

INTERNATIONAL JOURNAL OF LEGAL SCIENCE AND INNOVATION

[ISSN 2581-9453]

Volume 4 | Issue 1

2022

© 2022 *International Journal of Legal Science and Innovation*

Follow this and additional works at: <https://www.ijlsi.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com>)

This Article is brought to you for free and open access by the International Journal of Legal Science and Innovation at VidhiAagaz. It has been accepted for inclusion in the International Journal of Legal Science and Innovation after due review.

In case of **any suggestion or complaint**, please contact Gyan@vidhiaagaz.com.

To submit your Manuscript for Publication at the **International Journal of Legal Science and Innovation**, kindly email your Manuscript at submission@ijlsi.com.

An Imperial Legacy: Revisiting the Crimean Crisis from The Lens of International Law

RISHITA CHATTERJEE¹

ABSTRACT

“Ukraine, a new and important space on the Eurasian chessboard, is a geographical pivot because its very existence as an independent country helps transform Russia. Without Ukraine, Russia ceases to be a Eurasian empire.”

- Zbigniew Brzezinski

As approximately 96.6% of Crimean people were willing to join the Russian Federation, the Sevastopol City Council, along with the Crimean Supreme Court, adopted a declaration of independence from Ukraine less than 48 hours prior to Russia’s infamous annexation of Crimea. The Crimean Crisis is one that has encompassed ethnic and ideological conflicts, controversial political architectures, and the inconclusive question of the application of self-determination. With the unanimous use of internal conflict as a tool to deprive the Ukrainian government of its control over Crimea, leading to its declaration of independence and subsequent admission to the Russian Federation, the chain of said events marked a significant matter of deliberation on the integrity of contemporary international relations. Most states rejected Russia’s de-facto proclamation of sovereignty over the territory of Crimea. However, the Russian and Crimean authorities continue to justify both Crimea’s right to secede from Ukraine and Russia’s eventual intervention by virtue of international law. The article aims to answer the two primary questions the circumstances present - Does Russia’s annexation of Crimea violate international law? And can Crimea’s secession be legally justified through “self-determination”?

I. CONFLICT IN UKRAINE

With the cold war ending in 1989, Ukraine gained traction as the focal point of several competing geo- strategical interests, including Russia and the European Union. Crimea was an essential piece in this power conundrum, located

on the northern coast of the black sea; several nations vehemently contested its ownership due to its “strategically important location on the Black Sea and arable land”². After the collapse of the Soviet Union in the early 1990s, Crimea continued to remain a part of independent Ukraine. However, the demographic of the

¹ Author is a student at Jindal Global Law School, India.

² Adam Taylor, *To understand Crimea, take a look back at its complicated history*, Feb. 27, 2014

territory was of sixty per cent Russian ethnicity, resulting in the population fear of losing their connections to Russia. Joseph Zajda, in *Globalization and National Identity in Textbooks*,³ recalls that “*Crimea became one of the former Soviet territories where Russian people found they had become outsiders overnight.*” Consequently, Crimean sovereignty became an important topic of concern among Russian, Ukrainian, and Crimean political forces. To avoid conflict, Crimea was granted significant autonomy with the condition that it continues to remain a part of Ukraine. Crimean leaders drafted and passed their first Constitution in 1991⁴, which affirmed that Crimean laws would be hierarchized over Ukrainian laws; this was vetoed by the Ukrainian government as it failed to comply with their legislation. Thereafter in 1998, the Constitution was amended, aiming to reflect the agreement between Crimea and Ukraine, stating, “*all provisions of the national Ukrainian legislation and confirms that Crimean affairs, including referendums, shall be conducted in accordance with the Constitution of Ukraine.*”⁵ There were, however, no legal provisions or determination of a desire to secede through a local referendum.

Ukraine found itself on a dangerous slope of economic collapse in November 2013 when President Yanukovich and his pro-Russian party were torn between meeting the criteria to join the European Union trade association agreement and

Russia’s intense pressure to halt the agreement talks. Yanukovich and his cabinet decided to suspend the EU trade association agreement, with the rationale that Ukraine was considerably more dependent on Russia in terms of both gas and trade. The suspension of the agreement sparked widespread protests all over Ukraine, with Kyiv’s Independence Square popularly known as the “Maidan” as its nucleus. ⁶Over time, these protests took a violent turn, with a hundred deaths and 500 injuries. The Maidan protests have been characterized as “the largest Pro- European rally in history” and resulted in the successful impeachment of Victor Yanukovich by the Ukrainian Rada. Immediately after Yanukovich’s overthrow, the Russian troops took control of Crimea and initiated the incremental accession of Crimea to the Russian Federation.

II. DOES RUSSIA’S ANNEXATION OF UKRAINE VIOLATE INTERNATIONAL LAW?

The accession of Crimea to the Russian Federation in March 2014 was an event that questioned the validity of various principles in international legislation as both the Crimean and Russian authorities continued to defend the following events by affirming that they were relying on international law. The legal obligations between Russia and Ukraine concerning the prohibition against the use of

³ Joseph Zajda, ‘Globalisation and National Identity in History Textbooks’, in *Globalisation, Comparative Education and Policy Research (GCEP, Volume 16)*

⁴ *Ibid* 1

⁵ Constitution of the autonomous republic of Crimea, oct. 21, 1998, 350-xiv, *translated in the state council of the republic of Crimea.*

⁶ “Maidan on my Mind,” *The Economist*, February 15, 2014.

force and territorial integrity are entailed in several bi- and multilateral agreements, most notably in the Article 2 (4) UN Charter, which clearly states that “*All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or any other manner inconsistent with the Purposes of the United Nations.*” The 1994 Budapest memorandum⁷ which aimed to provide Ukraine security assurances for acceding to the Treaty on the Non-Proliferation of nuclear weapons, the 1997 Treaty on Friendship, Cooperation and Partnership⁸ between Ukraine and the Russian Federation, which affirmed the inviolability of the borders between both the states and most notably the Black Sea Fleet Status of Forces Agreement (SOFA)⁹ a lease agreement signed in 1997 which allows Russian military forces to be in Crimea but restricts its operations and prohibits Russian troops from being publicly present in Crimea are other bilateral agreements which hold significant relevancy in this predicament.

Russian President Vladimir Putin contends that Ukraine’s regime change was the consequence of a resolution out of which a new state had emerged without the involvement of any Russian agreement, and further argued these bi-lateral treaties are non-binding.¹⁰ This continues to be a

rather calculated political statement, as the question of state succession is redundant in these circumstances because a revolution-led regime change does not equate to the discontinuity of statehood in a given territory.¹¹

III. CAN CRIMEA'S SECESSION BE LEGALLY JUSTIFIED THROUGH SELF-DETERMINATION?

President Putin stated that “*we had to help create a condition so that the residents of Crimea for the first time in history were able to peacefully express their free will regarding their own future.*” Russia has justified its military intervention and Crimea’s secession through various grounds, one of the significant ones being the enforcement of an alleged right to self-determination. All of this leads to the central perplexing question concerning legitimacy between territorial claims vis a vis The Right to Self Determination.

J Crawford defines secession as “*the creation of a State by the use or threat to use force without the consent of the former sovereign*”¹² generally, it is a process that results in the creation of new states. International law does not distinctly provide a right of secession; however, it does not inhibit any legislation that explicitly prohibits it. On the other hand, the principle of self-determination has been crafted to embrace

⁷ Budapest Memorandum, signed 5 December 1994, para. 1.

⁸ “Treaty on Friendship, Cooperation, and Partnership Between Ukraine and the Russian Federation,” signed May 31, 1997, Article 3.

⁹ Nikolai Alexandrovich Kryukov, “Evolution of Russian-Ukrainian Relations: The Legal Status of the Black Sea Fleet,” *Military Thought* 15 (2006): 120.

¹⁰ Kyiv-Mohyla Law and Politics Journal 2 (2016): 13–36

¹¹ Andreas Zimmermann, “State Succession in Treaties,” *MPEPIL*, November 2006, para. 1.

¹² J. Crawford, *The Creation of States in International Law* (2nd ed.), Oxford University Press, New York: 2006, p. 375.

people's right to independence and their economic, political, and social structures. The nuances between secession, self-determination, and international law have always attracted jurisprudence's long-standing theoretical curiosity. Although with the creation of the United Nations, it was clearly emphasized how the right to self-determination does not automatically equate to the right of secession. According to the Helsinki Act of 1975 and The Charter of the United Nations¹³, territorial integrity has always taken precedence over the right to self-determination in international law¹⁴. Therefore, as the status of Crimea was designated in both the Constitution of Ukraine and the Constitution of the Autonomous Republic of Crimea, it cannot legally separate from Ukraine under international law.

IV. CONCLUSION

Using military force to take control of the Crimean Peninsula and prevent Ukrainian troops from intervening in the secession process was indeed a significant violation of Ukraine's territorial integrity, which was further aggravated by Crimea's integration into the Russian Federation. Russia fails to justify its actions, as international law does not permit the state to intervene in Crimea. Consequently, Crimea fails to be recognized as a part of the Russian

Federation as it does not fulfill the legal requirements for the right to secession. Since the Crimean Crisis, the rebels have fought the Ukrainian military resulting in approximately 14,000 casualties¹⁵. All international law can do amidst its blatant violation is to oblige other countries not to recognize these illegal territorial progressions.

Presently, Russia- Ukraine relations exist in an environment of constant power scuffle and uncertainty. Reportedly, the Russian Federation began moving troops and military equipment near Ukraine's border, which reignited the Ukrainian governments' anticipation for potential intervention by the Russian Federation¹⁶. By mid-December 2021, the Russian Foreign Ministry issued a set of demands¹⁷ which included a ban on Ukraine entering the North Atlantic Treaty Organization, distinctly reflecting the long-standing Russian resistance to Ukraine's shift towards the European institutions and NATO, these set of demands were further rejected by the United States and other NATO allies. February 2022 marked the deployment of over 3000 U.S troops bordering the NATO countries of Poland and Romania, and the Biden administration stated that the forces do not intend to enter Ukraine at

¹³ Declaration on Principles of International Law concerning Friendly relations and Co-operation among States in accordance with the Charter of the United Nations, g.A. res. 2625 (XXv), UN Doc. A/8082 (24 October 1970).

¹⁴ W. r. Slomanson, *Legitimacy of the Kosovo, South Ossetia and Abkhazia secessions: Violations in search of a rule*, 6(2) *miscolc Journal of International Law* 1 (2009), p. 15.

¹⁵ Paul Kirby, 'Is Russia preparing to invade Ukraine and what does Putin want' *BBC NEWS* (9 February 2022)

¹⁶ 'Conflict in Ukraine', *Global Conflict Tracker* (9 February 2022)

¹⁷ Andrew Roth, 'Russia issues list of demands it says must be met to lower tensions in Europe' *The Guardian* (Moscow, 17 December 2021)

any point. On the other hand, a Reuters report¹⁸ clearly portrayed one of the largest deployments of Russian troops near the Belarus border since the end of the cold war. Hence, without a formal, legally binding agreement in sight, the environment of extreme instability will only aggravate further, precipitating greater tension between Russia, the United States, and the European Union. It is of extreme urgency that the international community recognizes the need for stringent implementation of international law in the socio-political structure because its absence continues to threaten a nation's sovereignty and human lives.

¹⁸ 'Satellite images show troop deployment to Belarus border with Ukraine ahead of Russian drills', *Reuters* (Moscow, 6 February 2022)