



## LESSONS OF WORLD WAR II AND THE ANNEXATION OF CRIMEA<sup>1</sup>

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**Abstract.** The article carries out an assessment of the “reunification of Crimea with Russia” from the point of view of contemporary international law and examines the arguments of Russian scholars who aim to justify the acts of Russia in Crimea. The article aims to identify the strategies that are employed in seeking to offer an interpretation of international legal norms that corresponds to the interests of the Russian Federation. The research shows that in the legal discourse a new definition is attached to a “people” as an entity entitled to secession and right to “remedial secession” becomes, in principle, absolute, i.e. the exercise of the right to “remedial secession” is justified not only on the grounds of an actual physical threat, but also on the grounds of vague ideological threats, or temporary political instability. Moreover, the scientific discourse on justifying the „reunification of Crimea with Russia“ relies heavily on historical arguments that suggest restoring “historical justice” and reuniting historically united nations, and aims at diminishing the sovereignty of Ukraine and redefining it in such a way that enhances the scope of Russian sovereignty, while minimizing the sovereignty of post-Soviet states. The research suggests that consequently the current Russian legal discourse has become a political instrument used for constructing concepts and meanings necessary for the realization of Russia’s geopolitical interests as Russian scholars tend to manipulate international legal concepts and combine legal and pseudo-legal reasoning and subsequently an alternative pseudo-legal reality is constructed.

**Keywords:** International law; Annexation of Crimea; Aggression; Use of force under international law; Principles of international law

### Introduction

The annexation of a part of the territory of Ukraine – the Crimean peninsula was unexpected and shocking incident to both the international and academic community. It is generally assessed as a grave breach of the fundamental principles of international law, such as the principle on the non-use of force, the principles of territorial integrity and inviolability of frontiers (Leonaitė & Žalimas, 2016). 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 system of international law, in particular, questioning the credibility of the European security system founded on the 1975 Helsinki Accord.

The annexation of Crimea, as well as the subsequent and ongoing Russian armed invasion to the Donbas region of East Ukraine, provoked discussions not only on the effectiveness of the above-mentioned principles of international law, but also on such issues as the content of the principle of the self-determination of peoples, the

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legal meaning of referendums, the nature and extent of the duty of non-recognition, and the overall role of international law in the conflicts of interests of the major powers.

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 legal scholars are important for identifying how the employed arguments develop the official position of the Russian Federation. Although these publications and statements justifying the so-called “reunification of Crimea with Russia” have already become the object of research (Leonaitė & Žalimas, 2016, p. 28-62), this article provides a good opportunity to take a look at them from a different angle. That is a historical angle related with the lessons of the World War II that was preceded and started by the annexations accomplished in the same manner as that of Crimea.

Thus, the key aim of this article is to assess, against the historical background related to the World War II, the arguments and strategies employed by Russian scholars in the legal discourse in justifying the “the reunification of Crimea with Russia”. Firstly, the article provides the general assessment of the annexation of Crimea under contemporary international law. Further the speeches of Russian officials and the publications of Russian scholars, 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 arguments and strategies used by Russian legal scholars for constructing such evaluation of the annexation that is favourable to the Russian Federation. The analysis carried out in the article serves not only an informative function, but it also discloses the ways in which international law is manipulated by the Russian academia. By employing the methods of analogy and comparative analysis, the arguments presented by the Russian officials and scholars 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 may resemble to the arguments raised by the Nazis in justifying the aggressive policy of the Third Reich. It is the author’s conviction that, once we are able to see identity with the Nazis ideology and argumentation in support of their aggressions, we should be brave 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.

## **1. Assessment of the Actions in Crimea under Contemporary 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>3</sup> There is a general consensus both among states and international lawyers that the actions of the Russian Federation constitute an illegal use of force and should be qualified as an aggression. According to the universally recognised 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

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<sup>3</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 recognising 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 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 judgment declaring that the above-mentioned “treaty” is 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.

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 (General Assembly, 1974, Articles 3(a), (c), (e), (g)).

Since the actions taken by Russia in Crimea provoked 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 (European Parliament, 13-3-2014, § 1, 11; European Parliament, 17-4-2014, § 3; Parliamentary Assembly of the Council of Europe, 9-4-2014, § 14; OSCE Parliamentary Assembly, 2015, § 16, 21).

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 (The European Commission for Democracy through Law (Venice Commission), 21-3-2014)<sup>4</sup> is only a subsidiary argument pointing to the illegality of the annexation.

## **2. Actions in Crimea from the Viewpoint of the Russian Federation**

It should be noted that the scholarly discussion providing a legal assessment of the actions of Russia in Ukraine and examining the ensuing challenges to international law is dominated by the Western authors, whereas the number of publications by Russian legal scholars on these questions is rather limited. It is evident that the arguments provided by the latter scholars mainly develop the official position of the Russian Federation. In particular, the speech of Vladimir Putin of 18 March 2014 serves as an inspiration to these authors 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>5</sup> As Christopher Borgen has noted, “using legalistic rhetoric can muddy the waters, even when the legal argument is doctrinally weak” (Borgen, 2015, p. 277).

In view of the above, it would be worthwhile to concentrate on certain strategies employed by Russian politicians and lawyers who try to justify the so-called “reunification” of Crimea with Russia. These strategies raise serious concerns, as they resemble or, sometimes, are even identical to those used in the period of the

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<sup>4</sup> 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, 15-4-2014, § 6).

<sup>5</sup> For more on this conception see, e.g., Tiefenbrun, 2011.

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.

### **2.1. The Concept of the “People of Crimea” and the Right to Self-determination**

As it is well known, the main narrative, exploited by 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”. At the core of the narrative is the alleged *coup d’état* carried out in Ukraine by right-wing radicals in February of 2014 (often referred by Russian officials as “the neo-Nazi coup”), 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 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” (Tomsinov A., 2014, p. 26). In the open letter to the International Law Association, signed by 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 (Kapustin, 2014). 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.

### **2.2. Claims for “Remedial Secession”**

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 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]” (Kapustin, 2015, p. 111). 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” (Kapustin, 2015, p. 116). 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 (Tolstykh, 2015, p. 135). 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.

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 Valery Zorkin stated in his recently published book that the “actions on behalf of Russia [...] was a necessary and inevitable response to blatantly illegal actions of the Kiev 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” (Zorkin, 2015, p. 264). 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 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” (Tolstykh, 2014, § 8). According to this author, 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 (Tolstykh, 2014, § 9). 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 the narrow sense as defined by the Convention on Genocide [...], but in the broad sense as defined by Lemkin” (Tolstykh, 2014, § 9).<sup>6</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).

Consideration should be also given to 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 million Germans in Czechoslovakia cease and that the inalienable right to self-determination take its place” (Hitler, 1938).

### **2.3. The Role of the Referendum**

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<sup>6</sup> 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, 2005, p. 79).

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.

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” (Tomsinov, *Pravo* 2014 (11), p. 28). Thus, this author 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 historical rights for Crimea” (Kapustin, 2014). Probably this statement also 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).

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” (International Military Tribunal (Nuremberg), 1 October 1946, p. 31 (427)). 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 (Žalimas, 2015, p. 351-353).

#### **2.4. The Role of the Russian Armed Forces**

Another aspect that is important for unfolding the narrative constructed by the Russian authors on “the reunification of Crimea with Russia” is 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 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” (Written Statement of the Russian Federation, 2009, § 80). 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 realise 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” (Velyaminov, 2014). 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” (Tomsinov, *Zakonodatelstvo*, 2014 (7), p. 19). 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 process of Crimean self-determination is the breakup of the statehood of Ukraine” (Tolstykh, 2015, § 11). 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” (Tolstykh, 2015, § 11). 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) (Marek, 1954, p. 15-126, 551-587; Crawford, 1979, p. 403-420). 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 against Poland) providing the justification that the Polish state had allegedly ceased to exist (Marek, 1954, p. 148-149).

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 scholars of international law.

## **2.5. Historic Arguments to Justify the Russian Actions in Crimea**

The above-described argumentation by the Russian authors (on the role of the referendum and the Russian armed forces), for the most part reflecting the related statements of politicians, is apparently intended to reinforce the narrative on self-determination. The same purpose is pursued by raising the next group of more sophisticated arguments, namely, those of historical nature about the alleged historical rights of Russia to the territory of Crimea.

Here the key role 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. Namely, the historical argument was dominant in the “Crimean speech” by Putin of 18 March 2014; it was also used by Vitaly Churkin, Russian Ambassador to 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” (Churkin, 2014). 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 “historic argument” is presented by the chairman of the International Law Association A. Kapustin: “[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” (Kapustin, 2015, p. 113). 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” (Kapustin, 2014).

In such a way, as noted by Borgen, 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 (Borgen, 2015, p. 255). 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. Alexander Salenko argues that the Belavezha Accords (Soglasheniya o sozdanii Sodruzhestva nezavisimyh gosudarstv [the Agreement establishing the Commonwealth of Independent States], 8 December 1991)<sup>7</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 (Salenko, 2015, p. 158-159). 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 (Salenko, 2015, 156).

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 (Salenko, 2015, p. 156-157). 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.

## **2.6. Putting the Sovereignty of Ukraine in Question**

Besides 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 authors justifying the annexation of Crimea. The

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<sup>7</sup> 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.



questioning of the Ukrainian statehood is based on the arguments pointing to 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” (Tomsinov, *Pravo* 2014 (11), p. 30).

The attempts to humiliate the Ukrainian state by denying its sovereignty 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 of Ukraine. Such a view is presented in rather extreme terms, for example, in the monograph by 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 this circumstance does not allow the West to prevent the ultimate demise of the Ukrainian state” (Tomsinov, 2015, p. 118-119).

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 becomes redefined in such a way that enhances the scope of Russian sovereignty, while minimizing the sovereignty of post-Soviet states (“Near Abroad”) (Borgen, 2015, p. 261-262, 273). 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 authors 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 different from that predominant in the West (Mälksoo, 2015, p. 192). 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 (Mälksoo, 2015, p. 192). 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 may be blurred, the apparently absurd arguments as well as the humiliating statements towards the whole neighboring nation and statements resembling hate speech may be used. As noted by Ch. Borgen, “Russia is building a revisionist conception of international law to serve its foreign policy needs” (Borgen, 2015, p. 279). 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. it can be hardly perceived as a science at all. It rather continues the sad tradition of the former Soviet legal science – the servility towards the ruling regime.

In concluding, it is also necessary to emphasise 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”. 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” (Socor, 2014). 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” (Laruelle, 2015, p. 1).

It is important to draw attention to the apparent similarity of the essence of this doctrine, including the “reunification” narrative constructed by Russian lawyers, 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 abrogated.” (Programme of the National Socialist German Workers’ Party, 2008) Yes, it is true, that these statements are the first two points from the Program of the National Socialist German Workers’ Party, the organisation 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.

Finally, it is the conviction of the author of this article that the lessons from the World War II have not been learned adequately if such concepts as that of “the Russian World”, including the analysed “reunification” narrative, are still alive. They cannot be learned so long as we avoid naming the things in their true names. Let

me finish this article with the ironic rhetorical question: has Russia actually won the war against Nazism or has it finally lost it.

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