, 2018); Sergey Sayapin and Evhen Tsybulenko (eds.), *The Use of Force against Ukraine and International Law: Jus Ad Bellum, Jus In Bello, Jus Post Bellum* (The Hague: T.M.C. Asser Press & Springer, 2018); and Thomas D. Grant, *International Law and the Post-Soviet Space II: Essays on Ukraine, Intervention, and Non-Proliferation* (Stuttgart: *ibidem*-Verlag, 2019).

- 5 For a brief overview see: Cindy Wittke, "The Politics of International Law in the Post-Soviet Space: Do Georgia, Ukraine, and Russia 'Speak' International Law in International Politics Differently?" *Europe-Asia Studies* 72, no. 2 (2020): 180–208.
- 6 On official Russia's explanations and justifications of the annexation: Yuri Teper, "Official Russian Identity Discourse in Light of the Annexation of Crimea: National or Imperial?" *Post-Soviet Affairs* 32, no. 4 (2015): 378–96; Andrei Tsygankov, "Vladimir Putin's Last Stand: The Sources of Russia's Ukraine Policy," *Post-Soviet Affairs* 31, no. 4 (2015): 279–303; John Biersack and Shannon O'Lear, "The Geopolitics of Russia's Annexation of Crimea: Narratives, Identity, Silences, and Energy," *Eurasian Geography and Economics* 55, no. 3 (2014): 247–69; Flemming Splidsboel Hansen, "Framing Yourself into a Corner: Russia, Crimea, and the Minimal Action Space," *European Security* 24, no. 1 (2015): 141–58; Marlene Laruelle, "Russia as a 'Divided Nation', from Compatriots to Crimea: A Contribution to the Discussion on Nationalism and Foreign Policy," *Problems of Post-Communism* 62, no. 2 (2015): 88–97; Mariya Omelicheva, "Critical Geopolitics on Russian Foreign Policy: Uncovering the Imagery of Moscow's International Relations," *International Politics* 53, no. 6 (2016): 708–26; Ruth Deyermond, "The Uses of Sovereignty in Twenty-first Century Russian Foreign Policy," *Europe-Asia Studies* 68, no. 6 (2016): 957–84; Mikhail Suslov, "'Russian World' Concept: Post-Soviet Geopolitical Ideology and the Logic of 'Spheres of Influence'," *Geopolitics* 20, no. 2 (2018): 330–53; and Tuomas Forsberg and Sirke Mäkinen, "Russian Discourse on Borders and Territorial Questions – Crimea as a Watershed?" *Russian Politics* 4 (2019): 211–41.

Tatars, who were brutally deported by Stalin in 1944, and spontaneously started to return to Crimea in the late 1980s, are just one of several ethnic minorities or an indigenous people whose homeland has historically been Crimea and who, as a result, are entitled to self-determination. The notion of self-determination is consequential because it entails mechanisms to protect their collective rights via representative bodies and ethnic self-government.

Belitser's richly documented essay shows how this relatively little-known and small ethnic group in Crimea played an important role in the recent political fate of post-Soviet Ukraine and in popular resistance to the annexation of the Ukrainian peninsula. The article illustrates how influential players, including Ukraine's government, the Kremlin, political forces active in Crimea, and international actors, took an interest in the legal status of the Crimean Tatars—an interest that varied depending on its interconnection with their own topical agendas. Belitser's article demonstrates that it is impossible to disassociate the larger question of the Crimean annexation from what might otherwise appear to be the minor issue of the legal status of certain domestic groups on the peninsula, above all of the Crimean Tatars.

It was not until Crimea was annexed by Russia that the Ukrainian authorities adopted a decree that recognized the Crimean Tatars as an indigenous people of Ukraine and the Mejlis and Qurultay as their main organs of self-government on 20 March 2014.⁷ By the end of 2017, following an order issued by President Petro Poroshenko and parliamentary discussions, changes to Articles 134–139 (Part X of the Constitution) were made, which bolstered the national-territorial autonomy of the indigenous Crimean Tatar people. These legislative activities did not happen in a vacuum, but were accompanied by a media campaign which included the voices of experts and prominent public figures and

⁷ Postanova № 4475 “Pro Zaiavu Verkhovnoi Rady Ukrainy schodo garantii prav kryms’kotatars’kogo narodu u skladi Ukraini’koi Derzhavy,” *Verkhovnaia Rada Ukrainy* official website, 20 March 2014, <http://iportal.rada.gov.ua/print/89891.html>.

sought to enlighten the public about the history and plight of the Crimean Tatar people.

The new attitude of Kyiv towards the Crimean Tatars in the post-annexation period was obviously—though not exclusively—a strategic move. In any event, this was a very welcome development for the Crimean Tatars who had demonstrated their allegiance to the newly emerging Ukrainian state even before it came into being. Belitser reminds us that the Crimean Tatars had already been favorably predisposed to Ukraine on various historical occasions before the break-up of the USSR. They boycotted the Crimean referendum of 20 January 1991 which supported the (abortive) creation of a Crimean Autonomous Soviet Socialist Republic “as a subject of the USSR and as a party to the new USSR treaty,” and the Soviet referendum of 17 March 1991. Crimean Tatar deputies in the Verkhovna Rada supported the declaration of Ukraine’s independence on 24 August 1991. Perhaps most importantly, the affirmative voting of most of the Crimean Tatars was decisive in securing a small, but absolute majority on Crimea in favor of Ukraine’s independence from the USSR, in the historic referendum of 1 December 1991 that led to the formal break-up of the Union-state one week later.

While Kyiv has, over the last six years, fully embraced the status of the Crimean Tatars as the major indigenous people of Crimea, the Kremlin vehemently opposes such a special designation for this significant ethnic minority that is now under its illegal political control. To be sure, Moscow has—apart from harshly repressing pro-Ukrainian Crimean Tatars and their organizations—also publicly courted politically neutral Crimean Tatars since the annexation, and preserved the status of the Crimean Tatar language on the peninsula. Yet Putin, the rest of the Russian leadership, and the regime’s propagandists fear that official recognition of the Crimean Tatars as the main indigenous people of Crimea would undermine the Kremlin’s narrative of the annexation as a “re-unification” justified by, among other reasons, the peninsula’s allegedly deep-rooted (ethnic) Russianness. Russia’s stance concerning the status of the Crimean Tatars shows again that the

fate of this much mistreated nationality is inextricably linked to broader geopolitical issues in post-Soviet Eastern Europe.

Caught between the opposing Ukrainian and Russian views on the Crimean Tatars, the international community, with the commendable exception of the European Union, has mostly remained indifferent. As Belitser notes, there was no special mention of Crimea's indigenous people in the UN General Assembly Resolution 68/262, adopted on 27 March 2015, which condemned the invasion of Crimea by Moscow, and declaration of the Autonomous Republic of Crimea (ARC) as a subject of the Russian Federation. This tendency to ignore or circumvent the thorny issue of Crimea's indigenous people continued in subsequent reactions expressed by a number of international organizations, such as the Council of Europe and the OSCE.

The language of these documents is important in both formal and informal ways. For instance, the Office of the UN High Commissioner on Human Rights (OHCHR) focuses on violations of individual rights, but does not refer to the collective rights of the Crimean Tatar people. This emphasis on singular human rights rather than on collective human rights is important as it keeps the issue of the indigenous status of the Crimean Tatars out of reach of international law. Pundits and journalists have similarly opted for the ambiguous phrase "Tatars of Crimea" which implies that the Crimean Tatars are a branch of a Tatar nation distinguished mainly by the fact that they happen to inhabit a specific geographical locale. The article refutes this view by referencing analyses showing that the Crimean Tatars are genealogically and historically distinct from Volga Tatars or the Tatars from Siberia. Therefore, insinuation of a common lineage and resulting political legal implications are misplaced.

Whereas Belitser examines the annexation of Crimea through the lens of the Crimean Tatars' rights and history, Alina Cherviatsova's article "The 1954 Transfer of Crimea: Debunking the Myth of a 'Royal Gift' to Ukraine" focuses on Soviet legal and historical issues related to Moscow's various apologetic discourses

since 2014.⁸ Cherviatsova dissects the Kremlin's efforts to justify the annexation by way of presenting Crimea's post-war inclusion into the Ukrainian Soviet Socialist Republic (UkrSSR) as the result of an illegal Soviet operation carried out on a whim of then First Secretary of the CPSU's Central Committee, Nikita Khrushchev.⁹ By invoking the myth of an arbitrary and random Soviet gift to Ukraine, the Kremlin implies that its 2014 annexation of Crimea was merely correcting a historical mistake, an idea advanced at the highest level by, among others, Russian President Vladimir Putin in his March 2014 annexation speech.¹⁰

The emergence and popularization of a "royal gift" narrative happened not immediately after the transfer, but gradually accelerated only after the dissolution of the USSR. Prior to the breakup of the Soviet Union, the 1954 transfer of Crimea from the RSFSR to the UkrSSR was instead presented, by the Kremlin and Soviet media, as an expression of the two Eastern Slavic nations' "fraternal friendship." Since Soviet Ukraine was, within a totalitarian

⁸ An example of a semi-academic apologetic outline is: John Burke and Svetlana Panina-Burke, "The Reunification of Crimea and the City of Sevastopol with the Russian Federation," *Russian Law Journal* 5, no. 3 (2017): 29–68.

⁹ See also: Oleksandr Merezhko, "Crimea's Annexation in the Light of International Law: A Critique of Russia's Legal Argumentation," *Kyiv-Mohyla Law and Politics Journal* 2 (2016): 37–89; Ted Hopf, "Crimea is Ours': A Discursive History," *International Relations* 30, no. 2 (2016): 227–55; Roy Allison, "Russia and the Post-2014 International Legal Order: Revisionism and Realpolitik," *International Affairs* 93, no. 3 (2017): 519–43; Dubinsky and Rutland, "Russia's Legal Position on the Annexation of Crimea;" Tero Lundstedt, "The Changing Nature of the Contemporary Russian Interpretation of the Right to Self-Determination under International Law," in *Russian Discourses on International Law: Sociological and Philosophical Phenomenon*, ed. P. Sean Morris (Abingdon, UK: Routledge, 2019), 197–219; and Christer Pursiainen and Tuomas Forsberg, "The Principle of Territorial Integrity in Russian International Law Doctrine: The Case of Crimea," in *Russian Discourses on International Law*, 220–41.

¹⁰ Address to the parliament, heads of Russian regions and civil society representatives in the Kremlin: President of Russian Federation, 18 March 2014, <http://en.kremlin.ru/events/president/news/20603>. See also: Edwin Bacon, "Putin's Crimea Speech, 18 March 2014: Russia's Changing Public Political Narrative," *Journal of Soviet and Post-Soviet Politics and Society* 1, no. 1 (2015): 13–36.

one-party state, subordinated to Moscow, it made little difference at the time to which republic within the USSR Crimea belonged.

This political calculus changed drastically in December 1991 when Ukraine gained independence. Already in May 1992, the Supreme Soviet (i.e. the then working parliament) of the Russian Federation declared the 1954 transfer of Crimea unconstitutional and annulled the Decree “On the transfer of the Crimean Region from the jurisdiction of the Russian Soviet Federative Socialist Republic to the jurisdiction of the Ukrainian Soviet Socialist Republic.” Russia and Ukraine clashed diplomatically and politically, with particularly high vengeance, over the republican city of Sevastopol that has been a separate municipal unit within the RSFSR, UkrSSR, and eventually independent Ukraine. It was during the mid-1990s that the myth of a quasi-“royal gift” from Moscow to Kyiv gathered force.

Cherviatsova’s article uses a multitude of legal documents and historical arguments to undermine the Russian myth of a “royal gift.” She shows that the manner in which the Crimean Oblast was, in 1954, transferred from the Russian SFSR to the Ukrainian SSR entirely conformed to regular procedures and norms of Soviet law and practice concerning intra-Union territorial transfers, and that the transfer was politically and economically also beneficial to the Russian Soviet Republic and USSR as a whole, at the time. In the aftermath of World War II and the related violent deportation of the Crimean Tatars and other Crimean minorities, the peninsula was ravaged economically and had not recovered much during the first post-war years, within the RSFSR. Because of Ukraine’s mainland and the Crimean peninsula’s geographic proximity and geological connection (through the Isthmus of Perekop), their economies were becoming more and more intertwined even before their 1954 merger. The eventual transfer of Crimea into the UkrSSR was merely a mechanism to overcome administrative hurdles and formalize an already informally emerging economic reality.

Cherviatsova also notes that a “royal gift” of this kind was not within any individual’s powers at the time. In early 1954, when the plan to transfer the peninsula was brought up, discussed, and prepared, Nikita Khrushchev was not yet influential enough (if he

ever was) to make such a consequential territorial decision single-handedly. He was only one of nine members of the Presidium of the Central Committee of the CPSU, and far from as powerful as Stalin, his predecessor as first among equals, had been.

Cherviatsova's article details the contents and relevance of eight legislative and constitutional documents authorizing or confirming the transfer of Crimea. Her analysis makes abundantly clear that there is little to official Russia's recent claim that the 1954 transfer of Crimea allegedly violated the then valid norms of the 1936 USSR Constitution, the 1937 RSFSR Constitution, and/or the 1937 UkrSSR Constitution. Her analysis also shows up definitively the ludicrous nature of the Kremlin's assertion that the transfer of Crimea was an anomaly.

In fact, territorial transfers within the Union were in general quite common and, after World War II, part of a wider administrative reform policy implemented from the 1940s through the 1970s all over the USSR. The only "oddity" of Crimea's merger into the UkrSSR lay in the fact all other territorial transfers were made from various Soviet republics to the benefit of the Russian SFSR. In that sense, Crimea's case of 1954 was indeed unusual practice. Last but not least, Cherviatsova's chapter examines some of these issues in the context of the yet more special case of Sevastopol which from 1948 had the special status of a "city of republican subordination."¹¹

Our special section's concluding article by Maryna Rabinovych "How the Federal Republic Reacted to Russia's Annexation of Crimea: Berlin's Diplomatic Response and German Media Representations in 2014–2020" portrays today's Germany as caught in the middle of two of its fundamental competing foreign affairs principles, in the aftermath of Russia's annexation of Crimea and intervention in the Donetsk Basin (Donbas). On the one hand, Germany strongly and vehemently condemned the annexation and

¹¹ Ukaz Prezidiuma Verkhovnogo Soveta RSFSR "O vydelenii goroda Sevastopolia v samostoiatel'nyi administrativno-khoziaistvennyi tsentr," 29 October 1948. The document reads: "To allocate the city of Sevastopol as an independent administrative and economic center with its own budget and assign it to the category of cities with republican subordination."

supported a policy of multilateralism which envisaged, among other things, stationing additional troops in East-Central Europe. On the other hand, however, Germany was careful not to discontinue its older *Ostpolitik* (Eastern policy) towards Russia which has been aimed at securing especially close ties between Bonn/Berlin and Moscow since the late 1960s (if not before).¹²

The biggest discrepancy appeared in the field of Germany's foreign economic policy towards Russia, fiercely disputed already before 2014.¹³ On the one hand, Berlin advocated imposition of economic sanctions on Moscow in reaction to Russia's attack on Ukraine. Yet, on the other hand, it continued to collaborate with the Kremlin in advancing the controversial Nord Stream 2 project launched in 2016. Nord Stream 2 is the name of the second underwater gas pipeline through the Baltic Sea that is being built by Russian energy giant Gazprom with a consortium of large European energy companies that includes, among others, Germany's BASF and E.ON.

The project aims to enable transportation of Siberian gas to the EU via North-East Germany, on the bed of the Baltic Sea. The pipeline thereby circumvents, above all, Ukraine as a transit country, and parallels, in doing so, the already existing first Nord Stream pipeline which was launched in 2005 and completed in 2011-2012.¹⁴ The completion of this project would lower further Ukraine's

¹² Angela Stent, *From Embargo to Ostpolitik: The Political Economy of West German-Soviet Relations, 1955-1980* (Cambridge: Cambridge University Press, 1982).

¹³ Andreas Umland, "Berlin, Kiew, Moskau und die Röhre: Die deutsche Ostpolitik im Spannungsfeld der russisch-ukrainischen Beziehungen," *Zeitschrift für Außen- und Sicherheitspolitik* 6, no. 3 (2013): 413-28; and Tuomas Frosberg, "From Ostpolitik to 'Frostpolitik'? Merkel, Putin and German Foreign Policy towards Russia," *International Affairs* 92, no. 1 (2016): 21-42.

¹⁴ On Germany's *Ostpolitik* in view of the events of 2014: Stefan Meister, "From Ostpolitik to EU-Russia Interdependence: Germany's Perspective," in *Post-Crimea Shift in EU-Russia Relations: From Fostering Interdependence to Managing Vulnerabilities*, eds. Kristi Raik and András Rác (Tallinn: International Centre for Defence and Security, 2019), 25-44; and Andreas Umland, "Die friedenspolitische Ambivalenz deutscher Pipelinedeals mit Moskau – eine interdependenztheoretische Erklärung des russisch-

already reduced economic leverage and political bargaining power vis-à-vis Russia by weakening its position as a gas-transit country. Rabynovich unpacks how these contradictory policies and political complexities are reflected in the FRG's political discourse by analyzing the official positions of the German government and articles from three of the most reputable German daily newspapers, *Süddeutsche Zeitung*, *Frankfurter Allgemeine Zeitung*, and *Die Welt*, as well as from the website of the public broadcaster *Deutsche Welle*.

These three articles add new observations, comparisons, and interpretations to the growing body of academic literature on Russia's annexation of Crimea. They provide insights into hitherto insufficiently highlighted aspects of this consequential event in contemporary European history and current affairs. We also hope to publish a third JSPPS special section on various additional dimensions of the Russian-Ukrainian conflict since 2014.

ukrainischen Konfliktes," *SIRIUS – Zeitschrift für Strategische Analysen* 4, no. 3 (2020): 293–303.