ARTICLES

"CRIMEA ACTS" OF 1954: INTERNATIONAL LEGAL PRINCIPLES

VLADIMIR LAFITSKY,
Kutafin Moscow State Law University (MSAL)

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Crimea was transferred to Ukraine by Russia in February 1954 in violation of not only of the constitutions of the USSR, Russia (RSFSR), and Ukraine (Ukrainian SSR) in force at that time, but also of the principles of international law. This thesis is substantiated by a detailed analysis of the legal acts that formalized the transfer of Crimea to Ukraine; by research into the historical context of their adoption; by an assessment of whether these acts conform to international legal standards; and by the testimony of the author of the present article, who consulted on draft Union Treaty in 1990–1991, in drafting laws of the Republic Crimea in 1994–1995, and in presenting the legal position of the Russian Federation on Crimea in the Venice Commission of the Council of Europe in March 2014. The author expands upon the legal position of Russia on Crimea and addresses existing conflicts in legislation of the Russian Federation as the legal continuer of the USSR and the RSFSR; applies the international legal means for protecting the interests and the will of the people of Crimea and to prevent further escalation of the confrontation between Russia and Ukraine.

Keywords: Crimea; Russian Federation; Ukraine; international legal principles; illegal acts; null and void; legal remedies; means of legal protection; international organizations; United Nations Charter; Venice Commission; draft law.

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Introduction

In the beginning was the Word ...[1]

The Kuchuk-Kainardji Peace Treaty of 10 July 1774 and the 1791 Jassy Peace Treaty between the Russian and the Ottoman empires provided that Crimea shall be an integral part of Russia as its "complete, eternal and unquestionable possession" (Art. 19). The sovereignty of the Russian Empire over Crimea was confirmed by other international legal documents and not challenged after the Crimean War of 1853–1856. According to the 1856 Treaty of Paris, Russia was restricted only in maintaining its naval forces in the Black Sea.

After fifteen years, this restriction was revoked, and Russia fully restored and significantly enlarged its sovereign rights over Crimea and Black Sea territorial waters. This was the result of the efforts by the Minister of Foreign Affairs of Russia, His Serene Highness Prince A.M. Gorchakov, who, according to the testimony of the diplomat and poet F.I. Tyutchev, "could argue down the whole of Europe."[2] It would be appropriate to note that "to argue down" meant not the threat or use of force or endless empty talks, but coherent legal acts: the skillful composition of the diplomatic notes, general or separate negotiations and agreements with the members of the former anti-Russian coalition.

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[1] Bible. Gospel of John. Chapter 1. Verse 1.

[2] Стихотворение «Велели вы – хоть, может быть, и в шутку…» [Verse "You have so commanded, albeit perhaps as a joke"].

In the new millennium, Russia must defend Crimea with the same persistence and art. But, unfortunately, Russian diplomats, unlike Gorchakov, cannot "argue down" anybody or do not consider it necessary, which the author of the present article may confirm as a participant of a number of Crimean events.

1. Crimean Events of 1994–2014 in the Author's Perception

You will recognize them by their fruits …[3]

In 1994–1995 at the request of the first President of the Republic Crimea, Yu.A. Meshkov, I participated together with O.G. Rumyantsev (head of the working group) and V.N. Dodonov in consulting on and drafting documents on the constitutional reform of the Republic Crimea. These materials can be found on the official website of O.G. Rumyantsev[4] and in my book "The Great Constitutions" (published by Biblio-Globus Publishing House in 2017).[5]

At that time our work was not supported in Russia. The President of Crimea, Yu.A. Meshkov told us with alarm that the Administration of the President of Russia and the Ministry of Foreign Affairs had refused to provide any support and that it was possible to rely only on the assistance of the Office of the Mayor of Moscow and the Black Sea Fleet Command. I can add that at the end of 1994 the Administration of the President of Russia considered our work on the constitutional and legal reforms of the Republic Crimea to be "provocative."

The situation dramatically changed in 2014 after a coup d'état in Ukraine and a referendum on the issue of returning Crimea to Russia. However, the efforts of the Ministry of Foreign Affairs of the Russian Federation and other federal organs were far from a fully-fledged campaign.

In May 2013 I was appointed by the President of Russia as a substitute member of the European Commission for Democracy through Law (Venice Commission of the Council of Europe), which gave me an opportunity to present in March 2014 to the rapporteurs, the subcommission, and to the plenary session of the Venice Commission, the legal position of Russia on Crimea (for the text of my comments, *see* Appendix No. 1). This was noted with approval in materials published by Rossiiskaia Gazeta on 18 April 2014.[6]

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[3] Bible. Gospel of Matthew. Chapter 7. Verse 20.

[4] Концепция государственно-правового развития Республики Крым. 1994 [The Concept of State and Law Development of the Republic of Crimea (1994)] (Jun. 2, 2020), available at https://rumiantsev.ru/a486.

[5] *Лафитский В.И.* Великие конституции (Истоки, факторы развития и роль в современном мире) [Vladimir I. Lafitsky, *Great Constitutions (Sources, Factors of Development and Role in the Modern World)*] (Moscow: Biblio-Globus, 2017).

[6] Трудности перевода: Как Европейская комиссия принимала решение по крымскому референдуму (интервью Т.Я. Хабриевой) // Российская газета. 18 апреля 2014 г. № 6360(88) [Difficulties of Translation: How Did the European Commission Decide on the Crimean Referendum (Interview by T.Ya. Khabrieva), Rossiiskaia Gazeta, 18 April 2014, No. 6360(88)] (Jun. 2, 2020), available at https://rg.ru/2014/04/18/habrieva.html.

However, it would be appropriate to note, that the legal position of Ukraine on Crimea was presented at the plenary session of the Venice Commission by the Minister of Justice of Ukraine, P. Petrenko.[7] Representatives of Russian State organs did not participate in the debates. They were not present at the main part of the subsequent meetings of the Venice Commission at which issues of Crimea and the Russian-speaking population in Ukraine were considered.[8] This contrasted sharply with the active participation of high-ranking officials of Ukraine, in particular the Chairman of the Verkhovna Rada (and later the head of the Cabinet of Ministers), V. Groysman; the deputy Chairman of the Verkhovna Rada, O. Syroed; Deputy Head of the Presidential Administration, A. Filatov; the heads of the ministries of Foreign Affairs, Justice, and others.

Such activity by representatives of Ukraine was widespread. In 2014, I traveled frequently and saw with what tireless passion they worked, moving from country to country, persistently "knocking on doors" of State organs, and broadcasting via foreign mass media their own interpretations of the Crimean events.

Official representatives of Russia, with the rare exceptions, were not heard. The Russian embassy in the United States was silent when in February 2014 American politicians, including the deputy chairman of the United States Senate Foreign Relations Committee, were calling on Ukrainians to undertake a coup d'état in Ukraine and to give their lives for freedom, and not just talk about it. Many other Russian diplomatic missions, in particular in France, Italy, Austria, Germany, and Brazil, were in the same "frozen" state of mind.

But this silence was the lesser evil than the speeches of some Russian diplomats who were giving interviews in July 2014 to the mass media in the European Union about the "revolution of dignity" in Ukraine, failing to remind the audience about the unconstitutional coup d'état.

A significant portion of Russian officials were confused and were not able to assess the events reasonably. This may be confirmed by the adoption of the Federal Law of 22 July 2014 on the creation of a gambling zone in Crimea. Speaking on 24 July 2014 at the section of the Security Council of the Russian Federation on Crimean events, I pointed out the need to abandon this idea because it defamed Russia. My comments provoked an angry rebuke from a high-ranking official, who said that the decision had been made and was not subject to revision ... Fortunately, common sense prevailed. The implementation of the idea to create a gambling zone in Crimea was suspended.[9]

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[7] 98th Plenary Session (Venice, 21–22 March 2014), CDL-PL-PV(2014)001syn (Jun. 2, 2020), available at https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-PL-PV(2014)001syn-f.

[8] At the plenary sessions of the Venice Commission in 2014–2015, where the issues of Crimea, Ukraine and the Russian Federation were considered, the position of the Russian Federation was in some cases represented by the member of the State Duma D.F. Vyatkin.

[9] Unfortunately, this idea was revived and, as according to the mass media, the gambling zone in Crimea will appear in 2022. On this issue *see* Игорная зона в Крыму появится к 2022 году // ТАСС. 23 октября 2019 г. [Gambling Zone in Crimea Will Appear by 2022, TASS, 23 October 2019] (Jun. 2, 2020), available at https://tass.ru/ekonomika/7033346.

But the number of strange decisions did not decrease. An example was the erection of a monument to "Polite People" in the center of Simferopol on 11 June 2016, which confirms that the referendum on the reunification of Crimea with Russia was held during military confrontation with Ukraine, thus making it more difficult to solve the task of substantiating and justifying the legitimacy of the referendum.

Such oversights can be attributed to emotional euphoria or to the pathological inability of Russian politicians to assess the consequences of proposed actions. But such explanations are unconvincing in the light of other events associated with Crimea and bringing Russia closer to a suicidal war.

A considerable share of the blame ought to be shared by Russian politicians dreaming, contrary to the Russian Constitution, of a "military-police state"; who publicly call, in violation of the Criminal Code of the Russian Federation, to unleash a war and, at the same time, do not forget to increase their assets abroad; who reject, without reasonable grounds, proposals that can divert or at least postpone the threat of isolation and destruction (disintegration) of the State.

The foregoing is confirmed by facts that have become an everyday media reality. We address only one question: the fate of the draft Federal Law "On the Recognition of Normative Legal Acts of the USSR and the RSFSR on the Transfer of Crimea from the RSFSR to the Ukrainian SSR as Not Generating Legal Consequences from the Moment of their Adoption and Not Having Legal Force Due to the Failure of these Acts to Conform to Fundamental Principles of International Law and the Rule of Law State."

This draft law, prepared by the author of the present article (the text is reproduced in English in the Appendix No. 2),[10] was rejected by a number of federal departments, claiming that it "would question all previously adopted interrelated constitutional provisions that shaped the State structure of the USSR and the RSFSR and their subject composition" and that it would entail "negative consequences for our country."

It is unclear what "our country" they were talking about, taking into account that the Russian Federation as the legal continuer of the USSR and the RSFSR has to recognize the unrepealed "Crimea Acts" of 1954 and that the preservation of the legal force of these acts creates not speculative, but absolutely real negative consequences, threatening not only the loss of Crimea, but the destruction of Russia as a whole. This was the subject of my article sent to the newspaper "Rossiiskaia Gazeta" in April 2018, but it "disappeared" in the labyrinth of consultations and approvals.

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[10] The draft law was prepared by the author of the present article on the assignment of the Foundation for Constitutional Reforms. The text of the draft law in Russian is published in: *Лафитский В.И.* О правовом наследии России и его возрождении в борьбе за право [Vladimir I. Lafitsky, *On Legal Heritage of Russia and its Renaissance in the Struggle for Law*] 75–80 (Moscow: Iustitsinform, 2018).

2. On the Need to Strengthen the Legal Position of Russia on Crimea

And the rain came, and the rivers overflowed, and the winds blew, and rushed on that house, and it did not fall, because it was founded on a stone ...[11]

The legal position of the Russian Federation on Crimea should be built on "stone," not on a sandy foundation, in order to exclude "its great fall." This task urgently requires strengthening the legal position of Russia on Crimea. But the five-year efforts of the Administration of the President and the Ministry of Foreign Affairs have made them weaker.

On 21 March 2014, Russia's legal position on Crimea, as presented at the plenary session of the Venice Commission of the Council of Europe, was based on the arguments that:[12]

– Throughout most of Soviet history Crimea was an integral part of Russia and was transferred to Ukraine in violation of the requirements of the constitutions and legislation of the USSR and the RSFSR in force at that time;

– The referendum held in Crimea on 20 January 1991 reflected the desire of the population of Crimea to join the Soviet Union, of which the Russian Federation is the legal continuer;

– The Constitution of the Republic Crimea of 6 May 1992 vested the government of Crimea with full authority, with the exception of the powers voluntarily delegated to Ukraine;

– The Supreme Soviet of the Russian Federation enacted the Decree of 21 May 1992, No. 2809-1, which proclaimed that it did not recognize the legitimacy of the normative legal acts of the Union of Soviet Socialist Republics (USSR) and the Russian Soviet Federative Socialist Republic (RSFSR) on the transfer of Crimea to Ukraine, and that this Decree retains the legal force for the Russian Federation;

– The development of the statehood of the Republic of Crimea as an autonomous entity of Ukraine was forcibly interrupted on 17 March 1995 with the adoption of the Law of Ukraine "On the Repeal of the Constitution and Certain Laws of the Autonomous Republic of Crimea" and the removal of Yu.A. Meshkov from the office of the President of Crimea;

– The unconstitutional coup d'état in Ukraine in February 2014 created a threat to the right of the people of Crimea to preserve their statehood and their native language;

– The reunification of the Republic of Crimea and the federal city of Sevastopol with Russia was the result of the will of the absolute majority of voters who took

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[11] Bible. Gospel of Matthew. Chapter 7. Verse 25.

[12] For the comments by the author presented in the Venice Commission, *see* Appendix No. 1.

part in the referendum on 16 March 2014, and that this decision was confirmed by the Constitution of the Russian Federation, which established the legal status of the Republic of Crimea and the federal city of Sevastopol as subjects of the Russian Federation;

– The secession of Crimea from Ukraine and reunification with Russia are not contrary to international law and should be compared with the secession of Texas from Mexico in 1836 and its subsequent joinder to the United States in 1845.

These arguments were advanced in diplomatic documents during 2014. But later the Administration of the President and the Ministry of Foreign Affairs of the Russian Federation abandoned many of them, relying on only one: the "unshakable" argument about the legitimacy of the referendum in Crimea. But the world community has not recognized the referendum, and it is unlikely that the situation will change. Under such circumstances, there are two options: to continue to insist on the inviolability of the principle by saying: "Let everyone die, but the idea of the referendum shall prevail," or to demonstrate common sense and not rejecting the outcome of the referendum, to reinforce the legal position on Crimea, and to defend Russia in international organizations and courts on a more solid ground.

The main task of the struggle of Russia for Crimea is to contest the legality of the 1954 "Crimea Acts" on the basis that they initially had no legal force and could not generate legal consequences because of violations of international law.

The 1954 "Crimea Acts" violated Article 1(2) of the Charter of the United Nations pertaining to the principle of equal rights and self-determination of peoples

This is demonstrated by the algorithm for the adoption of the "Crimea Acts." They were initiated on 25 January 1954 by decision of the Presidium of the Central Committee of the Communist Party of the Soviet Union (CPSU) "On Confirmation of the Draft Edict of the Presidium of the Supreme Soviet of the USSR on the Transfer of the Crimean Region from the RSFSR to the Ukrainian SSR." This document was born in the central apparatus of the Communist Party and ignored the will of the population of Crimea and the state bodies of the RSFSR.

At that time, only the will of the Communist Party (CPSU) mattered, as "the leading core of all organizations of the working people, both social and state" (Art. 126 of the 1936 USSR Constitution). Under the totalitarian system of government, the decisions of the governing bodies of the Communist Party were not subject to discussion. The state bodies of the RSFSR and the USSR could only "approve" them, even without their being adopted in accordance with the procedures and requirements as established by law.

On 5 February 1954, the Council of Ministers of the RSFSR adopted a Decree "On the Transfer of the Crimean Region from the RSFSR to the Ukrainian SSR." On the same day, this decision was confirmed by the Presidium of the Supreme Soviet of the RSFSR. On 19 February 1954, these enactments were confirmed by an all-union body – the Presidium of the Supreme Soviet of the USSR. The process was completed

by the Law of the USSR "On the Transfer of the Crimean Region from the RSFSR to the Ukrainian SSR," adopted by the Supreme Soviet of the USSR on 26 April 1954 in one day, without discussion and secret ballot – just by raising hands so that it was possible to see how the deputies were voting.

This procedure for the adoption of the 1954 "Crimea Acts" violated constitutional norms of the USSR and the RSFSR. According to the 1936 USSR Constitution, the transfer of any territory could be initiated only at the proposal of a union republic. There was no such initiative on part of the RSFSR. Instead, there were the decisions of the supreme political and State organs of the USSR. This is demonstrated by the adoption of the first "Crimea act" by the Presidium of the Central Committee of the CPSU. Its title was also illustrative – "On Confirmation of the Draft Edict of the Presidium of the Supreme Soviet of the USSR on the Transfer of the Crimean Region from the RSFSR to the Ukrainian SSR."

It should be noted that according to the 1936 Constitution of the USSR, the all-union State organs had only the power to confirm changes in borders between the union republics and did not have the power to transfer territories from one union republic to another (Art. 14(d)). Moreover, Article 15 of the Constitution of the USSR was violated, which did not allow the all-union State organs to usurp powers not enumerated in Article 14 of the Constitution as vested in all-union organs. It was also prohibited to adopt acts restricting the sovereignty of the union republics or creating obstacles preventing the union republics to exercise independently the state powers granted to them.

The requirement of the Constitution of the USSR to obtain the consent of the union republic (in this case, the RSFSR) to the transfer of its territory was not observed (Art. 18). Such transfer could be carried out only through the adoption of a separate legal act of the RSFSR or the conclusion of an agreement between the RSFSR and the Ukrainian SSR. There was no such act or agreement.

The Edict of the Presidium of the Supreme Soviet of the USSR of 19 February 1954 "On the Transfer of the Crimean Region from the RSFSR to the Ukrainian SSR" contained a false statement: that it confirmed "a joint submission of the Presidium of the Supreme Soviet of the RSFSR and the Presidium of the Supreme Soviet of the Ukrainian SSR to transfer Crimean region from the Russian Soviet Federative Socialist Republic to the Ukrainian Soviet Socialist Republic." The lack of such joint submission by the two union republics (RSFSR and Ukrainian SSR) casts doubt on the legal force not only of this Edict of the Presidium of the Supreme Soviet of the USSR, but also of all subsequent acts of all-union legislation, including the USSR Law of 26 April 1954 "On the Transfer of the Crimean Region from the RSFSR to the Ukrainian SSR" and the USSR Law of 26 April 1954 "On the Confirmation of Edicts of the Presidium of the Supreme Soviet of the USSR."

The "Crimea Acts" of 1954 were utilized as an instrument of struggle for political power in violation of Article 1(a) of the United Nations Charter on the observance of the principles of justice and international law

When evaluating the "Crimea Acts," it is necessary to take into account their political context. First, they emerged as an instrument for opposing (preventing) the reunification of the Crimean region and the adjacent shores of the Northern Black Sea region. For a long time, they had belonged to the pre-revolutionary Tauride Governate, later the Soviet Republic of Tauride, and were transferred to the Ukrainian SSR only in 1920.[13]

The plans for expanding the territorial boundaries of the Crimean region were discussed during the early postwar years with a view to restoring its socio-economic and demographic potential, severely damaged in the Second World War. This gave the Russian historian, V. Kruglov, grounds for asserting that the transfer of Crimea to Ukraine should be perceived "not as an ordinary decision of an economic scale, but as a mean for averting the danger of losing territories received from the RSFSR by the Ukrainian SSR"; this added a "political hue" to the aforesaid events.[14]

This assessment is confirmed by other facts. The adoption of the 1954 "Crimea Acts" was timed to coincide with the 300th anniversary of the Pereyaslavs'ka Rada, which proclaimed the eternal unity of the Zaporozhian Cossack Host (Army) with the Russian Realm. And, undoubtedly, N.S. Khrushchev utilized the transfer of Crimea as a "bargaining chip" and an instrument for raising support of party officials of Ukraine in his struggle for political power over the Central Committee of the CPSU and the Soviet Union in the whole.

A convincing illustration was provided by the testimony of a prominent party official, D.T. Shepilov, who in 1953 held the positions of a chairman of the standing committee of the CPSU Central Committee on ideological issues and editor-in-chief of the major newspaper of the CPSU, "Pravda." He accused Khrushchev of committing political bribery by asserting that the transfer of Crimea to Ukraine was aimed to demonstrate his generosity to the whole of Ukraine, so that "the Ukrainian people regard him as their ... patron."[15]

Such actions were in violation of the principles of justice provided for in Article 1 of the U.N. Charter. The 1954 Crimea Acts also infringed the provisions of the USSR Constitution and the U.N. Charter which required that the principle of self-determination of peoples be observed. No referendums (or voting) were held in the RSFSR and Crimea on transfer of Crimea to Ukraine; local representative organs

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[13] *See Панов В., Чичкин А.* Как Крым Украине отдали: О «белых пятнах» в истории передачи полуострова из РСФСР в УССР // Столетие.RU. 24 января 2014 г. [Valery Panov & Alexey Chichkin, *How Crimea Was Given to Ukraine: On the "White Spots" in the History of the Transfer of the Peninsula from the RSFSR to the Ukrainian SSR*, Stoletie.RU, 24 January 2014] (Jun. 2, 2020), available at http://www.stoletie.ru/territoriya_istorii/kak_krym_ukraine_otdali_982.htm.

[14] *See Круглов В.* Передача Крымской области Украине (1954 г.): истоки, ход, дискуссионные сюжеты, последствия // Крым: память, право, воля. 1954–2014. 2014–2019 [Vladimir Kruglov, *Transfer of the Crimean Region to Ukraine (1954): Origins, Procedure, Discussion Topics, Consequences* in *Crimea: Memory. Law. Will. 1954–2014. 2014–2019*] 89, 96 (Moscow: Astreia-tsentr, 2019).

[15] *Шепилов Д.Т.* Непримкнувший. Воспоминания [Dmitry T. Shepilov, *Not Adjoined. Memories*] 303, 308 (Moscow: Vagrius, 2001).

of Crimea were not involved in the discussion of this issue, despite the principles of international law, as specified in Article 1(1) of the U.N. Charter.

The 1954 "Crimea Acts" violated Article 2(4) of the Charter of the United Nations on the principle of inadmissibility of the use of force or the threat of the use of force against the territorial integrity of states

Although the 1954 "Crimea Acts" violated the principles of international law and the constitutions of the USSR and the RSFSR, they did not provoke protests or even discussions, which may be explained by only one fact. The acts of the secession of Crimea from Russia were adopted under a totalitarian political regime which doomed to repression everyone who dared to express objections or doubts.

On 16 January 1954, the first secretary of the Crimean regional committee of the CPSU, P.I. Titov, who had been summoned to Moscow to take part in discussing the plan, concerning the transfer of Crimea to Ukraine, was promptly removed from his post at the moment he started to express his doubts. In his place, another Party functionary was appointed who was willing to obey any orders or instructions.

To understand the situation of that time, it is necessary to take into account the following. One year before the adoption of the "Crimea Acts," about 2.62 million people were detained in prisons (one of every 70 citizens of the USSR, including newly-born children). According to the official data, starting from 1921 to 1 February 1954 approximately 3,777 million citizens of the USSR were convicted for counter-revolutionary activities, of whom 2,369 million were imprisoned, 765 thousand were exiled, 642,9 thousand were executed.[16] Hundreds of thousands (possibly millions) of citizens of the Soviet Union were murdered without charge or trial. Proposals or demands to leave Crimea as a part of Russia were perceived under the 1926 Criminal Code of the RSFSR as "propaganda or agitation containing calls for the overthrow, undermining or weakening of Soviet power..." (Art. 58.10(1)).

Moreover, such acts committed "with the use of ... national prejudices of the masses" (Art. 58.10(2)) were punishable by "the highest measure of social defense," as established by Article 58.2:

> Death by shooting or declaration as an enemy of workers with confiscation of property and deprivation of the citizenship of the union republic and, thereby, of the citizenship of the USSR and expulsion from the USSR forever, provided that it is permitted under the extenuating circumstances to assign a penalty of imprisonment for a term of at least three years, with confiscation of all or part of the property.[17]

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[16] *See Земсков В.Н.* ГУЛАГ (историко-социологический аспект) // Социологические исследования. 1991. № 6. С. 10–27; 1991. № 7. С. 3–16 [Victor N. Zemskov, *GULAG (Historical and Sociological Aspect)*, 6; 7 Sociological Research 10; 3 (1991)].

[17] As amended on 6 June 1927. *See* Электронный фонд правовой и нормативно-технической документации «Кодекс» [Electronic fund of legal and normative-technical documentation "Codex"] (Jun. 2, 2020), available at http://docs.cntd.ru/document/901757374.

Violence and fear – these are the factors that explain the swift and silent implementation by the state authorities of the USSR and the RSFSR of the decision of the Presidium of the Central Committee of the CPSU to separate Crimea from Russia.

Another circumstance is directly related to this issue. In the USSR of that time, any mention of national interests came into conflict with State ideology, consistently imposed since the mid-1920s. This is well illustrated by the following statement by I.V. Stalin concerning the territorial claims of the Ukrainian SSR:

> From the point of view of the development of the main issues of our policy and our work, of course, it does not have any serious significance; when we speak about such States as Ukraine and RSFSR ... it is just a question of pure practice.[18]

This ideological position was more fully substantiated five years after the sepa-ration of Crimea from Russia in the 1961 Third Program of the CPSU (Sec. IV of Part Two):

> People of many nationalities live and work together in the Soviet republics. The borders between the union republics within the USSR are increasingly losing their former significance, since all nations are equal, their life is built on a single socialist basis and the material and spiritual needs of each people are equally satisfied, they are all united by common vital interests into one family and together are moving towards a common goal – communism ...[19]

Protests pertaining to Crimea's separation from Russia manifested themselves in various forms only at the end of "Khrushchev's thaw." One example was the following letter written by several citizens of the USSR in August 1964 to the Chairman of the USSR Constitutional Commission, N.S. Khrushchev:

> How can Russia, having the best, greatest values, constituting its adornment – Crimea, which in its territory exceeds Belgium or Switzerland, give away this entire state ... How could they have given away this Russian jewel, this Russian heritage, without informing the Russian people? A Russian citizen could not give Crimea away. This is an anti-state act pursuing a dangerous goal.[20]

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[18] РГАСПИ, ф. 558 (Фонд И. Сталина), оп. 1, д. 4490, л. 19–20 [Russian State Archive of Social and Political History. Archival Fund of I. Stalin]. For more information *see* Kruglov 2019, at 106–107.

[19] Программа Коммунистической партии Советского Союза // Сайт комсомольцев и коммунистов МГУ им. М.В. Ломоносова [Program of the Communist Party of the Soviet Union, Site of Komsomol and Communists of Lomonosov Moscow State University] (Jun. 2, 2020), available at http://leftinmsu.narod.ru/polit_files/books/III_program_KPSS_files/III_program_KPSS.htm.

[20] The authors of the letter were N. Fillipova, E. Bakunina, I. Khaipova. *Quoted by Мякшев А.П.* Власть и национальный вопрос: Межнациональные отношения и Совет Национальностей Верховного Совета СССР (1945–1991) [Anatoly P. Myakshev, *State Power and the National Question: Interethnic Relations and the Soviet of Nationalities of the Supreme Soviet of the USSR (1945–1991)*] 160–161 (Saratov: Saratov University Publishing House, 2004).

It should be noted that according to the 1936 Constitution of the USSR, all union republics, including the RSFSR, had legal personality under international law. They exercised sovereign rights within the powers assigned to them (Art. 15). The Union republics were guaranteed the right to freely secede from the USSR (Art. 17). It was prohibited to change the territories of the union republics without their consent (Art. 18). They were vested with the rights to enter into relations with foreign states, to conclude agreements with them, and to exchange diplomatic and consular representatives (Art. 18a).

Therefore, the 1954 "Crimea Acts" should be assessed from the standpoint of both constitutional and of international law.

For an international legal assessment of the 1954 "Crimea Acts" the following circumstances have importance:

– The decision to separate Crimea from Russia was made by state bodies of the USSR (Soviet Union) in favor of the Ukrainian SSR (Ukraine), which at that time, along with the USSR, was a member of the United Nations.

– The Soviet Union and the Ukrainian SSR as members of the United Nations were obliged to refrain from threatening or using force with the aim to infringe the territorial inviolability of other states, including those that were not, like the Russian SFSR, the members of the United Nations (Art. 2(4) of the U.N. Charter).

When explaining the principle of the inadmissibility of the use or threat of force for the purpose of changing the territorial boundaries of other states, the United Nations International Law Commission formulated in 1966 the following guiding provisions:

> There is general agreement that acts of coercion or threats applied to individuals with respect to their own persons or in their personal capacity in order to procure the signature, ratification, acceptance or approval of a treaty will unquestionably invalidate the consent so procured. History provides a number of instances of the employment of coercion against not only negotiators but also members of legislatures in order to procure the signature or ratification of a treaty …
>
> The use of coercion against the representative of a State for the purpose of procuring the conclusion of a treaty would be a matter of such gravity that the article should provide for the absolute nullity of a consent to a treaty so obtained …
>
> The invalidity of a treaty procured by the illegal threat or use of force is a principle which is lex lata … applicable at any rate to all treaties concluded since the entry into force of the Charter …[21]

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[21] Report of the International Law Commission on the Work of its Eighteen Session, 4 May – 19 July 1966, Official Records of to the General Assembly, Twenty-First Session, Supplement No. 9 (A/6309/Rev.1), at 246–247 (Jun. 2, 2020), available at http://legal.un.org/ilc/documentation/english/reports/a_cn4_191.pdf.

It would be appropriate to note in this regard, that the transfer of Crimea to Ukraine was implemented by the totalitarian Communist regime of the Soviet Union after the entry into force of the Charter of the United Nations in 1945. The principle of the invalidity of a treaty procured by the illegal threat or use of force as defined by the International Law Commission was reiterated in the 1969 Vienna Convention on the Law of Treaties:

> The expression of a State's consent to be bound by a treaty which has been procured by the coercion of its representative through acts or threats directed against him shall be without any legal effect [Art. 51];
>
> A treaty is void if its conclusion has been procured by the threat or use of force in violation of the principles of international law embodied in the Charter of the United Nations [Art. 52].

We further note that the Vienna Convention broadly defined the concept of a "treaty" as

> an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation [Art. 2(1)(a)].

The Vienna Convention covers not only treaties establishing the European Union, but also many acts of internal law of the member states of the united Europe.

The same approach should be applied to the 1954 "Crimea Acts" because the USSR until its collapse in 1991 was a state based on a voluntary union and equal legal standing of its member states.

3. On Further Measures to Protect Russian Crimea

Having lit a candle, they do not put it under the vessel,
but on a candlestick, and it shines on everyone
in the house[22]

There is an urgent need for decisive measures to protect the legal position of Russia relating to Crimea.

One step should be the submission to the State Duma of the Federal Assembly of the Russian Federation of the draft Federal Law "On Recognizing the Normative Legal Acts of the USSR and the RSFSR on the Transfer of Crimea from the RSFSR to

[22] Bible. Gospel of Matthew. Chapter 5. Verse 15.

the Ukrainian SSR as Not Generating Legal Consequences from the Moment of Their Adoption and Not Having Legal Force Due to the Failure of These Acts to Conform to Fundamental Principles of International Law and Rule of Law State."

The necessity to adopt such law is determined by the fact that the Russian Federation is the legal continuer of the USSR and the RSFSR, which is proclaimed by Article 67.1 of the Constitution of the Russian Federation and is confirmed by many federal laws.[23] As noted above, the transfer of Crimea from the RSFSR to the Ukrainian SSR was carried out in violation not only of the requirements of the Constitution of the Soviet Union and the Constitution of the Russian SFSR, concerning the allocation of powers between the state authorities of the Soviet Union and the Russian SFSR and decision-making procedures, but also of the fundamental principles of international law, including the Charter of the United Nations.

Such violations give grounds to assert that the following acts cannot be recognized as valid from the moment of their adoption and that they do not have legal force: Decision of the Presidium of the Central Committee of the CPSU dated 25 January 1954 "On Confirmation of the Draft Edict of the Presidium of the Supreme Soviet of the USSR on the Transfer of the Crimean Region from the RSFSR to the Ukrainian SSR"; Decree of the Council of Ministers of the RSFSR "On the Transfer of the Crimean Region from the RSFSR to the Ukrainian SSR" dated 5 February 1954; Edict of the Presidium of the Supreme Soviet of the RSFSR "On the Transfer of the Crimean Region from the RSFSR to the Ukrainian SSR" dated 5 February 1954; Edict of the Presidium of the Supreme Soviet of the USSR 19 of February 1954 on the Confirmation of the draft Edict of the Presidium of the Supreme Soviet of the USSR "On the Transfer of the Crimean Region from the RSFSR to the Ukrainian SSR"; Law of the USSR "On the Transfer of the Crimean Region from the RSFSR to the Ukrainian SSR" dated 26 April 1954, which confirmed the Edict of the Presidium of the Supreme Soviet of the USSR dated 19 February 1954; Amendments to Articles 22 and 23 of the Constitution of the USSR, introduced by the USSR Law "On the Transfer of the Crimean Region from the RSFSR to the Ukrainian SSR" dated 26 April 1954 (Art. 2(1)).

The adoption of such federal law (the draft law is attached as Appendix No. 2) can significantly strengthen the position of Russia on Crimea, by giving strong impetus to the debates on the 1954 "Crimea Acts" in international organizations.

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[23] The status of the Russian Federation as a continuer and successor of the USSR is confirmed by the Federal Law of 15 July 1995 "On International Treaties of the Russian Federation." It states that the effect of the Federal Law extends to international treaties, in which the Russian Federation is a party as the state-continuer of the USSR (Art. 1(3)). The preamble of the Federal Law of 24 May 1999 "On the State Policy of the Russian Federation in Relation to Compatriots Abroad" confirms that the Russian Federation is the continuer and legal successor of the Russian state, the Russian Republic, the Russian Soviet Federative Socialist Republic (RSFSR) and of the Union of Soviet Socialist Republics (USSR). Article 60 of the Fundamental Principles of the Legislation of the Russian Federation on Culture of 9 October 1992 establishes that the Russian Federation is the State continuer of the USSR in the ownership and use of cultural centers and other cultural organizations abroad.

The Russian Federation may request the opinion of the Venice Commission of the Council of Europe. The Commission made a significant contribution to the dismantling of the communist legacy in Europe and should be consistent in assessing the legitimacy of the 1954 "Crimea Acts" as the product of the totalitarian regime of the USSR.

The next step is the appeal of the Russian Federation to the International Court of Justice with a request to consider the case with participation of Ukraine as the legal successor of the Ukrainian SSR on the grounds of violations of Article 2(4) of the United Nations Charter committed by the Ukrainian SSR by adopting the 1954 "Crimea Acts." As a member of the United Nations, the Ukrainian SSR was obliged to refrain from participating in the separation of Crimea from Russia. Such violations, as noted by the U.N. International Law Commission, do not have a statute of limitations.

The third step is the resumption of negotiations between Russia and Ukraine. The return of Crimea to Russia does not exclude, but on the contrary, presupposes the need to take into account the interests of Ukraine in Crimea, which should be the subject of negotiations between Russia and Ukraine based on goodwill and equal standing of the parties. The failure to recognize this obvious requirement inevitably leads to a further escalation of the confrontation, which threatens the existence of the two states. I warned about this danger repeatedly, in particular in the documents on the constitutional reform in the Republic of Crimea drafted in 1994–1995.

The fourth step is a broad discussion of decisions taken or not taken by the President, the Administration of the President, the Security Council, and the Ministry of Foreign Affairs of the Russian Federation in defending the interests of Russia in Crimea and the interests of the people of Crimea. Only the light of truth can stop Russia from falling into the abyss of nothingness by pointing out that:

– The state should serve the common good, and not the interests, ambitions or vices of any individual person or group of persons;

– Positions in government or municipal bodies, in diplomatic missions of Russia in other states and international organizations should belong only to persons who are not encumbered by citizenship or residence permit of any foreign state, or who have spouses, close relatives, realty and other assets located abroad;

– In the case of Crimea it is impossible to rely on a miracle, goodwill or self-sacrifice of others, but it is necessary to struggle for the acknowledgment of the legal position of Russia...

Appendix No. 1

Comments by the Author at the Preliminary Discussions and the Plenary Session of the Venice Commission on the Draft Opinion on "Whether the Decision Taken by the Supreme Soviet of the Autonomous Republic Crimea in Ukraine to Organize a Referendum on Becoming a Constituent Territory of the Russian Federation or Restoring the 1992 Constitution of Crimea Is Compatible with Constitutional Principles" (CDL-AD (2014)002e)[24]

The Crimean referendum on coming back of Crimea to the Russian Federation may not be assessed separately from historic, constitutional and international law factors.

I

1. Assessing the *history of Crimea*, it would be appropriate to note, that its territory was a part of a number of ancient Russian principalities in the 10th–11th centuries and that the Russian presence and activities in Crimea and adjacent lands were so extensive that the Arab geographers of that time preferred to call the Black See as "the Russian Sea."

2. The territory of Crimea was returned to Russia by the Peace Treaty of Kuchuk Kainarji signed with Turkey on 10 July 1774 and the Russian sovereign rights over Crimea were finally confirmed by the Peace Treaty of Yassi of 29 December 1791.

2. The territory of Crimea and the adjacent lands forming the Region of Taurida were developed mainly by the Russian population. Therefore, it was often designated in the documents and maps of the 18th–19th centuries as "Novorossiya" (or New Russia).

Crimea was not part of Malorossiya (Small Russia) which is forming the basic axis of modern Ukraine, including the territories of Kyiv, Chernihiv, Poltava and some other regions of Ukraine.

3. After the disintegration of the Russian Empire in 1917, no part of the territory of Crimea belonged to the independent Ukrainian state formations, such as the Ukrainian National Republic and the Ukrainian Derzhava (State) which preceded the formation of the Ukrainian Socialist Soviet Republic, one of the founding states of the Soviet Union (USSR) in 1922.

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[24] The author of the article presented the legal position on Crimea at the working meetings and the plenary session of the Venice Commission on 20–21 March 2014. For more information *see Хабриева Т.Я., Лафитский В.И.* Комментарии к проекту заключения Венецианской комиссии «О соответствии конституционным принципам решения Верховного Совета Автономной Республики Крым в Украине по организации референдума по вопросу вхождения в качестве субъекта в Российскую Федерацию или восстановления Конституции Крыма 1992 г.» // Журнал зарубежного законодательства и сравнительного правоведения. 2014. № 1(44). С. 129–135 [Talia Ya. Khabrieva & Vladimir I. Lafitsky, *Commentary on the Draft Opinion of the Venice Commission on Conformity to the Constitutional Principles of the Decision of the Supreme Soviet 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*, 1(44) Journal of Foreign Legislation and Comparative Law 129 (2014)]; Difficulties of Translation, *supra* note 6; Lafitsky 2017, at 482–493.

During the Civil war, the territory of Crimea was proclaimed as an integral part of Russia by all governments which had been replacing each other, including the Soviet Socialist Republic of Taurida and the Crimean Soviet Socialist Republic.

Later, on 18 October 1921, it was transformed into the Crimean Autonomous Soviet Socialist Republic and in 1945 into the Crimean oblast (region) remaining in the composition of the Russian Soviet Federative Socialist Republic.

In 1954 the Crimean region was separated from Russia and transferred to another member state of the Union – the Ukrainian Soviet Socialist Republic. This process was launched on the initiative of the Presidium of the Central Committee of the Communist party of the Soviet Union in January 1954 and was "stamped" in less than 5 months by the acts of state organs of the Soviet Union and both soviet republics in violation of the constitutional norms existing at that time.

This gross violation of the principles of legality or the rule of law did not become the subject of any disputes which may be explained not only by the inevitable repressions which were waiting anybody who dared to oppose even arbitrary decisions of the totalitarian regime, but also by the undisputable fact that the transfer of Crimea to Ukraine was carried out within a single state in which actually there were no internal borders, there was a single citizenship and there were uniform laws throughout the entire Soviet Union.

4. After the collapse of the Soviet Union, the legitimacy of these acts was repeatedly questioned by the Russian authorities.

The Supreme Soviet of the Russian Federation adopted a Resolution dated 21 May 1992 No. 2809-1 "On Legal Assessment of Decisions of the Supreme Bodies of State Power of the Russian Soviet Federative Socialist Republic, Concerning the Change of the Status of Crimea, as Adopted in 1954" according to which all legal acts pertaining to the transfer of the Crimean region to Ukraine were recognized as having no legal force from the moment of their adoption (para. 1). This act of the Supreme Soviet of the Russian Federation remains in full legal force for the Russian Federation till the present day.

In substantiating the aforesaid decision it was emphasized that the separation of the part of the Russian Federation and its transfer to the territory of the Ukrainian Soviet Socialist Republic was carried out without consent of the population of Crimea and without account of the opinion of the population of Russia. The requirements providing for the national voting (referendum) envisaged by the Constitution of the USSR of 1936 (Art. 49) and the Constitution of the Russian SFSR of 1937 (Art. 33) were not taken into account.

The procedural rule demanding negotiations between the two republics and the formal consent of the Supreme Soviet of the Russian SFSR for the transfer of the part of its territory was also not fulfilled, though it had been directly stipulated by Article 16 of the Constitution of the Russian SFSR of 1937.

It was also emphasized that during the existence of the Soviet Union such transfer of part of the territory of the Russian Federation to another subject of the federation

(in this case, to the Ukrainian Soviet Socialist Republic) didn't entail essential changes in the rights of citizens of Crimea, as it was implemented within the framework of an extremely centralized, totalitarian statehood.

The Supreme Soviet of the Russian Federation called for interstate negotiations between Russia and Ukraine with the participation of Crimea and with account of the will of its population (para. 2 of the aforesaid Resolution of 21 May 1992).

5. In Crimea the referendum was held on 20 January 1991, in which 81.3% of registered voters of Crimea participated. To the question: "Do you support the restoration of the Crimean Autonomous Soviet Socialist Republic, as the subject of the USSR and as the state party to the Union Treaty" positively responded 1,343,855 voters (93.26% of the total number of participating voters). The referendum was recognized by the Supreme Soviet of the Ukrainian Soviet Socialist Republic to be in full conformity with legislation of both the Soviet Union and Ukraine.

The Crimean Autonomous Republic was reestablished again. State officials of Crimea participated in the elaboration of the draft Union Treaty, representing Crimea as a future member state of the renewed Union. This I may witness as one of the experts involved in consulting on the draft Union Treaty.

The Supreme Soviet of Crimea adopted on 5 May 1992 the Act proclaiming the state independence of the Republic of Crimea. It was supposed that it would come into force after its approval by the all-Crimean referendum appointed to be held on August 2, 1992. Its participants were asked to vote on two questions:

"Are you for independent Crimea in the Union with other states"?

"Do you approve the Act of State Independence of the Republic of Crimea"?

But on 13 May 1992 the Supreme Soviet of the Ukrainian SSR suspended the referendum on the ground that it was not in conformity with the Constitution of Ukraine. Two months later, on 9 July 1992, the Supreme Soviet of Crimea declared the moratorium on holding of the referendum.

On 6 May 1992 the Constitution of the Republic of Crimea was adopted. It proclaimed that the Republic of Crimea is a rule of law and democratic state and that it is in entitled to have the supreme right to natural resources, material, cultural and spiritual values and exercises sovereign rights and full authority throughout the Republic. It also noted, that the state authorities and public officials of the Republic of Crimea shall exercise on its territory all powers, except those which were voluntarily delegated to Ukraine and which were enshrined by the constitutional law of the Republic (Art. 1).

At the presidential elections held on 30 January 1994, Yu.A. Meshkov, the leader of the electoral bloc "Russia" became the first President of the Republic of Crimea. In the second round of voting he received 72.9 % of votes of the total number of voters taking part in the elections.

In February 1994 – January 1995, the Crimean state authorities adopted a number of acts, aimed at strengthening the statehood of Crimea. A significant part of these acts, in particular the amendments to the Constitution of the Republic of Crimea,

draft laws on laws on Government and local self-government, citizenship of the Republic of Crimea, harmonization of interests of Ukraine and Russia, were drafted by the author of this article jointly with Oleg Rumyantsev and Vyacheslav Dodonov.

On 27 March 1994 during the elections of the Supreme Soviet of the Republic of Crimea the voters participated in the republican poll.

To the first question of the poll: "Are you for the restoration of the provision of the Constitution of the Republic of Crimea of 6 May 1992, which states that the relations between the Republic of Crimea and Ukraine shall be built on the treaty basis?" 78.4% of the voters of Crimea answered "yes," including 83.3% of the voters of Sevastopol.

To the second question of the poll: "Are you for restoring the provision of the Constitution of the Republic of Crimea of 6 May 1992 preserving the right of citizens of the Republic to have dual citizenship?" 82.8% of voters in Crimea answered "yes," including 87.8% of voters in Sevastopol.

6. Further development of the Crimean statehood was interrupted by the government of Ukraine. The President of Crimea, some other officials of the Republic were removed from office on 17 March 1995 according to the Law of Ukraine "On Repeal of the Constitution and Some Laws of the Autonomous Republic of Crimea."

Besides the Constitution, the Ukrainian government cancelled the laws of the Republic of Crimea "On Elections of the President of the Republic of Crimea" of 17 September 1993, "On the President of the Republic of Crimea" of 14 October 1993, "On Restoration of the Constitutional Basis of Statehood of the Republic of Crimea" of 20 May 1994, the Constitutional Law "On the Constitutional Court of the Republic of Crimea" of 8 September 1994, "On Elections of Deputies and Chairmen of Rural, Settlement, District, City, District in Cities Councils" of 18 January 1995.

On 1 November 1995 the new Constitution of Crimea was adopted, which considerably reduced the powers of the Crimean government and municipal organs. The tendency for minimizing the powers of Crimea was preserved by the Constitution of Crimea which was adopted on 21 October 1998 by the Supreme Council of the Republic of Crimea and was endorsed by the Law of Ukraine of 23 December 1998 which granted it full legal force.

7. The aforesaid historical facts demonstrate that the development of the statehood of Crimea was interrupted by the Ukrainian authorities in violation of the will of the Crimean people and despite the principles of international law.

II

8. We assert that *the constitutional law assessment of the Crimean referendum* should take into account not only the provisions and the general context of the constitutions of Ukraine and the Republic of Crimea, but also the circumstances of their application and the dramatic events of February 2014.

The Constitution of Ukraine in all its versions of 1996, 2004, 2010, 2014 proclaimed that Ukraine shall be a sovereign, democratic, law abiding state, which recognizes and functions in conformity with the principle of the rule of law.

However, these basic values of the Constitution of Ukraine were violated during the February 2014 coup d'état. Despite and in violation of constitutionally established procedures (Arts. 5, 17, 37, 85, 105, 108, 109, 110, 111 and 112), the President of Ukraine was removed from his office, and his powers were transferred to the Verkhovna Rada of Ukraine.

The Verkhovna Rada adopted a number of other acts which were violating the constitutional order. Thus, according to the Resolution of 24 February 2014 "On Responding to the Facts of Violation of the Judicial Oath by Judges of the Constitutional Court of Ukraine," five judges of the Constitutional Court, including its Chairman, were compelled to terminate ahead of time the executions of their functions. At the same time, the General Procurator was instructed to initiate criminal proceedings against all judges who, in the opinion of the deputies of the Verkhovna Rada, were guilty for voting in the support of the decision of the Constitutional Court of 30 September 2010 requiring to observe the procedure for amending the Constitution of Ukraine.

This decision of the Verkhovna Rada, violating the independence and immunity of judges, contradicted not only to the basic principles of the Constitution, but also to the international law obligations of Ukraine, which were established, in particular, by the Recommendation No. R (94) 12 On the Independence of Judges which had been enacted on 13 October 1994 by the Committee of Ministers of the Council of Europe with the aim to prevent any measures that may jeopardize the independence of judges.

The Verkhovna Rada of Ukraine, in violation of the requirements of the Constitution, was intensively amending its text.

The Constitution of Ukraine requires that its amendments (with the exception of the chapters devoted to general provisions, elections and referendums, procedures for changing the Constitution) have to be approved in two consecutive regular sessions of the Verkhovna Rada: in the first session by the majority of votes and in the next session by no less than two-thirds of votes of the constitutional composition of the Verkhovna Rada (Art. 155 of the Constitution). Special procedure is established for amending the three chapters of the Constitution mentioned above. Such constitutional amendments ought to be adopted by no less than two-thirds of votes of the constitutional composition of the Verkhovna Rada and approved by an All-Ukrainian referendum (Art. 156 of the Constitution).

A draft law introducing constitutional amendments may be considered by the Verkhovna Rada only upon the availability of an opinion of the Constitutional Court on the conformity of the draft law with the provisions of Articles 157 and 158 of the Constitution, which require that the Constitution of Ukraine shall not be changed, if the amendments are proposed in the circumstances of martial law or state of emergency; it they foresee the abolition or restriction of human and citizens' rights and freedoms; if they lead to the liquidation of the independence or violation of the territorial indivisibility of Ukraine and so on.

These requirements were not observed by the constitutional reform launched by the coup d'état of February 2014.

9. Such circumstances of unconstitutional coup d'etat, destruction of the system of state power, gross violations of the rule of law make it not possible to assess the referendum in Crimea on the basis and in terms of the Constitution and laws of Ukraine, because they were deprived of the quality of legality and created the state of legal uncertainty. It is impossible to say definitely, what version of the Constitution of Ukraine was in force at that time.

In such circumstances it is quite natural, that the Republic of Crimea regarded its own constitutional acts and the will of its population as prevailing over the Constitution and the will of the state organs of Ukraine. The same approach shall be followed by the Venice Commission.

10. According to the Constitution of the Republic of Crimea, the Supreme Council of the Republic of Crimea has the power to make a decision on holding a republican (local) referendum.

The legislation of Ukraine does not regulate the procedures of republican (local) referendums.

Nevertheless, at the request of the General Prosecutor's Office of Ukraine, the Kiev District Administrative Court enacted on 4 March 2014 the decision which declared the referendum of the Republic of Crimea illegal. Several days later, on 7 March 2014, the Acting President of Ukraine A. Turchynov, in violation of the requirements of the Constitution of Ukraine, made a decision to suspend the Resolution of the Supreme Council of the Republic of Crimea on holding an all-Crimean referendum. On the same day (March 7), the said Resolution of the Supreme Council of Crimea was declared canceled by the Administrative Court of Kiev.

An appropriate appeal was filed in the Constitutional Court of Ukraine, but it was not able to hold a plenary session due to the lack of quorum, which was caused by the forced resignation of five members of the Court, as have been mentioned above. To overcome this procedural obstacle, the Verkhovna Rada of Ukraine appointed on 13 March 2014 four new judges of the Constitutional Court. This made it possible to hold on the next day (14 March 2014) a plenary session of the Constitutional Court of Ukraine, at which the Resolution of the Supreme Council of the Republic of Crimea on holding a referendum was declared unconstitutional.

Such actions were not in conformity with the requirements of the Constitution and laws of Ukraine.

III

11. The referendum of the Republic of Crimea may not be assessed beyond or without due account of the *requirements of international law*, that provide the protection of the population of Crimea as a national minority in Ukraine.

The Verkhovna Rada of Ukraine canceled the Law on Language Policy of 2012, according to which the Russian language had the status of a regional language in the Republic of Crimea. This act has violated the rights of the Russian-speaking and other non-Ukrainian nationalities of Crimea and was not in conformity not only with

the Constitution of Ukraine (Arts. 10, 11, 34 and 53), but with its international law commitments, established by the European Charter for Regional or Minority Languages of 1992 and the Council of Europe Framework Convention for the Protection of National Minorities of 1995. Ukraine joined the said acts in 2006 and 1998, respectively.

The legal assessment of the decision of the Supreme Council of the Republic of Crimea to hold a referendum cannot be complete, objective and comprehensive without taking into account broad international law implications and meaning.

12. The referendum of the Republic of Crimea does not contradict the international law requirements. According to the Constitution of Ukraine, the Autonomous Republic of Crimea has a special legal status. The word "Republic" is usually conceived in international law as one of the features or qualities of a sovereign state, which indicates that the people of such state have the right to determine their own historical fate.

The right of peoples to self-determination is widely recognized in modern international law and has been consolidated in a number of key international legal acts. Part 2 of Article 1 of the Charter of the United Nations obliges states to respect the principle of equality and self-determination of peoples, considering it as the basis for the development of the modern world.

Paragraph 2 of the 1960 Declaration on the Granting of Independence to Colonial Countries and Peoples (adopted by Resolution No. 1514 (XV) of the United Nations of the General Assembly on 14 December 1960) states that all peoples have the right to self-determination, and therefore they have the right to freely establish their own political status and carry out their economic, social and cultural development.

The same principle was enshrined in the international human rights covenants of 1966 (para. 1 of Art. 1 of the International Covenant on Economic, Social and Cultural Rights and para. 1 of Art. 1 of the International Covenant on Civil and Political Rights). At the same time, it is important to note, that the international legal norms do not provide for any exceptions, as established by national constitutions or laws.

Moreover, paragraph 3 of the aforesaid articles of the international human rights covenants requires, that all participating states shall be obliged, in accordance with the provisions of the United Nations Charter, to promote the exercise of the right to self-determination and to respect this right.

Ukraine has been a party to the international covenants on human rights since 1976. Accordingly, it is fully obliged by these requirements as a member state of the United Nations.

13. The Declaration on the principles of international law concerning friendly relations and cooperation between states in accordance with the United Nations Charter 1970 (adopted by Resolution 2625 (XXV) of the U.N. General Assembly of 24 October 1970), reaffirmed and developed the provisions of the United Nations Charter and other international legal documents on the right of peoples to self-determination. In particular, it established that, by virtue of the principle of equality and self-determination of peoples, enshrined in the United Nations Charter, all

peoples have the right to freely determine, without outside interference, their political status and to carry out their economic, social and cultural development, and each state is obliged to respect this right in in accordance with the provisions of the Charter.

At the same time, it should be noted that the Declaration calls each state to refrain from any violent actions aimed at depriving peoples of the right to self-determination, freedom and independence. In the event of violent actions against the right to self-determination, peoples have the right to seek support and receive it in accordance with the United Nations Charter.

Appropriate guidelines are provided by the decision of the International Court of Justice in the case of *Military and Paramilitary Activities in and against Nicaragua* (ICJ Reports 1986, pp. 101–103, paras. 191–193). It noted that the aforesaid Declaration reflects customary international law and that its provisions can be regarded as generally recognized principles and norms of international law.

14. In accordance with Section VIII of the Final Act of the 1975 Conference on Security and Cooperation in Europe, the participating States undertake the obligation to respect the equal rights of peoples, in particular their right to self-determination – "in full freedom, to determine, when and as they wish, their internal and external status, without external interference, and to pursue as they wish their political, economic, social and cultural development."

The principles of equality and self-determination of peoples have been repeatedly emphasized in many other international legal acts, including the Vienna Declaration and Program of Action adopted at the World Conference on Human Rights on 25 June 1993, African Charter on Human and Peoples' Rights 1981, etc.

15. International law proclaims in the most general terms the principles and norms pertaining to referendums. As a rule, these norms are aimed at providing for the free expression of will of citizens participating in elections or referendums. The Universal Declaration of Human Rights of 1948 in paragraph 3 of Article 21 provides that the will of the people should be the basis of the authority of government, and that elections should be held according to the principles of universal and equal suffrage by secret ballot or by equivalent free voting procedures.

The same requirements shall be applied to referendums, taking into account the provisions of paragraph 1 of Article 21 of the Universal Declaration, which guarantee the right of everyone to take part in the government of his country directly.

The referendum in Crimea was held in accordance with the legislation of the Republic of Crimea and the aforesaid international law standards, which was noted by the international observers, including the members of the European Parliament.

16. Assessing the international law implications of the referendum of the Republic of Crimea, it would be appropriate to note, that it confirmed the Declaration of Independence of the Republic of Crimea and the city of Sevastopol, which was adopted on 11 March 2014 by the Supreme Council of the Republic of Crimea and the Sevastopol City Council.

17. The international law assessment of the referendum of the Republic of Crimea shall also take into account the Advisory opinion "On Accordance with international law of the unilateral declaration of independence in respect of Kosovo" of the International Court of Justice of 22 July 2010.

This document states that the unilateral declaration of independence based on the principle of self-determination of peoples does not violate the principles and norms of international law, and that since the second half of the twentieth century, the international right to self-determination has developed in the direction of creating the right to independence of the peoples of non-self-governing territories under foreign domination and operation.

18. In conclusion, it would be appropriate to note that secession is not a phenomenon of recent decades. One of its first acts was the withdrawal of Texas from Mexico in 1836 and its incorporation into the United States in 1845 under the circumstances, which are comparable in many respects to the secession of Crimea from Ukraine and its subsequent return to Russia. I believe that we can be guided by such an analogy.

Appendix No. 2

Draft Federal Law
"On Recognizing the Normative Legal Acts of the USSR and the RSFSR on the Transfer of Crimea from the RSFSR to the Ukrainian SSR as Not Generating Legal Consequences from the Moment of Their Adoption and Not Having Legal Force Due to the Failure of These Acts to Conform to Fundamental Principles of International Law and Rule of Law State"

The Federal Assembly of the Russian Federation,

Having considered the circumstances of the adoption of decisions by the political party and state bodies of the USSR and the RSFSR on the transfer in 1954 of Crimea from the Russian Soviet Federative Socialist Republic to the Ukrainian Soviet Socialist Republic, which violated the constitutional norms and fundamental principles of international law that were in force at that time, including the principles of justice, rule of law and self-determination of peoples;

Based on the provisions of the Constitution of the Russian Federation on the revival of the sovereign statehood of Russia and the preservation of its historically established state unity;

Confirming the legal force of the Resolution of the Supreme Soviet of the Russian Federation of 21 May 1992 No. 2809-1 "On the Legal Assessment of Decisions of the Highest Bodies of State Power of the RSFSR on Changing the Status of Crimea, Adopted in 1954," which acknowledged the Resolution of the Presidium of the Supreme Soviet of the RSFSR of 5 February 1954 "On the Transfer of the Crimean Region from the RSFSR to the Ukrainian SSR" as having no legal force from the moment of its adoption on the ground that it violated the Constitution (Basic Law) of the RSFSR;

Recognizing the results of the referendum held in Crimea on 20 January 1991, which reflected the aspiration and will of the absolute majority of the Crimean population to join the Soviet Union, which is continued by the Russian Federation;

Noting that the development of the statehood of the Republic of Crimea was forcibly interrupted on 17 March 1995 with the adoption of the Law of Ukraine "On the Abolition of the Constitution and Some Laws of the Autonomous Republic of Crimea" and the removal from office of the first President of Crimea, Yu.A. Meshkov;

Taking into account the will of the population of the Republic of Crimea to secede from Ukraine due to the coup d'état in Ukraine committed in February 2014;

Confirming the irreversibility of rejoining of the Republic of Crimea and the federal city of Sevastopol with the Russian Federation in accordance with the will of the absolute majority of the population of Crimea, which was confirmed by the referendum on 16 March 2014, and the acknowledgement by the Constitution of the Russian Federation of the legal status of the Republic of Crimea and the federal city of Sevastopol as the subjects of the Russian Federation;

Defending the fundamental principles of the rule of law state,

Adopts this Federal Law.

Article 1. On the Recognition as Not Generating Legal Consequences from the Moment of Adoption and Having No Legal Force of Normative Legal and Other Acts of the USSR and the RSFSR on the Transfer of Crimea from the RSFSR to the Ukrainian SSR

1. The Russian Federation, as a continuer and legal successor of the USSR, the RSFSR and the Russian Empire, recognizes the following normative legal and other acts of the USSR and the RSFSR on the transfer of Crimea from the RSFSR and to the Ukrainian SSR as not generating legal consequences from the moment of adoption and not having legal force:

Decision of the Presidium of the Central Committee of the CPSU of 25 January 1954 "On the Approval of the Draft Decree of the Presidium of the Supreme Soviet of the USSR on the Transfer of the Crimean Region from the RSFSR to the Ukrainian SSR,"

Resolution of the Council of Ministers of the RSFSR "On the Transfer of the Crimean Region from the RSFSR to the Ukrainian SSR" dated 5 February 1954,

Resolution of the Presidium of the Supreme Soviet of the RSFSR "On the Transfer of the Crimean Region from the RSFSR to the Ukrainian SSR" dated 5 February 1954,

Decision of the Presidium of the Supreme Soviet of the USSR of 19 February 1954 on the Approval of the Draft Decree of the Presidium of the Supreme Soviet of the USSR "On the Transfer of the Crimean Region from the RSFSR to the Ukrainian SSR,"

The USSR Law "On the Transfer of the Crimean Region from the RSFSR to the Ukrainian SSR" dated 26 April 1954, which approved the Decree of the Presidium of the Supreme Soviet of the USSR dated 19 February 1954,

Amendments to Articles 22 and 23 of the Constitution of the USSR, introduced by the USSR Law "On the Transfer of the Crimean Region from the RSFSR to the Ukrainian SSR" dated 26 April 1954.

2. The aforesaid normative legal acts of the USSR and the RSFSR on the transfer of Crimea from the RSFSR to the Ukrainian SSR are acknowledged as not generating legal consequences from the moment of their adoption and not having legal force on the following grounds:

irreparable grave violations of the fundamental principles of international law requiring the observance of justice, self-determination of peoples, compliance of the norms of law, that were enshrined in the Charter of the United Nations and other international law documents and were in force at the time of the adoption of the aforesaid acts of the USSR and RSFSR;

irreparable grave violations of the requirements of the Constitution of the USSR and the Constitution of the RSFSR, specifying the powers of the organs of state power of the USSR and the RSFSR and establishing the decision-making procedures of the aforesaid state organs;

the incompatibility of these acts with the fundamental principles of the rule of law state, enshrined in the Constitution of the Russian Federation of 1993.

Article 2. Entry of this Federal Law into Force

This Federal Law shall enter into force within ten days from the date of its official publication.

Article 3. On Measures to Ensure the Consistency of the Legal System of the Russian Federation

1. The conformity of this Federal Law to the Constitution of the Russian Federation shall be established by the Constitutional Court of the Russian Federation at the request of the President of the Russian Federation in the procedure prescribed by paragraph "a" of part 5.1 of Article 125 of the Constitution of the Russian Federation.

2. If a contradiction arises between this Federal law and any other normative legal act of the Russian Federation, the priority shall be given to the provisions of this Federal law.

References

История Крыма с древнейших времен до наших дней (в очерках) [*History of Crimea from the Ancient Time and Till Our Days (Essays)*] (Simferopol: Atlas-Comact, 2006).

Федоров А.В. Правовой статус Крыма. Правовой статус Севастополя [Fedorov A.V. *Legal Status of Crimea. Legal Status of Sevastopol*] (Moscow: MSU Publishing House, 1999).

Latsa A. *Un printemps russe* (Genève: Éditions des Syrtes, 2016).

Information about the author

Vladimir Lafitsky (Moscow, Russia) – Professor, Kutafin Moscow State Law University (MSAL) (9 Sadovaia-Kudrunskaia St., 9, Moscow, 125993, Russia; e-mail: vlafitskiy@gmail.com).