

## **ANALYTICAL REPORT**

### **CONCERNING LEGITIMACY OF THE CRIMEAN REFERENDUM, 2014**

Three years have passed since the reunification of Crimea with Russia but still a group of Western countries opposing some principles of international law is promoting in the international organizations including the UN the position of “occupation” and “annexation” of Crimea by the Russian Federation ignoring the legitimate will of the people of Crimea, which they have expressed during the all-Crimean referendum conducted on March 16, 2014.

Thus, the group of experts and international lawyers prepared this analytical report.

1. On February 23, 2014 Kiev faced a coup d'etat, as a result of which the power was usurped by opponents of the legally elected president of Ukraine V. Yanukovich who had to leave Kiev due to danger to his life.

On February 23, 2014 an illegal attempt to remove the lawfully elected president of the country from his post despite of the procedure provided for in Art. 108 of the Ukrainian Constitution. The guarantees made to V.Yanukovich in Agreement on settlement of political crisis in Ukraine (signed on February 21, 2014 with mediation of the representatives of the European Union from Germany, France and Poland) were not exercised.

The group headed by A.Turchinov and A.Yatsenyuk seized the power by force. The Ukrainian Constitutional norms were violated. In fact the Constitution lost its' effect because the required legal conditions for its' application have been lost.

However, in Crimea, unlike in Kiev, lawfully elected bodies of state power continued their work, while the Autonomous Republic of Crimea continued to exercise limited sovereignty on its' territory in accordance with its' Constitution.

At the same time, it should be borne in mind that the Autonomous Republic of Crimea retained its' special status which in fact goes beyond the unitarity of the Ukrainian state due to the different national composition if compared to Ukraine (65% of ethnic Russians and 13% of the Crimean Tatars), and its' very presence in the composition of Ukraine after the proclamation of the sovereignty of the

Autonomous Republic of Crimea by the Act as of September 11, 1991 was a compromise based on the observance of its special rights of autonomous unit within the framework of the unitary Ukraine.

The coup d'état in Kiev and threat of ethnic cleansing and war imminent over the Crimea destroyed this compromise.

According to section 10 of the Ukrainian Constitution of 1996, the territory of Crimea is covered by the autonomous legal status, which is legally applied to the rights of peoples. According to Article 138.2 of this section of the Ukrainian Constitution, in particular, the jurisdiction of the Autonomous Republic of Crimea includes "the organization and conduct of local referendums," while the possible subject of such referendums is not limited to this special "Crimean" section of the Constitution.

The actions of the Crimean authorities in the conditions prevailing in Ukraine were of a legal nature. On March 17, 2014 on the base of the convincing result of the referendum (96,77% with a turnout of 83,1% voted for the reunion of the Crimea with Russia) the independent sovereign Republic of Crimea was proclaimed.

As for Sevastopol, it should be noted that as early as on 29.10.1948 it was separated from the Crimean region and subordinated directly to the republican authorities by the decree of the Presidium of the Supreme Soviet of RSFSR.

The Crimean region in the violation of the Constitution of the USSR, RSFSR and Ukraine was illegally transferred to Ukraine in 1954. The de facto inclusion of the city of Sevastopol (Article 133 of the Ukrainian Constitution) into Ukraine was not based on any normative acts of Russia on its' transfer to Ukraine and was nothing more than a unilateral decision of Ukraine, which should be considered from a legal point of view as the seizure of a foreign territory by Ukraine.

The referendum conducted on March 16, 2017 in Sevastopol reaffirmed that fact (95,6% with a turnout of 89,5% voted for the reunion of the Crimea with Russia) and gained its' special status.

In this situation the Crimean citizens, in full accordance with the provisions of the Universal Declaration of Human Rights dated 10.12.1948 taking into account the neglect of new (indeed criminal) central power of human rights first of all Russian minority, the mistreatment of the citizens and disregard of their rights and lives decided to hold a referendum on the independence and reunification with Russia. This step let avoid the armed violence against the republic and its' citizens.

In this part, the actions of the Crimean citizens have been fully agreed with the standards of law, in particular, with the provision of part 2 of Article 27 of the Ukrainian Constitution on the right of "everyone to protect their lives and lives of others from illegal attacks."

The referendum conducted on March 16, 2014 with the attendance of more than 150 observers in connection with a coup d'etat and the seizure of power in Kiev by nationalists and extremists has become the realization of the right of people to self-determination. Until March 16, 2014, the Autonomous Republic of Crimea existed in the form of autonomy within Ukraine, which had its' own Constitution adopted on October 21, 1998. Article 48 of this Constitution, entitled Guarantees and Provision of Status and Powers of the Autonomous Republic of Crimea, presupposes that these guarantees are provided by democratic institutions of the society including conduction of the referendum on any substantive question to the citizens.

In addition, it should be borne in mind that the preamble of the Ukrainian Constitution also refers to the recognition and ascertainment of the right of the Ukrainian peoples to self-determination.

This Constitution also guarantees the people's will through a referendum in accordance with Article 69, while the purpose of the referendum is defined as manifestation of one of the forms of direct democracy.

In the circumstances concerned, under a real threat to the life and security of the Crimean population, the peoples of Crimea independently decided their own destiny by holding a peaceful referendum without resorting to extreme measures.

2. These actions of the citizens of Crimea are also consistent with the International Covenant on Civil and Political Rights, adopted by the UN General Assembly Resolution on 16.12.1966 that prohibits tortures, mistreatment, humiliation (Article 7), national origin discrimination (Article 20). Abolition (suspension) of the Act of National Language Policy of Ukraine meant the prohibition of using of Russian language despite the fact that Russian-speaking population in Ukraine makes more than 85%.

Article 26 of the Covenant proclaims the equality of all people before the law, prohibition of all kinds of discrimination and protection against discrimination on the basis of a language, nationality and political convictions.

The peoples of Crimea saw such protection only in self-determination and reunification with the historical Motherland, where it was for about two hundred years (starting from April 8, 1783 after the Empress Ekaterina II signing the manifesto on accepting the Crimea peninsula into the Russian Empire).

The further development of the situation in Ukraine proved the correctness of choice of the peoples of Crimea (Odessa clashes and civil war on Donbass).

3. The actions on conducting the all-Crimean referendum on March 16, 2014 were legitimate and justified, since Ukraine faced:

A) the unconstitutional coup d'état carried out with the participation of foreign states (V.Nuland proved the fact of long-term financial support of actions targeted on undermining of the Ukrainian state system);

B) the fact of the coup d'état in Ukraine in February 2014 was confirmed by the decision of the Dorogomilovsky District Court of Moscow dated December 27, 2016, which came into effect on the application of V. Oleinik and in accordance with the CIS Convention of January 22, 1993 On Legal Assistance and Legal Relations in Civil, Family and Criminal Cases (Minsk), the decisions that come into legal force after the fact are automatically recognized in all twelve signatory countries of the Convention, including in Ukraine (Article 51);

C) the lack of legitimate authority, despite the fact that Part 3 of Article 5 of the Ukrainian Constitution presupposes that no one can usurp the power. The illegal armed formations (Right Sector, etc.), created and functioning contrary to the requirements of Part 6 of Article 7 of the Ukrainian Constitution. The Nazi executors and betrayers of the period of the WWII were proclaimed by the new regime national heroes and the terror became the basic instrument of the national policy.

In violation of the requirements of Part 1 of Article 27 of the Ukrainian Constitution were used to organize provocations on the basis of interethnic conflicts, conduct of repressions against the citizens of Ukraine up to arbitrary deprivation of their lives who opposed the coup d'état. There are numerous facts of violence and humiliation, deprivation of people's lives by the nationalists in Cherkassy, violence against the citizens of Crimea protected the Constitution on Maidan, attacks on buses, burning and killing people returning to Crimea from Kiev, forming the so-called "trains of friendship", conducting provocations on national basis etc. that indicates the violation of Part 1 of Art. 28 of the Ukrainian Constitution.

D) the manhunt and assassination attempts against legally elected president of Ukraine V. Yanukovich, a murderer on Maidan in Kiev of policemen from Crimea A.Felukin, D.Vlachenko, V.Goncharov who protected the public order.

E) the Crimeans in the conditions of the coup d'état implemented the right of the population to self-defense by creating self-defence forces with the participation of Cossacks, militia, together with a part of the local police, under the leadership of lawfully elected president V. Yanukovich and head of the government of Crimea S. Aksyonov. The number of militias was about 10,000.

F) in contradiction to the requirements of Part 4 of Article 17 of the Ukrainian Constitution on the prohibition of using the armed forces of the country to restrict the rights and freedoms of citizens, the Ukrainian Ministry of Defence was preparing a landing of troops to disrupt the referendum.

4. There was an appeal of the Supreme Council of Crimea to the President of Russia with a request for assistance in ensuring peace and serenity on the territory of Crimea. On February 28, 2014, upon the agreement with lawfully elected president of Ukraine V. Yanukovich, the Supreme Council of ARC formed a new government headed by S. Aksyonov, which began to function. On March 1, 2014 V. Konstantinov and S. Aksyonov appealed to Crimean forces and the President of Russia with a request to protect the people of Crimea and temporarily reassigned the power structures.

5. According to the US and EU countries, the referendum was illegitimate, unconstitutional in nature due to the presence of the Russian armed forces during its conduct in Crimea.

At that time, Russia acted in full accordance with the international law, since its military presence in Crimea (Black Sea Fleet) was due to the existence of bilateral international treaties that provide legal grounds for placing the Russian military contingent on the territory of Ukraine (Agreement between Ukraine and the Russian Federation on the issues of stay of Russia's Black Sea Fleet on the territory of Ukraine dated April 21, 2010, including the Agreement between Ukraine and the Russian Federation on the status and stay of Russia's Black Sea Fleet on the territory of Ukraine dated May 28, 1997, Agreement between Ukraine and the Russian Federation on the parameters for dividing the Black Sea Fleet dated May 28, 1997, and Agreement between the Government of Ukraine and Government of the Russian Federation on mutual settlements related to the division of the Black Sea Fleet and stay of Russia's Black Sea Fleet on the territory of Ukraine dated May 28, 1997). The Russian Armed Forces could move around the territory of Crimea, as it is stipulated by the international treaty between Russia and Ukraine, which was ratified by the Verkhovna Rada.

The presence of Russian troops in Crimea and the city of Sevastopol is due to an international agreement dated May 28, 1997, while the servicemen of the RF Armed Forces did not participate in the voting and could not influence its outcome. The provision of law and order in the polling stations was born by self-defence forces and people's volunteers from among the citizens of Crimea and these actions also did not affect the counting of votes.

On March 3, 2014 as a respond on illegal accusations V.Churkin, the Permanent Representative of the Russian Federation to the United Nations, represented the address of V.Yanukovich, the President of Ukraine, to V.Putin, the President of Russia, with the claim to security assistance: "Being a legally elected President of Ukraine I declare: public protests on Maidan, the illegal coup d'état in Kiev resulted in Ukraine being on the edge of civil war. Chaos and anarchy rule, lives, security and rights of people especially in the South-Western of the country and in Crimea are in danger. Under the influence of Western states terror and violence are exercised, people are being pursued on political and language reasons. In this regard I appeal to the President of Russia V.Putin to use the armed forces of the Russian Federation to restore legitimacy, peace, order, stability and protection of the Ukrainian nation. V.Yanukovich, March 1, 2014.

Legally before being reelected or resigning V.Yanukovich stayed a legal president.

On March 18, 2014, President of Russia in his address stressed that "Russia did not introduce troops into Crimea, but only reinforced its grouping, while not exceeding the maximum number of staff provided for by the international treaty." Such actions were taken to protect "the lives of citizens of the Russian Federation, our compatriots and staff of the military contingent of the Russian Armed Forces deployed on the territory of Ukraine in accordance with the international treaty."

Moreover, President of Russia confirmed his constitutional right in the national parliament of the state on the use of the Russian troops abroad, but he did not use it. (Resolution of the Council of Federation of the Russian Federal Assembly No. 48-SF dated 01.03.2014)

Thus, the accusations of using the Russian Armed Forces before, during and after the referendum in Crimea are legally inconsistent.

The main question in this situation around crisis in Ukraine provoked by anti-constitutional coup d'état as a result of military capture of power by extremists is if the new power was legal. The new government committed a felony and its actions had no legal power for the Russian Federation.

In this regard the Opinion of the Venice Commission on the Crimean Referendum dated March 21, 2014 No. 762/2014 CDL-AD (2014) 002 "... there are numerous provisions of the Ukrainian Constitution, clearly indicating that the separation of a part of the country's territory cannot be subject to a local referendum" seems to be unconvincing because the constitutional norms on the functioning of the Ukrainian government that functioned before the coup d'état were ruined and the extraordinary circumstances in Crimea (threat to lives of people, unleashing the civil war) didn't let conduct the referendum without special

security measures. Undertaking such measures is legal for legitimate Crimean government.

Summing up, it is necessary to state that Crimea faced a secession (i.e., voluntary withdrawal from the state), proclaiming state independence by a legitimate representative body represented by the Supreme Council of the Autonomous Republic of Crimea, confirmed by a referendum having approved the separation from Ukraine. It was followed by an application for the entry of an independent Crimea state into the Russian Federation, adopted by Russia, and reunion that fundamentally excludes the annexation, i.e., accession by one state of another.

Thus, in such case it is inevitable to differentiate the legal terms “secession” and “annexation”.

In this regard, the statements of some politicians on the Crimean referendum violating the international law seems to be absurd and the UN General Assembly Resolution No. A/RES/68/262 dated March 27, 2014 on the "territorial integrity" of Ukraine adopted in a hurry without a duly made legal analysis seems to be hasty.

The Declaration of Independence doesn't violate international law. The UN International Court of Justice proved by its' decision on July 22, 2010 that “unilateral declaration of independence by a part of the state does not violate any rules of international law... The general international law does not include any applicable prohibition of declaration of independence”.

6. The legitimacy of the referendum of the Crimeans dated March 16, 2014 is further strengthened by the fact that the Resolution of the Supreme Council of the Russian Federation dated May 21, 1992 No. 2809-1 has recognized the Resolution of the Presidium of the Supreme Soviet of RSFSR dated 05.02.1954 Concerning the Transfer of the Crimean Region from RSFSR to the Ukrainian SSR as having no legal force since the adoption due to the adoption with the violation of the Constitution (Basic Law) of RSFSR and legislative procedure.

The Supreme Council of the Russian Federation decided on restoring the illegally lost territory without establishing protectorate over Crimea. This decision was rested for the future involving the expression of will of the citizens of Crimea. The legal vacuum and legal vagueness of the status of Crimea were overcome after 22 years on the basis of democratic expression of the citizens' will.

Thus, the referendum in Crimea and Sevastopol conducted on March 16, 2014, which was used by the peoples inhabiting the Crimea peninsula to

independently and democratically determine their fate, was held legitimately and should be recognized as such by foreign states.

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