

# **RUSSIAN JUSTIFICATION OF THE ANNEXATION OF CRIMEA AND NAZI PROPAGANDA: GREAT SIMILARITIES AND MINOR DIFFERENCES<sup>1</sup>**

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The annexation of a part of the territory of Ukraine – the Crimean peninsula was an unexpected and shocking incident to the international community. It is generally assessed as a grave breach of the fundamental principles of international law, such as the principles of the non-use of force, respect for territorial integrity of states and inviolability of their borders.<sup>2</sup> Since the World War II, these principles have been regarded as the basis of international stability and, in particular, of security in Europe that has suffered the most during the both world wars. Therefore, the annexation was widely identified as a major challenge to the contemporary international legal order, in particular, to the credibility of the European security system founded on the 1975 Helsinki Accord (the CSCE Final Act).

As the legal assessment of the Russian acts against Ukraine seems to be not a particularly difficult task, it might seem also not so worth examining the arguments forwarded by the Russian officials and scholars in justification of the annexation of Crimea and subsequent acts in Ukraine. However, the publications by Russian lawyers are important for identifying how the employed arguments support and develop the official position of the Russian Federation. Although these publications and statements grounding the thesis of the so-called “reunification of Crimea with Russia” have already become the object of research,<sup>3</sup> this article provides a good opportunity to take a look at them from a different angle. That is a historical angle related with the experience of the World War II that was preceded and started by the annexations and other acts of aggression accomplished in the same manner as that of Crimea.

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<sup>1</sup> This article was prepared on the basis of the report “The Lessons of WWII and Annexation of Crimea” done on 11 December 2015 at the international conference “Past and Future Issues and Challenges of Prevention of International Crimes and Rise of Intolerance”, which was organised by the Mykolas Romeris University (Vilnius, Lithuania).

<sup>2</sup> Leonaitė, E., Žalimas, D. The Annexation of Crimea and Attempts to Justify It in the Context of International Law. *Lithuanian Annual Strategic Review, 2015-2016*. 2016, vol. 14, pp. 14-22.

<sup>3</sup> *Ibid.*, pp. 28-62.

Thus, the main aim of this article is to assess, against the historical background related to the World War II, the arguments and strategies employed by Russian politicians and lawyers in grounding the thesis of the “the reunification of Crimea with Russia”. The article begins with the general assessment of the annexation of Crimea under international law. Further the speeches of Russian officials and the publications of Russian lawyers, where the attempts have been made to prove the legality of the annexation of Crimea, are considered by applying the methods of systemic analysis and generalization. This analysis is followed by the identification of the typical statements used by the Russian officials and lawyers for constructing the evaluation of the annexation that is favourable to the Russian Federation. The purpose of this analysis is to disclose how international law is manipulated by the Russian academia. Finally, by employing the methods of analogy and comparative analysis, the arguments presented by the Russian officials and lawyers in favour of the annexation of Crimea are also placed against the background of the arguments announced by the Nazi leadership in justification of the aggressive acts of the Third Reich prior and during the World War II.

This comparison will lead us to the answer, how much the legal discourse of Russian scholars resemble to the arguments raised by the Nazis in justifying the aggressive policy of the Third Reich. It is the author’s conviction that a lawyer should be brave enough to tell the truth. Therefore, once we are able to see identity of the Russian “reunification” thesis with the Nazis ideology and argumentation in support of their aggressions, we have to acknowledge and state that openly. One could hardly learn any lessons from the World War II, if he is afraid to see the truth when facing the deeds and ideas that have already led to the catastrophic consequences. Who else, if not lawyers, should take a principled stand in condemning in the strongest possible words the international crimes, such as the crime of aggression.

## **1. Assessment of the Russian Acts in Crimea under International Law**

It would be unnecessary to repeat in detail the legal assessment of the annexation of Crimea, which was formally accomplished in five days.<sup>4</sup> There is a general consensus both

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<sup>4</sup> After at the end of February 2014 the Crimean peninsula was taken under control of the Russian armed forces (at the initial stage concealing their identity), the so-called “referendum” was held on 16 March 2014. On 17 March, the results of the “referendum” were announced; on the same day, the Russian president Putin signed the order on recognizing the Republic of Crimea as a sovereign and independent state. On 18 March, the “international treaty” was signed between the Russian Federation and “the Republic of Crimea” “On the

among states and international lawyers that the acts of the Russian Federation constitute an illegal use of force and should be qualified as **an aggression**. According to the universally recognized definition of aggression, any forcible annexation of the territory of another state, armed incursion into the territory of another state, blockade of the ports or coasts of a state, the use of armed forces stationed in another state in contravention of the terms of the status of forces agreement, as well as the sending of armed groups, are all acts of aggression.<sup>5</sup>

Since the actions taken by Russia in Crimea could provoke certain discussions on whether an act of aggression can be carried out without significant military confrontation, it should be pointed out that, as it is clear from Article 1 of the Definition of Aggression, the key fact in defining aggression is the conduct of military actions by a state against the sovereignty, territorial integrity, or political independence of another state; in addition, considerable importance is placed on the consequences of such actions. It is obvious that the actions by the Black Sea Fleet and special forces of the Russian Federation (including the so-called “green men” who took over the actual control of the peninsula by occupying the most important objects and blocking the Ukrainian forces) were taken with the aim of preventing the Ukrainian government from exercising its sovereign powers in the Crimean peninsula, as well as with the aim of creating necessary conditions for a smooth scenario of the annexation of Crimea, i.e. these actions were aimed against the sovereignty and territorial integrity of Ukraine. In addition, it is important to mention that reference to “**aggression**” in various resolutions adopted at multilateral political forums should be regarded as a significant proof attesting to the view taken by the states (*opinio juris*) with regard to the concept of aggression as not necessarily involving the intense use of arms.<sup>6</sup>

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accession of the Republic of Crimea in the Russian Federation and on forming new constituent entities within the Russian Federation”; this “treaty” was submitted to the Constitutional Court of the Russian Federation for the review of its constitutionality. On 19 March, that is, actually within one night, the Constitutional Court of the Russian Federation passed the opinion declaring that the above-mentioned “treaty” was in compliance with the Constitution of the Russian Federation. In such a way, for the first time in history, the Constitutional Court was employed as a tool for committing an international crime of aggression. On 20 March, the “treaty” was ratified by Russia.

<sup>5</sup> The United Nations General Assembly Resolution 3314 (XXIX), *Definition of Aggression* [interactive]. 1974-12-14, A/RES/29/3314. <<http://www.un-documents.net/a29r3314.htm>>. See Article 3(a), (c), (e), (g).

<sup>6</sup> The annexation of Crimea is characterized as a (military) aggression in a number of resolutions of various international organizations. See: the European Parliament Resolution on the Invasion of Ukraine by Russia [interactive]. 2014-03-13, 2014/2627(RSP), P7\_TA(2014)0248, § 1, 11: <<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2014-0248+0+DOC+XML+V0//EN>>; the European Parliament Resolution on Russian Pressure on Eastern Partnership Countries and in Particular the Destabilisation of Eastern Ukraine [interactive]. 2014-04-17, 2014/2699(RSP), P7\_TA(2014)0457, § 3: <<http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2014-0457&language=EN&ring=P7-RC-2014-0436>>; the Parliamentary Assembly of the Council of Europe

Consequently, the so-called “secession” of Crimea, which took place as a result of the threat and use of armed force (in the presence of the Russia-controlled illegal military and paramilitary forces who performed the actual takeover of the territory of Crimea, blocked the Ukrainian armed forces and ports, in the face of wide-scope military maneuvers of the Russian armed forces along the Ukrainian borders, as well as the constant declarations by the Russian political leadership of the preparedness to use force) and the incorporation of Crimea into Russia are illegal in terms of international law and cannot be interpreted as the case of realization of the right of peoples to self-determination. Against this background, the circumstance that the “referendum” did not comply with the minimum international standards that guarantee the free expression of will<sup>7</sup> is only a subsidiary argument pointing to the illegality of the annexation.

Therefore, as a consequence of the above provided qualification of the annexation of Crimea, there is the consensus of the whole international community on **the non-recognition of the annexation**,<sup>8</sup> the Crimea is regarded as **a part of Ukrainian territory that is under the temporary Russian occupation**. This consensus is reflected in a number of resolutions of various international organizations, including: 1) the 27 March 2014 Resolution of the General Assembly of the United Nations on the territorial integrity

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Resolution No. 1988 (2014) on Recent Developments in Ukraine: Threats to the Functioning of Democratic Institutions [interactive]. 2014-04-09, § 14: <<http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=20873&lang=en>>; the OSCE Parliamentary Assembly Resolution on the Continuation of Clear, Gross and Uncorrected Violations of OSCE Commitments and International Norms by the Russian Federation [interactive]. 2015-07-08, § 16, 21: <<https://www.oscepa.org/meetings/annual-sessions/2015-annual-session-helsinki/2015-helsinki-final-declaration/2282-07>>.

<sup>7</sup> The European Commission for Democracy through Law (the Venice Commission). Opinion on whether the Decision taken by the Supreme Council of the autonomous Republic of Crimea in Ukraine to organize a Referendum on becoming a constituent territory of the Russian Federation or restoring Crimea’s 1992 Constitution is compatible with Constitutional Principles [interactive]. 2014-03-21, No. 762/2014: <[http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2014\)002-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2014)002-e)>. In the Opinion the Venice Commission held that “circumstances in Crimea did not allow the holding of a referendum in line with European democratic standards”. Circumstances indicating disregard for democratic standards are similarly referred to in the report of the UN High Commissioner for Human Rights of 15 April 2014 on the human rights situation in Ukraine (Office of the United Nations High Commissioner for Human Rights. Report on the human rights situation in Ukraine [interactive]. 2014-04-15, § 6: <<http://www.ohchr.org/EN/Countries/ENACARegion/Pages/UARReports.aspx>>).

<sup>8</sup> The duty of non-recognition means that states are under an obligation not to recognize, through individual or collective acts, the purported statehood of an effective territorial entity established in breach of the prohibition of use or threat of force as well as not to recognize any territorial acquisition that is the result of the use or threat of force. This duty emerged out of the 1932 Stimson Doctrine that was used in pursuing policy of non-recognition of illegal forceful territorial changes, including the non-recognition of the annexation of the Baltic States by the Soviet Union. This duty of non-recognition is also expressed in Article 41 of the International Law Commission’s Articles on State Responsibility for Internationally Wrongful Acts. This duty is a part of customary international law and aims at preventing a serious breach of international law from validation by means of recognition. It contains a “minimum resistance” by the international community and “a continuous challenge to a legal wrong”. The duty of non-recognition is usually applied in cases of grave breaches of *erga omnes* obligations, in particular those arising out of the prohibition of the use of force or racial discrimination, or the right of peoples to self-determination.

of Ukraine,<sup>9</sup> in which the sovereignty and territorial integrity of Ukraine was affirmed; it was also reminded that Ukraine had not authorised the referendum on the status of Crimea and that such a referendum could have no validity; all states were called not to recognize any alteration to the status of the Autonomous Republic of Crimea and the city of Sevastopol; 2) the 19 December 2016 Resolution of the General Assembly of the United Nations on the situation of human rights in the Autonomous Republic of Crimea and the city of Sevastopol (Ukraine),<sup>10</sup> in which the temporary occupation of a part of the territory of Ukraine was condemned and the non-recognition of the annexation of Crimea was reaffirmed; Russia was recognised as an occupying power with regard to Crimea; 3) the 14 November 2016 Report of the International Criminal Court on preliminary examination activities,<sup>11</sup> in which the conclusion is made that the situation within the territory of Crimea and Sevastopol amounts to an international armed conflict between Ukraine and the Russian Federation; that means acknowledgment of the status of Crimea as the territory under the Russian occupation; 4) the 9 April 2014 Resolution No. 1988 (2014) of the Parliamentary Assembly of the Council of Europe on Recent Developments in Ukraine,<sup>12</sup> in which it was declared that the outcome of the Crimean referendum of 16 March 2014 and the illegal annexation of Crimea by the Russian Federation had no legal effect and were not recognised by the Council of Europe; it was also emphasised that the drive for secession and integration into the Russian Federation was instigated and incited by the Russian authorities;<sup>13</sup> 5) the 27 January 2015 Resolution No. 2028 (2015) of the Parliamentary Assembly of the Council of Europe on the humanitarian situation of Ukrainian refugees and displaced persons, in which the Russian authorities were called to ensure the security and respect for human rights of all those who live under the *de facto* illegal control of the Russian Federation in Crimea;<sup>14</sup> 6) the 12 October 2016 Resolution No. 2132 (2016) of the Parliamentary Assembly of the Council of Europe on political consequences of the Russian aggression in Ukraine, in which the Assembly reiterated its

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<sup>9</sup> The UN General Assembly Resolution on the Territorial Integrity of Ukraine, A/RES/68/262 of 27 March 2014. Adopted with 100 votes, 58 abstentions, and 11 no-votes.

<sup>10</sup> The UN General Assembly Resolution. Situation of human rights in the Autonomous Republic of Crimea and the city of Sevastopol (Ukraine), A/RES/71/205 of 19 December 2016.

<sup>11</sup> The ICC Report on Preliminary Examination Activities, 14 November 2016, para 158.

<sup>12</sup> Paras 14-16, see *supra* note 6.

<sup>13</sup> Considering that the actions of the Russian Federation constituted beyond any doubt a grave violation of international law, the Parliamentary Assembly of the Council of Europe has also suspended the voting rights of the delegation of the Russian Federation. See: the Resolution No. 1990 (2014) “Reconsideration on substantive grounds of the previously ratified credentials of the Russian delegation” and the Resolution No. 2034 (2015) “Challenge, on substantive grounds, of the still unratified credentials of the delegation of the Russian Federation”.

<sup>14</sup> <<http://assembly.coe.int/nw/xml/xref/xref-xml2html-en.asp?fileid=21480&lang=en>>, para. 15.2.

condemnation of the illegal annexation of the peninsula and its continuing integration into the Russian Federation, in breach of international law and the Statute of the Council of Europe;<sup>15</sup> 7) the 17 April 2014 Resolution of the European Parliament on Russian Pressure on Eastern Partnership Countries and in Particular the Destabilisation of Eastern Ukraine,<sup>16</sup> in which the Crimea referendum was denounced as illegal and illegitimate and the annexation of the Ukrainian peninsula was declared as being against international law; the European Parliament also expressed its conviction that Russia's assertion of the right to use all means to protect Russian minorities in third countries was not supported by international law and contravened fundamental principles of international conduct in the 21<sup>st</sup> century; 8) the 8 July 2015 OSCE Parliamentary Assembly Resolution on the Continuation of Clear, Gross and Uncorrected Violations of OSCE Commitments and International Norms by the Russian Federation,<sup>17</sup> in which the Russian Federation's unilateral and unjustified assault on Ukraine's sovereignty and territorial integrity as well as the Russian Federation's failure to respect the Helsinki principles of sovereignty, integrity, inviolability of internationally-recognized frontiers and the prohibition of the use of force and threat of force against other OSCE participating States was condemned.

## 2. Viewpoint of the Russian Federation

It should be noted that the scholarly discussion providing a legal assessment of the Russian acts in Ukraine and examining the ensuing challenges to international law is dominated by the Western authors, whereas the number of publications by Russian lawyers on these questions is rather limited. It is evident that the arguments provided by the Russian lawyers mainly defend and develop the official position of the Russian Federation. In particular, the speech of Vladimir Putin of 18 March 2014 (the so-called Crimean speech in which the thesis of peaceful "reunification" on the basis of voluntary self-determination and historical commonness was proclaimed<sup>18</sup>) serves as an inspiration to the

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<sup>15</sup> <<http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-EN.asp?fileid=23166&lang=en>>, para. 4.

<sup>16</sup> See *supra* note 6.

<sup>17</sup> *Ibid.*

<sup>18</sup> In this speech one can find the Putin's statements not only denying aggression as it has not met any resistance, but also grounding the alleged historical Russianness of the current South Ukrainian lands and the "old Chersones" where the first Russian duke was baptised, including the claims that Russians have always perceived the Crimea as an "inalienable part of Ukraine" ("В Крыму буквально всё пронизано нашей общей историей и гордостью. Здесь древний Херсонес, где принял крещение святой князь Владимир. <...> В сердце, в сознании людей Крым всегда был и остаётся неотъемлемой частью России. Эта убежденность, основанная на правде и справедливости, была непоколебимой, передавалась из поколения в поколение, перед ней были бессильны и время, и обстоятельства, бессильны все

Russian lawyers and guides them in developing their arguments. Therefore, the arguments used by Russian lawyers should be viewed as part of the *lawfare* strategy, which refers to exploiting legally unfounded arguments in order to weaken the positions of the opponent in the international arena, as well as to shape public opinion.<sup>19</sup> As Christopher Borgen has noted, “using legalistic rhetoric can muddy the waters, even when the legal argument is doctrinally weak”.<sup>20</sup>

In view of the above, it would be worthwhile to concentrate on certain typical arguments employed by the Russian officials and lawyers who try to justify the so-called “reunification” of Crimea with Russia. They concern four main issues: the alleged self-determination of the “people of Crimea” in pursuing the “remedial secession”, the alleged decisive role of the Crimean referendum on “reunification” with Russia, the historical arguments on the alleged dependency of Crimea on Russia and the alleged failure of the Ukrainian statehood. Only the first issue concerning the self-determination falls within the scope of international law. While the other three issues are raised to strengthen the arguments on self-determination, however, they seem to be outside the field of international law and even at all beyond law.

What is common to the arguments in relation to all four issues is that they resemble or, sometimes, are even identical to those used in the period of the World War II by both aggressor countries, the Third Reich and the USSR, in order to justify their acts of aggression, including the annexations of foreign territories. The same can be stated about the similarity or even identity of the argumentation provided by V. Putin in his “Crimean speech” with that of Adolf Hitler in a number of his speeches.

## 2.1. The Concept of the “People of Crimea” and the “Remedial Secession”

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драматические перемены, которые мы переживали, переживала наша страна в течение всего XX века. После революции большевики по разным соображениям, пусть Бог им будет судья, включили в состав Украинской союзной республики значительные территории исторического юга России. Это было сделано без учёта национального состава жителей, и сегодня это современный юго-восток Украины. <...> Крым – это исконно русская земля, а Севастополь – русский город.”)]. Appeal of the President of the Russian Federation (in Russian), 18 March 2014: <<http://kremlin.ru/events/president/news/20603>>.

<sup>19</sup> For more on this conception see, e.g., Tiefenbrun, S. Semiotic Definition of “Lawfare”. *Case Western Reserve Journal of International Law* [interactive]. 2011, vol. 43: <[http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1866448](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1866448)>.

<sup>20</sup> Borgen, Ch. Law, Rhetoric, Strategy: Russia and Self-Determination Before and After Crimea. *U.S. Naval War College. International Law Studies* [interactive]. 2015, vol. 91, p. 277: <<http://stockton.usnwc.edu/ils/vol91/iss1/7/>>.

As it is well known, the main narrative, exploited by the Russian politicians and lawyers to deny the annexation of Crimea as an illegal acquisition of territory, is centered on the alleged self-determination of the “Crimean people”. Thus, they claim that the existence of the separate “Crimean people” who allegedly were entitled to self-determination by means of “remedial secession”. Indeed, although it can hardly be considered as universally recognized, there is the concept of “remedial secession” in international law, according to which a people may claim to secession from the existing state provided that their existence is at stake due to serious massive repressions of that state.<sup>21</sup> However, one should have an unlimited phantasy to claim, first, that the population of Crimea suddenly became “a people” at the beginning of 2014 (as before 2014 nobody had ever perceived them as a separate “people”) and, secondly, that at the beginning of 2014 the existence of the “Crimean people” was at stake (as, again, nobody had ever heard about any repressions in Ukraine against the Crimean population). Therefore, here one can stop any serious scientific discourse on the right of “Crimean people” to self-determination, as the scientific legal discourse should not have anything in common with phantasies. But the purpose of this article is to examine the Russian arguments. Let us do that.

At the core of the Russian narrative of the self-determination of the “Crimean people” (as it is clear already from the mentioned Putin’s “Crimean speech”<sup>22</sup>) is the alleged *coup d’état* carried out in Ukraine by the right-wing radicals in February of 2014 (often referred by Russian officials as “the neo-Nazi coup”<sup>23</sup>), which was followed by the purported collapse of the Ukrainian state; consequently, the “Crimean people”, fearing possible persecution, allegedly acquired the right to secede from Ukraine and join Russia. In connection with this narrative, several key points can be identified.

Though the authors defending the “secession” of Crimea avoid disclosing the features of the “Crimean people” in greater detail, their position could be linked with the

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<sup>21</sup> See: Leonaitė, E., Žalimas, D., *supra* note 2, pp. 22-28; the European Commission for Democracy through Law (the Venice Commission). Opinion on whether Draft Federal Constitutional Law No. 462741-6 on Amending the Federal Constitutional Law of the Russian Federation on the Procedure of Admission to the Russian Federation and Creation of a New Subject within the Russian Federation is Compatible with International Law, 2014-03-21, No. 763/2014, paras 26-27: <[http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2014\)004-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2014)004-e)>.

<sup>22</sup> See *supra* note 18.

<sup>23</sup> E.g., the chairman of the Russian Constitutional Court Valery Zorkin in his public lecture of 19 May 2016 to the participants of the St. Petersburg International Legal Forum even six times referred to Ukraine and its authorities as “Nazi” or “neo-Nazi Bandera” entities. See: Zorkin, V. Lecture “Trust to the Law – the Way to Resolve Global Crises” to the participants of the International Legal Forum, held at St. Petersburg on 19 May 2016: <<http://www.ksrf.ru/ru/News/Speech/Pages/ViewItem.aspx?ParamId=78>>.

arguments about the “Russianness” of Crimeans. For example, Vladislav Tomsinov maintains that “the political and cultural autonomy of Crimea, consolidated in the Constitution of 6 May 1992 adopted by the Supreme Council of the Crimean Autonomous Republic, ensured *the retention of its Russianness* [emphasis added here and afterwards]. According to this author, this autonomy was a compromise, on the one hand, between Russia and Ukraine and, on the other, between Crimea and Ukraine. This compromise gave *the Russian people* the possibility for the full-fledged realisation of their right to self-determination without seceding from Ukraine, i.e. within the Ukrainian state” [“Политическая и культурная автономия Крыма, закреплённая его Конституцией 1992 г., обеспечивала сохранение его *русскости*. Эта автономия была компромиссом: с одной стороны, между Россией и Украиной, с другой — между Крымом и Украиной. Такой компромисс давал русским людям возможность в полной мере реализовать свое право на самоопределение, не выходя из состава Украины — в рамках Украинского государства”]<sup>24</sup>.

In the open letter to the International Law Association, signed by the prominent Russian lawyer Anatoly Kapustin on behalf of the Executive Board of the Russian Association of International Law, it is emphasised that ethnic Russians in Crimea are not a minority, since the Crimea historically was a part of Russia.<sup>25</sup> Thus, although this discourse is formally about the multi-ethnic “people of Crimea”, emphasis is placed on the importance of the ethnic Russians. At the same time, attempts are made to deny their status as a national minority (a group holding no right to self-determination in the form of secession under the established Russian legal doctrine).

Such arguments are very close to those employed by the Third Reich in constructing their claims concerning Germans in Czechoslovakia (Sudetenland), Poland (Danzig), and Lithuania (Klaipėda (Memel)), as well as in grounding the Nazis claims for Austria. All these claims originated from the concept of the alleged unity of the German-speaking nation and the German historical affiliation and rights to these territories. However, it is worth examining this argumentation in more detail when it comes to the point of “remedial secession”.

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<sup>24</sup> Tomsinov, A. V. “Krymskoe pravo“ ili Juridicheskie osnovaniya vossoedinenija Kryma s Rossiej [„Crimean Law“ or Legal Grounds for the Reunification of the Crimea with Russia]. *Vestnik Moskovskogo universiteta, Pravo*, 2014, vol. 11, p. 26.

<sup>25</sup> Kapustin, A. Circular Letter to the Executive Council of the International Law Association [interactive], 2014: <<http://www.ilarb.ru/html/news/2014/5062014.pdf>>.

In order to substantiate the claim for a “remedial secession”, two interrelated lines of argumentation are employed. The first line, which is dominant, centers around the alleged restrictions on the Crimean autonomy and the alleged exclusion of the Crimeans from participation in political processes; the second one highlights the alleged violations of human rights and threats allegedly faced by the “people of Crimea”.

As regards the purported restrictions of the autonomy of Crimea, A. Kapustin goes as far as to directly accuse Ukraine of having not created conditions for the secession of the Republic of Crimea. He points out that, as a result of the steps taken by the central government of Ukraine in order to preclude the secession of Crimea in 1992, “the people of Crimea were clearly refused their right to *external self-determination* [emphasis added]”.<sup>26</sup> In this way, the borderline between internal and external self-determination is completely blurred. It is also suggested that the Crimean inhabitants were excluded from political representation. A. Kapustin claims that “an unconstitutional coup [...] deprived the Crimean people of the right to representation in the central government of Ukraine”.<sup>27</sup> V. Tolstykh links the direct exclusion of the Crimean population from participation in political communication with the removal of Viktor Yanukovych from the office of the President of Ukraine, also with the campaign directed against the Party of Regions and the Communist Party of Ukraine, as well as with an inadequately representative transitional Ukrainian government and the lustration process.<sup>28</sup> Why this statement makes dependent the survival of the “Crimean people” on the existence of V. Yanukovych and his party regime or the communist party, one can hardly find the answer. Indeed, if to continue in that way of argumentation, one can come to the absurd conclusions that the “Crimean people” have to be associated with communism.

The arguments aimed at showing the alleged consistent striving of the Crimean inhabitants towards self-determination and underlining the concurrent denial of their possibilities of exercising this right are supplemented with statements about the threats allegedly posed to “the people of Crimea”. For example, the chairman of the Constitutional Court of the Russian Federation V. Zorkin stated in his book that the “actions on behalf of Russia [...] was a necessary and inevitable response to blatantly illegal actions of the Kiev

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<sup>26</sup> Kapustin, A. Crimea’s Self-Determination in the Light of Contemporary International Law. *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht. Heidelberg Journal of International Law*. 2015, vol. 75(1), p. 111.

<sup>27</sup> *Ibid.*, p. 116.

<sup>28</sup> Tolstykh, V. Three Ideas of Self-Determination in International Law and the Reunification of Crimea with Russia. *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht. Heidelberg Journal of International Law*. 2015, vol. 75(1), p. 135.

authorities that performed a coup, as well as to a direct military threat to security of the Russian population of Crimea by Islamic terrorists and Ukrainian neo-Nazis. Russia could not regard these threats as anything but military”.<sup>29</sup> Again, any additional comments are hardly needed. Except the fact that in his statement the chairman of the Russian constitutional court associates the indigenous population of Crimea – the Crimean Tartars – with the “Islamic terrorism”.

It is important to note that the perception of the alleged threat to the existence of “the people of Crimea” among Russian authors is not unanimous. It should not be a surprise as the abilities to create phantasies regarding such a threat are different by different authors. Though some, like V. Zorkin and A. Kapustin, speak of physical threats, V. Tomsinov and V. Tolstykh concentrate on cultural aspects. For example, V. Tolstykh maintains that “the absence of human rights violations in Crimea similar to those that had taken place in Kosovo may not serve as a ground for refusing its population, which was excluded from political communication, the right to self-determination” [“отсутствие в Крыму нарушений прав человека, подобных тем, которые имели место в Косово, не может служить основанием для отказа его населению, исключенному из политического общения, в праве на самоопределение”].<sup>30</sup>

According to V. Tolstykh, such events in Ukraine as the initiative for the repeal of the law on regional languages, numerous cases of the demolition of monuments to Lenin (which are claimed to be rather national than political symbols), anti-Russian proclamations, as well as forced spreading of ideas of European integration and European identity can be viewed as an attempt to impose cultural requirements, which can be overcome only at the expense of the loss of the identity of a nation.<sup>31</sup> In the opinion of this author, “a massive scale and systematic character of these events and support or approval from the new government heightened the threat posed by these measures and have justified the secession of Crimea to a significant extent”; the same author comes to the conclusion that “the imposition of cultural requirements can be qualified as genocide, though not in

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<sup>29</sup> Zorkin, V. *Civilization of law and development of Russia*. Petersburg: St. Petersburg International Legal Forum, 2015, p. 264.

<sup>30</sup> Tolstykh, V. L. Vossoedinenie Kryma s Rossiej: pravovye kvalifikacii [The Reunification of Crimea with Russia: the Legal Qualifications]. *Evrazijskij juridicheskij zhurnal* [interactive]. 2014, vol. 5(72), § 8: <[http://www.eurasialaw.ru/index.php?option=com\\_content&view=article&id=6186%3A2014-06-25-08-34-35&catid=442%3A2014-06-25-08-30-09&showall=1](http://www.eurasialaw.ru/index.php?option=com_content&view=article&id=6186%3A2014-06-25-08-34-35&catid=442%3A2014-06-25-08-30-09&showall=1)>.

<sup>31</sup> *Ibid.*, § 9.

the narrow sense as defined by the Convention on Genocide [...], but in the broad sense as defined by Lemkin”.<sup>32</sup>

The quotation of some of these thoughts by V. Tolstykx in Russian reads as follows:

“Некоторые украинские события могут рассматриваться как попытка введения такого ценза; среди них — инициирование отмены закона о региональных языках, многочисленные случаи *сноса памятников Ленину* (являющегося для многих не столько политическим, сколько *национальным символом*), антирусские прокламации и выступления. Массовость, системный характер и поддержка или одобрение со стороны новой власти усугубили угрозу, создаваемую данными мерами, и в значительной степени оправдали отделение Крыма.

Установление культурного ценза может квалифицироваться как геноцид,— но не в том узком смысле, в котором данный термин определяется Конвенцией о предупреждении преступления геноцида и наказании за него 1948 г., а в том широком смысле, в каком он определяется Р. Лемкиным”.<sup>33</sup>

Again, additional comments about the legal value of these highly primitive and political statements are hardly needed (e.g., why the identity of the Crimean people or Russians in Crimea should be necessarily linked with Lenin, but not with the European values).

However, one can notice the striking similarity between the above-mentioned arguments with those employed by Adolf Hitler with respect to Germans in Sudetenland: “All I can say to these representatives of democracy is that this does not leave us cold, no, if these tortured creatures can find neither justice nor help by themselves, then they will receive both from us. [...] I am simply demanding that the oppression of three and a half

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<sup>32</sup> *Ibid.* Authors’ note: Raphael Lemkin, the author of the term “genocide”, understood genocide not just in terms of the mass killing of individuals belonging to a certain national group, but also as “a coordinated plan of different actions aiming at the destruction of essential foundations of the life of national groups, with the aim of annihilating the groups themselves. The objectives of such a plan would be disintegration of the political and social institutions, of culture, language, national feelings, religion, and the economic existence of national groups, and the destruction of the personal security, liberty, health, dignity, and even the lives of the individuals belonging to such groups. Genocide is directed against the national group as an entity, and the actions involved are directed against individuals, not in their individual capacity, but as members of the national group” (Lemkin, R. *Axis Rule in Occupied Europe*. Clark, New Jersey: the Lawbook Exchange Ltd, 2005, p. 79).

<sup>33</sup> Tolstykx, V. L., *supra* notes 30, 31.

million Germans in Czechoslovakia cease and that the inalienable right to self-determination take its place”.<sup>34</sup>

## 2.2. The Role of the Referendum and the Russian Armed Forces

Another feature that becomes evident in the publications of the Russian authors justifying the “secession” of Crimea and its incorporation into Russia is the placement of an emphasis on the importance of a referendum, by attributing international legal significance to the institute whose origin lies within national law and which remains regulated at the level of national law. It should not be a surprise as the significance of the “Crimean referendum” was strongly emphasized by V. Putin in his “Crimean speech” of 18 March 2014.<sup>35</sup>

A particularly radical position on the importance of referendum is put forward by V. Tomsinov, who contends that “in terms of the contemporary Western European legal tradition, founded on the principle of government by the people, *the principal legal ground for the reunification of Crimea with Russia* [emphasis added] was the 16 March 2014 referendum, which showed the genuine striving of the overwhelming majority of Crimean people to join Russia” [“С точки зрения современной западноевропейской правовой традиции, построенной на принципе народовластия, главным юридическим основанием для воссоединение Крыма с Россией стал референдум 16 марта 2014 г., показавший искреннее стремление подавляющего большинства крымчан войти в состав России”].<sup>36</sup>

Thus, V. Tomsinov regards the referendum as an independent and, in principle, unconditional ground for the secession of Crimea. Nevertheless, from the perspective of international law, the most original position, making “the will of a people” absolute, was expressed in the open letter of the Russian Association of International Law, where it was held that the “destiny of the Crimea was decided by the expression of the will of the Crimean people and the people of its historical homeland – Russia. [...] Mass meetings in all big cities of Russia in support of reunion with Crimea after twenty three years of a break are a peculiar will expression of the multimillion people of Russia concerning its

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<sup>34</sup> Hitler, A. *Closing speech at the National-Socialist party congress in Nuremberg* [transcript of the speech in English] [interactive], 1938-09-12: <<http://der-fuehrer.org/reden/english/38-09-12.htm>>.

<sup>35</sup> V. Putin claimed that he relied on the will of people expressed in the “Crimean referendum” when he submitted to the parliament the acts of the annexation of Crimea. *Supra* note 18.

<sup>36</sup> Tomsinov, *supra* note 24, p. 28.

historical rights for Crimea” [“Судьбу Крыма решило волеизъявление народа Крыма и народа его исторической родины – России. Массовые митинги во всех крупных городах России в поддержку воссоединения с Крымом, после двух десятков лет перерыва – это своеобразное волеизъявление многомиллионного народа России в отношении его исторических прав на Крым“].<sup>37</sup> From the legal point of view, it can be hardly to invent something more absurd than the mass meetings in the cities of Russia as the argument to justify the annexation.

Probably the statement of the Russian Association of International Law would not require any additional comments, if it was not written by the authoritative academic institution in a manner very similar to that had been used by the Nazi criminals at the Nuremberg Tribunal while attempting to justify the annexation of Austria in 1938 (one can recall also that the Austrian Anschluss was accomplished by means of “a referendum” after the country fall into the factual control of Germany and that the German population was also in favour of the Anschluss).

In this respect, the conclusion set out as early as in the judgment of 1 October 1946 by the International Military Tribunal at Nuremberg regarding the Austrian Anschluss is worth quoting: “It was contended before the Tribunal that the annexation of Austria was justified by the strong desire expressed in many quarters for the union of Austria and Germany; that there were many matters in common between the two peoples that made this union desirable; and that in the result the object was achieved without bloodshed. These matters, even if true, are really immaterial, for the facts plainly prove that the methods employed to achieve the object were those of an aggressor. The ultimate factor was the armed might of Germany ready to be used if any resistance was encountered”.<sup>38</sup> Thus, already the Nuremberg Tribunal has demonstrated the real value of the arguments about the decisive role of referendums in pursuing annexations of foreign territories.

In the same vein, the purported assent to the act of aggression was exploited to justify the actions of the Third Reich against Czechoslovakia, Denmark, Belgium, and Luxembourg; the same method was also used by the USSR in order to carry out the occupation and annexation of the Baltic States.<sup>39</sup>

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<sup>37</sup> Circular Letter to the Executive Council of the International Law Association, *supra* note 25.

<sup>38</sup> The 1946 October 1 Judgement of the International Military Tribunal [interactive]. 1946-10-01, 31 (427): <[http://crimeofaggression.info/documents/6/1946\\_Nuremberg\\_Judgement.pdf](http://crimeofaggression.info/documents/6/1946_Nuremberg_Judgement.pdf)>.

<sup>39</sup> Žalimas, D. The International Legal Status of Lithuania and its Resistance to the Soviet Union. In Korzeniewska K. *et al.*, eds., *Lithuanians and Poles against Communism after 1956. Parallel Ways to Freedom?*, Vilnius, 2015, p. 351-353.

In the narrative constructed by the Russian authors on “the reunification of Crimea with Russia”, the issue of the “Crimean referendum” is closely related with the interpretation of the role of the Russian armed forces in Crimea. It is worth noting that the Russian international legal doctrine, as well as the position submitted to the International Court of Justice in the case on Kosovo, was formerly consistent in underlining the provision, deriving from the 1970 Declaration on Principles of International Law, that the right to self-determination must be exercised “through the free choice by the people concerned, without outside interference”.<sup>40</sup> The main strategy that is currently adopted in order to circumvent this norm is the assertion that the aim of the Russian armed forces was not to influence the expression of free will, but to create conditions for expressing this will, i.e. to help the “people of Crimea” to realize self-determination. As Georgy Velyaminov notes, “there has not been a single reliable fact established about any kind of pressure or, the more so, pressure imposed by the force of arms on the people who came to the referendum” [“Неизвестно ни одного (!) достоверного факта какого-либо давления, тем более силой оружия на людей, пришедших на референдум”].<sup>41</sup> According to V. Tomsinov, the Russian forces were called upon “to protect the people of Crimea against the forcible actions by the Ukrainian authorities or radical nationalists depriving the citizens of the possibility of holding the referendum” [“Российские войска в Крыму и призваны были избавить народ Крыма от насильственных действий со стороны украинских властей или радикально настроенных националистов, лишаящих граждан возможности провести референдум“].<sup>42</sup> One can ironically note what could be the reaction to the argument that in 1938 in Austria the Nazi armed forces also pursued the aim to secure the plebiscite on unification with Germany.

A notably unconventional interpretation of the role of Russia in Crimea is developed by V. Tolstykh. Along with the assertions that the participation of Russia was not aimed at interfering with the process of the formation of the will of Crimeans and that, thus, the actions of Russia, which prevented the Kiev government from intervening in the course of events, cannot be viewed as coercion against the inhabitants of Crimea, V. Tolstykh indicates that “the main circumstance justifying the participation of Russia in the

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<sup>40</sup> *Accordance with international law of the unilateral declaration of independence in respect of Kosovo (Request for Advisory Opinion). Written Statement of the Russian Federation* [interactive]. 2009-04-16, § 80 [accessed 2016-10-10]. <<http://www.icj-cij.org/docket/files/141/15628.pdf>>.

<sup>41</sup> Velyaminov, G. M. *Vossoedinenie Kryma s Rossiej: Pravovoj rakurs* [The Reunification of Crimea with Russia: the Legal Perspective] [interactive], 2014-04-24: <<http://www.igpran.ru/articles/3556/>>.

<sup>42</sup> Tomsinov, V. A. *Mezhdunarodnoe pravo s točki zrenija vossoedinenija Kryma s Rossiej* [International law from the Perspective of the Reunification of the Crimea with Russia]. *Zakonodatelstvo*. 2014, vol. 7, p. 19.

process of Crimean self-determination is the breakup of the statehood of Ukraine”.<sup>43</sup> Invoking the ideas of Jean-Jacques Rousseau, this author argues that, due to the coup that took place in Ukraine, the Ukrainian state broke up; as a result, the social contract was broken and the inhabitants of Crimea were transferred to the state of nature. For this reason, “the configuration of international relations changed: instead of Russian-Ukrainian relations, relations between Crimea and new Ukraine, between Crimea and Russia, and between Russia and new Ukraine have emerged. The actions of Russia, which prevented the extension of the jurisdiction of the new Ukraine to the territory of Crimea, were lawful, since they were based on the consent of the population of Crimea. These actions cannot be qualified as support for one of the sides in a civil war, as, from the moment of the breakup, Crimea and the new Ukraine ceased to be parts of one state. In these circumstances, the additional arguments provided by Russia (invitation by the President, right to self-defense, humanitarian intervention) are unnecessary” [“С момента распада изменилась конфигурация международных отношений: вместо российско-украинских отношений возникли отношения Крыма и новой Украины, отношения Крыма и России и, наконец, отношения России и новой Украины. Действия России, препятствующие распространению юрисдикции новой Украины на территорию Крыма, были правомерными, поскольку они опирались на согласие населения Крыма. Данные действия не могут квалифицироваться как поддержка одной из сторон в гражданской войне, поскольку с момента распада Крым и новая Украина перестали быть частями одного государства. В этих условиях использование Россией дополнительных аргументов (согласие президента, право на самооборону, гуманитарная интервенция) не является необходимым“].<sup>44</sup>

Indeed, it is difficult to find more absurd interpretation of international law that has nothing in common with the well-established concept of continuity of states, according to which a state, as the subject of international law, cannot disappear and cannot be released from its obligations due to the change (even of unconstitutional nature) of its government (as well as the state continuity is presumed in case of changes in its territory or population and in case of foreign military occupation).<sup>45</sup> In this regard, one can also recall the fact that in September of 1939 the Soviet Union invaded Poland (joining the Nazi Germany in war

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<sup>43</sup> Tolstykh, V. L., *supra* note 30, § 11.

<sup>44</sup> *Ibid.*

<sup>45</sup> See: Marek, K. *Identity and Continuity of States in Public International Law*. Geneva: Librairie E. Droz, 1954, p. 15-126, 551-587; Crawford, J. *The Creation of States in International Law*. Oxford: Clarendon Press, 1979, p. 403-420.

against Poland) providing the justification that the Polish state had allegedly ceased to exist.<sup>46</sup>

This kind of argumentation, as provided by V. Tolstykh, does not only obviously transcend the “boundaries” of international law. Regretfully it should be noted that it is not a case of an isolated occurrence. Rather absurd or legally irrelevant arguments are similarly set out in the publications of other Russian lawyers. That is seen from the attempts to provide historical arguments and to question the statehood of Ukraine in justifying the annexation of Crimea.

### 2.3. Historical Arguments

As it can be seen from the above mentioned Putin’s “Crimean speech” of 18 March 2014,<sup>47</sup> the important role in claiming the “reunification” of Crimea with Russia is played by the arguments concerning the restoration of “historical justice”; they include the statements on the unconstitutionality of the transfer of Crimea to the Ukrainian SSR in 1954, as well as the statements highlighting the historical belonging of Crimea to Russia. The historical argument was used by Vitaly Churkin, the Russian representative in the UN, in his address of 27 March 2014 to the UN General Assembly: “Historical justice has triumphed. For ages Crimea has been an integral part of our country, we share history, culture and, the main thing, people. And only the voluntarist decision by the USSR leaders in 1954, which transferred Crimea and Sevastopol to the Ukrainian Republic, although within one state, has distorted this natural state of affairs”.<sup>48</sup> One can recall that in the same manner the Third Reich grounded the claim to return of the territories taken from Germany in accordance with the 1919 Versailles Peace Treaty.

It is worth noting how the “historical argument” is presented by the chairman of the International Law Association A. Kapustin. Like V. Putin in his “Crimean speech” of 18 March 2014,<sup>49</sup> A. Kapustin emphasizes that the “reunification” aimed at repairing the

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<sup>46</sup> Marek, K., *supra* note 29, p. 148-149.

<sup>47</sup> *Supra* note 18.

<sup>48</sup> Churkin, V. Speech by Russia’s Permanent Representative to the United Nations Vitaly Churkin at the session of the UN General Assembly [interactive]. New York, 2014-03-27 [accessed 2016-10-10]. <<http://russian-embassy.org/en/?p=1060>>.

<sup>49</sup> *Supra* note 18. Deploring the dissolution of the USSR and the alleged disintegration of the Russian people, V. Putin stated: “То, что казалось невероятным, к сожалению, стало реальностью. СССР распался. События развивались столь стремительно, что мало кто из граждан понимал весь драматизм происходивших тогда событий и их последствий. Многие люди и в России, и на Украине, да и в других республиках надеялись, что возникшее тогда Содружество Независимых Государств станет новой формой общей государственности. Ведь им обещали и общую валюту, и единое

damage done by the dissolution of the Soviet Union in 1991: “[historical justification] cannot be ignored when it comes to reuniting historically united nations. The division of Russia and Crimea was largely artificial and in the process of the disintegration of the USSR a satisfactory legal settlement of territorial issues was, for historical reasons, not implemented. Subsequently, the conclusion of bilateral agreements between the Russian Federation and Ukraine, as well as documents of the Commonwealth of Independent States stated only the *status quo* and did not address the question of the legal status of some of the disputed territories, which means that there are still some unresolved territorial disputes and conflicts on the territory of Commonwealth of Independent States”.<sup>50</sup> In the open letter of the Russian Association of International Law, it is also pointed out that, as a result of “holding the Crimean referendum, the expression of will in favour of the return of the Crimean people to the historical homeland – Russia became the restoration of historical justice, realization of historically developed legal grounds”.<sup>51</sup>

In such a way, as noted by Borgen, the shared history is presented as a factor that as if somehow lessens the sovereign rights of Ukraine over its territory, thus bringing back the times of pre-UN Charter norms.<sup>52</sup> Indeed, the quoted statements are nothing more than complete ignorance and cynical denial of such well-established principles of modern international law as the respect to territorial integrity of states and inviolability of their borders as well as of the principle *uti possidetis juris* applicable in delimitation of borders of the newly emerged states. These statements also represent “truly innovative” approach to the border delimitation treaties making them simply meaningless.

At the same time, the works of some Russian international legal specialists include an even more ambitious application of historical argumentation (that is most probably based and develops Putin’s thoughts about the dissolution of the USSR). Alexander

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экономическое пространство, и общие вооружённые силы, но всё это осталось только обещаниями, а большой страны не стало. И когда Крым вдруг оказался уже в другом государстве, вот тогда уже Россия почувствовала, что её даже не просто обокрали, а ограбили. Вместе с тем надо тоже откровенно признать, что и сама Россия, запустив парад суверенитетов, способствовала развалу Советского Союза, а при оформлении распада СССР забыли и про Крым, и про главную базу Черноморского флота – Севастополь. Миллионы русских легли спать в одной стране, а проснулись за границей, в одночасье оказались национальными меньшинствами в бывших союзных республиках, а русский народ стал одним из самых больших, если не сказать, самым большим разделённым народом в мире. Сегодня, спустя уже много лет, я слышал, как крымчане, совсем недавно, говорят, что тогда, в 1991 году, их передали из рук в руки просто как мешок картошки. Трудно с этим не согласиться. Российское государство, что же оно? Ну что, Россия? Опустила голову и смирилась, проглотила эту обиду. Наша страна находилась тогда в таком тяжёлом состоянии, что просто не могла реально защитить свои интересы. Но люди не могли смириться с вопиющей исторической несправедливостью”.

<sup>50</sup> Kapustin, A., *supra* note 26, p. 113.

<sup>51</sup> Circular Letter to the Executive Council of the International Law Association, *supra* note 25.

<sup>52</sup> Borgen, Ch., *supra* note 20, p. 255.

Salenko argues that the Belavezha Accords<sup>53</sup> concerning the termination of the existence of the USSR violated the will of the people of Russia on the preservation of the USSR in the form of a renewed federation, as was expressed in the Soviet Union referendum of 17 March 1991.<sup>54</sup> Furthermore, the same author states that the USSR president Mikhail Gorbachev and other participants of the Novo-Ogaryovo meetings, who, on 23 April 1991, signed a treaty between the central leadership of the USSR and nine union republics (this treaty had to turn the Soviet Union into a federation of independent states), consciously violated the fundamental constitutional norms of the USSR, since the results of the Soviet Union referendum of 17 March 1991 were obligatory to all union republics, including those six (Lithuania, Latvia, Estonia, Georgia, Armenia, and Moldova) that had boycotted the referendum.<sup>55</sup>

It is obvious that arguments aimed at assessing the legality of the disintegration of the USSR have a potentially much broader area of application than the justification of the annexation of Crimea. In fact, A. Salenko argues that the USSR president Mikhail Gorbachev illegally recognised the independence of “the self-proclaimed Baltic republics” (Lithuania, Latvia, and Estonia), as none of these three republics fulfilled any requirement of the USSR Law “Concerning an order of the solution of the questions with regard to an exit of the union republic from the USSR” of 3 April 1990.<sup>56</sup> One can ironically note that in such a manner A. Salenko is preparing the ideological basis for the attempts to restore all the Soviet empire. Again, it is regrettable, but in his statements one can hardly find any legal arguments, moreover, any basis in international law. What we can find is only the blind servility to the revanchist policy of Russia and its president V. Putin, i.e. the feature so much characteristic to the Soviet legal doctrine.

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<sup>53</sup> Soglasheniya o sozdaniy Sodrzhestva nezavisimyh gosudarstv [the Agreement establishing the Commonwealth of Independent States] (also known as Belovezhskie soglasheniya [the Belavezha Accords]) [interactive]. Minsk, 1991-12-08: <<http://rusarchives.ru/statehood/10-12-soglashenie-sng.shtml>>. The Belavezha Accords is an agreement signed by the RSFSR President Boris Yeltsin, the Ukrainian President Leonid Kravchuk, and the Belarusian Parliament Chairman Stanislav Shushkevich. The agreement declared that “the USSR, as a subject of international law and a geopolitical reality, is ceasing its existence” and established the Commonwealth of Independent States (CIS) in its place.

<sup>54</sup> Salenko, A. Legal Aspects of the Dissolution of the Soviet Union in 1991 and Its Implications for the Reunification of Crimea with Russia in 2014. *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht. Heidelberg Journal of International Law*. 2015, vol. 75 (1), pp. 158-159.

<sup>55</sup> *Ibid.*, p. 156. A. Salenko, drawing on Tretyakov, maintains that “The Soviet Union referendum on 17.3.1991 became an indicator that those union republics striving for independence from ‘Soviet Imperialism’ aimed to create their ‘own microempire and, having received [...] freedom for their own nations, do not want to give even a little of this freedom to other nations living in territories of their states” (in Salenko, p. 149).

<sup>56</sup> *Ibid.*, pp. 156-157.

## 2.4. “Failed Statehood” of Ukraine

As mentioned, together with historical revanchism the ideas aimed at the questioning of the status of Ukraine as a sovereign state play an important role in the argumentation of the Russian lawyers justifying the annexation of Crimea. Again, that is in line with Putin’s “Crimean speech” of 18 March 2014 where one can find allusions about the disintegration of the Ukrainian state and absence of the legitimate government in Ukraine, which is seen as the result of the alleged Western interference to which Russia is compelled to respond.<sup>57</sup>

Therefore, it is not a surprise that the questioning of the Ukrainian statehood by the Russian lawyers is based on the arguments pointing out the unconstitutionality of the alleged coup (the Revolution of Dignity), as well as to the influence allegedly exerted by the Western powers on the new Ukrainian government. According to V. Tomsinov, one of the features determining the specificity of the Crimean secession is that “the reunification of Crimea with Russia took place largely as a result of the perception by the people of Crimea that periodic state coups, [...] the inability of the changing governments to ensure smooth economic development and the essential conditions of normal human life are not accidental: they indicate not temporary ailments of Ukrainian society and of its political and legal consciousness, but its permanent vices precluding the emergence of normal self-reliant Ukrainian statehood. The inability of Ukrainian society to create a fully-fledged state capable of ensuring the essential conditions of normal human life to all its citizens [...] provides one more reason for the secession of Crimea from Ukraine and its reunification with Russia” [*“воссоединение Крыма с Россией произошло во многом вследствие осознания его народом, что периодические государственные перевороты, [...] неумение сменяющих одно другое правительств обеспечить нормальное развитие экономики, элементарные условия для нормальной человеческой жизни не случайны: они представляют собой проявление не временных недугов украинского общества, его политического и правового сознания, а постоянно присущих ему пороков, не позволяющих возникнуть на Украине нормальной самостоятельной государственности. Неспособность украинского общества создать полноценное*

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<sup>57</sup> *Supra* note 18. V. Putin also stated that against the current background the Crimea must be under strong and permanent sovereignty that at this moment can be only Russian: “Крым – это наше общее достояние и важнейший фактор стабильности в регионе. И эта стратегическая территория должна находиться под сильным, устойчивым суверенитетом, который по факту может быть только российским сегодня”.

государство, обеспечивающее необходимые условия для нормальной человеческой жизни всем гражданам, [...] является еще одним основанием для выхода Крыма из состава Украины и воссоединения с Россией”].<sup>58</sup>

The attempts to humiliate the Ukrainian state by denying its sovereignty and using insulting expressions of the Soviet propaganda style are also obvious when the situation in Ukraine after the annexation of Crimea is described. As the holding of the elections in Ukraine in October 2014 removed the possibility of relying on the argument about the unconstitutionality of the government, this line of argumentation has shifted towards views highlighting the alleged subordinate status (lack of sovereignty) of Ukraine. Such a view is presented in rather extreme terms, for example, in the monograph by the same V. Tomsinov:

“The reluctance by the leaderships of the USA and the European Union, as well as by the Ukrainian ruling groups, which are completely dependent on the USA and the EU, to solve the question of the belonging of Crimea by way of negotiations [...] leaves the only actually possible means of solving this controversy, i.e. **the total disintegration of the existing Ukrainian state and its liquidation as an international legal entity** [emphasis added by V. Tomsinov]. Such a possibility of releasing the relationship of Russia with the Western states from the burden of the Crimean problem is completely implementable in practice, mainly as a result of increasing destructive processes within the Ukrainian state. These processes have an objective character and cannot be stopped by means of any external forces.

As a result, Ukraine has definitely become subordinate to the governing Western groups, primarily those of the USA, and, in principle, has lost even that small degree of independence of its state that it had been granted after the dissolution of the Soviet Union. Decisions primarily important and essential to the Ukrainian state are being made not in Ukraine. The Ukrainian authorities, including the President and the Head of the Government, are mere agents of a foreign will, executives of decisions made by the leaderships of the USA and the European Union.

A particular weakness of the current Ukrainian state renders its ruling layer [...] absolutely ineffective in fulfilling its role as the agent of the Western policy [...]. Namely

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<sup>58</sup> Tomsinov, V., *supra* note 24, p. 30.

this circumstance does not allow the West to prevent the ultimate demise of the Ukrainian state”.<sup>59</sup>

[„Нежелание руководителей США и Европейского Союза и находящихся в полной от них зависимости украинских правящих группировок решить вопрос принадлежности Крыма путем переговоров, на основе международного права в современном его состоянии и с учетом выраженной на референдуме воле крымского населения оставляет *единственный реальный вариант разрешения этого противоречия, а именно: полное разрушение существующего ныне украинского государства, его ликвидацию как субъекта международного права.* Такой вариант освобождения отношений России с западными державами от бремени крымской проблемы является вполне осуществимым на практике, причем главным образом вследствие нарастания разрушительных процессов внутри самого украинского государства. Эти процессы *носят объективный характер и не могут быть остановлены при помощи каких-либо внешних сил.*

[...] В результате в настоящее время *Украина оказалась окончательно подчиненной правящим группировкам Запада, прежде всего США, и в сущности утратила даже ту небольшую государственную самостоятельность, которую получила вследствие распада Советского Союза.* Важнейшие, жизненно значимые для Украины государственные решения принимаются теперь не на Украине. Украинские власти, в том числе президент и глава правительства, являются всего лишь *проводниками чужой воли, исполнителями тех решений, которые принимаются руководством США и Европейского Союза.*

Чрезвычайная слабость ныне существующего украинского государства делает его правящий слой в целом и высших должностных лиц в частности совершенно неэффективными в роли проводников политики Запада внутри и во вне Украины. Именно это обстоятельство не позволяет Западу предотвратить окончательное крушение украинской государственности“.]<sup>60</sup>

At this point, it is useful once again to refer to the insights expressed by Ch. Borgen, namely, that sovereignty in the Russian rhetoric “becomes ephemeral” and is shifted from being the core value, protected by international law, to simply a fact that may or may not come into play in particular circumstances. At the same time, sovereignty itself

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<sup>59</sup> Tomsinov, V. A. “*Krymskoe pravo*“ ili *Juridicheskie osnovaniya vossoedinenija Kryma s Rossiej* [“Crimean Law“ or the Legal Basis for the Reunification of Crimean with Russia]. Moskva: Zercalo, 2015, pp. 118-119.

<sup>60</sup> *Ibid.* The same quotation in original Russian language.

becomes redefined in such a way that enhances the scope of Russian sovereignty, while minimizing the sovereignty of post-Soviet states (“Near Abroad”).<sup>61</sup> Meanwhile, all the nations who have chosen independence from the Russian domination are depicted as no more independent and deserving to disappear from the world map. One could hardly add something to this absurd concept that has no roots in law.

## Conclusions

What one can learn from the above-described argumentation of the Russian officials and lawyers justifying the annexation of Crimea? Perhaps the main conclusion would be that this argumentation demonstrates us once more the specificity of the Russian perception of international law which is clearly different from that predominant in the West.<sup>62</sup> This specific meaning of international law as a means of the Russian policy reflects the idea that the Russian state as a strong *derzhava* is entitled to a regional-historical “greater space”; Russia allegedly pursues a unique “Russian idea” and therefore also has the right to watch and guard its neighborhood.<sup>63</sup> Apparently, according to this kind of perception of international law, such states as Ukraine can only exist provided they are subordinate to Russia and Russia is entitled to claim any territory that was a part of the former USSR.

The analysis of how the international legal concepts are manipulated in the construction of the “reunification” narrative also proves us that there are no limits to these manipulations aiming to create an alternative pseudo-legal reality that would serve for the justification of the so-called reunification of Crimea with Russia. All means are considered suitable in order to achieve this purpose: the boundaries between international and national law as well as between law and politics in general are blurred, the apparently absurd arguments with no basis either in law or in state practice or legal doctrine are raised, as well as the humiliating statements towards the whole neighboring nation and statements resembling hate speech are used. As noted by Ch. Borgen, “Russia is building a revisionist conception of international law to serve its foreign policy needs”.<sup>64</sup> Thus, it is regrettable, but one has to come to the conclusion that the current Russian science of international law has become a political instrument, i.e. its degradation reached the stage where it can be

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<sup>61</sup> Borgen, Ch., *supra* note 20, pp. 261-262, 273.

<sup>62</sup> Mälksoo, L. *Russian Approaches to International Law*. Oxford: Oxford University Press, 2015, p. 192.

<sup>63</sup> *Ibid.*

<sup>64</sup> Borgen, Ch., *supra* note 20, p. 279.

hardly perceived as a science at all. It rather continues the sad tradition of the former Soviet legal science – the blind servility towards the ruling regime and its leader.

In concluding, it is also necessary to emphasize that all the elements of the “reunification” narrative perfectly fit within the broader political concept of “the Russian World” (*Russkyj Mir*), designed in order to justify actions in the so-called “Near Abroad” and reflected in the Putin’s “Crimean speech” of 18 March 2014.<sup>65</sup> The “Russian World” is not ethnic, but it encompasses the Soviet legacy and the Russian-speaking world. One of the key elements of this concept is Russia’s entitlement to protect groups belonging to the “Russian World” in countries beyond Russia’s own borders. Such entitlement is extended on the subjects abroad, listed by V. Putin: “compatriots [*sootechestvenniki*], Russian people [*ruskiiie lyudi*], and people of other ethnicities, who feel that they are a part of the broad Russian World”.<sup>66</sup> Given the fact that the protection may involve the entire range of available means, ranging from political and economic to military, this conception serves as an important tool for the Russian geopolitical ambitions. As described by Marlene Laruelle, “the concept of the Russian World offers a particularly powerful repertoire: it is a geopolitical imagination, a fuzzy mental atlas on which different regions of the world and their different links to Russia can be articulated in a fluid way. This blurriness is structural to the concept, and allows it to be reinterpreted within multiple contexts. First, it serves as a justification for what Russia considers to be its right to oversee the evolution of its neighbors, and, when it considers necessary, for an interventionist policy. Secondly, its reasoning is for Russia to reconnect with its pre-Soviet and Soviet past through reconciliation with Russian diasporas abroad. Lastly, it is a critical instrument for Russia to brand itself on the international scene and to advance its own voice in the world”.<sup>67</sup>

It is important to draw attention to the apparent similarity of the essence of this doctrine, including the “reunification” narrative, with the following statements: “1. We demand the union of all Germans in a Great Germany on the basis of the principle of self-determination of all peoples. 2. We demand that the German people have rights equal to those of other nations; and that the Peace Treaties of Versailles and St. Germain shall be

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<sup>65</sup> *Supra* note 18. In this speech V. Putin once more claimed the right of Russia to defend Russians (the compatriots) elsewhere in the world.

<sup>66</sup> Socor, V. Putin Inflates “Russian World” Identity, Claims Protection Rights. *Eurasia Daily Monitor* [interactive]. 2014-07-02, vol. 11, issue 120: <[http://www.jamestown.org/single/?tx\\_ttnews%5Btt\\_news%5D=42579&no\\_cache=1#.Vo5US\\_mLSUk](http://www.jamestown.org/single/?tx_ttnews%5Btt_news%5D=42579&no_cache=1#.Vo5US_mLSUk)>.

<sup>67</sup> Laruelle, M. The “Russian World”. Russia’s Soft Power and Geopolitical Imagination. *Centre of Global Interests*. 2015, p. 1.

abrogated.”<sup>68</sup> Yes, it is true that these statements are the first two points from the Program of the National Socialist German Workers’ Party, the organization that was declared criminal by the Nuremberg Tribunal. Therefore, it is not a surprise that the Russian “reunification” narrative is so close to the Nazi ideology and actually employs the arguments identical to those presented by the Nazi criminals during the Nuremberg proceedings. Thus, one can conclude that there are evident similarities and even identity between the Nazi ideology and argumentation, on the one side, and the “Russian World” concept, including the above-described the “reunification” narrative, on the other side. One can find only minor differences mostly related with the names of nations and countries concerned. That is why one can also observe that we once more failed to learn the lessons of history as the same concepts that had already led to the catastrophe of the World War II seem to be alive (first and foremost, in Russia) and have not met an efficient response.

Therefore, finally, one can put the ironic rhetorical question: who is the winner of the World War II, or has Russia actually won the war against Nazism.

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<sup>68</sup> Program of the National Socialist German Workers’ Party. *The Avalon Project of the Yale Law School, Lillian Goldman Law Library* [interactive]. New Haven, 2008 [accessed on 2016-12-04]. <<http://avalon.law.yale.edu/imt/nsdappro.asp>>.