INFORMATION BRIEF

On the Role of the Constitutional Court of the Russian Federation in the Annexation of Crimea

Introduction

On 21 March 2014, the Russian Federation annexed the Republic of Crimea and the city of Sevastopol. This occurred after a series of events which took place in less than a month, and in which the Russian armed forces were clearly involved. The Constitutional Court of the Russian Federation received a request for an opinion on the constitutionality of the treaty on the incorporation of Crimea on 18 March 2014, and issued its opinion on the very next day, on 19 March 2014. The annexation of Crimea was completed on 21 March 2014. The Court's opinion was a direct instrument facilitating the internal legalisation of the annexation of part of the Ukrainian territory, which is an international crime. That is an unprecedented event, since, for the first time in history, the whole constitutional court was used for the commission of the gravest international crime – the crime of aggression.

International Consensus regarding the Illegality of the Annexation of Crimea

The occupation and annexation of Crimea were denounced by the international community as a grave breach of the *ius cogens* obligation of non-use of force (i.e. aggression). Such a breach triggers a corresponding international obligation *erga omnes* not to recognise the purported statehood of an effective territorial entity created in violation of the fundamental norm of international law, as well as not to recognise any territorial acquisition that is a result of that breach.[1] The resolutions of various international organisations and bodies proclaiming the illegality of the annexation of Crimea and confirming the territorial integrity of Ukraine within its internationally recognised borders include:

1. In its resolution of 27 March 2014 on the territorial integrity of Ukraine, **the General Assembly of the United Nations** affirmed the sovereignty and territorial integrity of Ukraine, reminded that Ukraine had not authorised the referendum on the status of Crimea, declared

[1] The doctrine of obligatory non-recognition provides that states are under an obligation not to recognise, through individual or collective acts, the purported statehood of an effective territorial entity created in violation of one or more fundamental norms of international law. This rationale underlies the Stimson Doctrine that was used as a justification for states not to recognise the annexation of the Baltic States by the Soviet Union. This rationale is also expressed in the International Law Commission's Article 41 of the Draft Articles on State Responsibility. The obligation is a norm of customary international law and aims at preventing that a violation of international law becomes validated by means of recognition. It contains a "minimum resistance" and "a continuous challenge to a legal wrong". The obligation arises where a territorial entity has been created in violation of an *erga omnes* norm, especially by violating the prohibition of the use of force, by violating the right to self-determination, or by violating the prohibition of systematic racial discrimination.

that such a referendum could have no validity, and called on States not to recognise any alteration to the status of the Autonomous Republic of Crimea and the city of Sevastopol.[2]

2. In its resolution of 19 December 2016 on the situation of human rights in the Autonomous Republic of Crimea and the city of Sevastopol (Ukraine), **the General Assembly of the United Nations** condemned the temporary occupation of Crimea as part of the territory of Ukraine and reaffirmed the non-recognition of its annexation, as well as recognised Russia as an occupying Power with regard to Crimea.[3]
3. In its resolutions of 19 December 2017, 22 December 2018 and 18 December 2019 on the situation of human rights in the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine, **the General Assembly of the United Nations** once more recalled its resolution 68/262 of 27 March 2014 on the territorial integrity of Ukraine, affirmed its commitment to the sovereignty, political independence, unity and territorial integrity of Ukraine within its internationally recognised borders, condemned the ongoing temporary occupation of part of the territory of Ukraine – the Autonomous Republic of Crimea and the city of Sevastopol – by the Russian Federation, and reaffirmed the non-recognition of its annexation.[4]
4. In its resolutions of 17 December 2018 and 9 December 2019 on the problem of the militarization of the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine, as well as parts of the Black Sea and the Sea of Azov, **the General Assembly of the United Nations** recalled its previous resolutions on the territorial integrity of Ukraine and on the situation of human rights in Crimea, once more condemned the ongoing temporary occupation of part of the territory of Ukraine (Crimea) and reaffirmed the non-recognition of its annexation, as well as supported the commitment by Ukraine to adhere to international law in its efforts to put an end to the temporary Russian occupation of Crimea. The UN General Assembly also stressed that the presence of Russian troops in Crimea is contrary to the national sovereignty, political independence and territorial integrity of Ukraine and undermines the security and stability of neighbouring countries and the European region; the

[2] UN General Assembly, Resolution on the territorial integrity of Ukraine, A/RES/68/262, 27.3.2014. Adopted with 100 votes, 58 abstentions, and 11 no-votes.
[3] UN General Assembly, Resolution on situation of human rights in the Autonomous Republic of Crimea and the city of Sevastopol (Ukraine), A/RES/71/205, 19.12.2016.
[4] UN General Assembly, Resolution on situation of human rights in the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine, A/RES/72/190, 19.12.2017; UN General Assembly, Resolution on situation of human rights in the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine, A/RES/73/263, 22.12.2018; UN General Assembly, Resolution on situation of human rights in the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine, A/RES/74/168, 18.12.2019.

Russian Federation, as the occupying Power, was urged to withdraw its military forces from Crimea and to end its temporary occupation of Ukraine's territory without delay.[5]

5. In its report on preliminary examination activities of 14 November 2016, **the International Criminal Court** concluded that the situation within the territory of Crimea and Sevastopol amounted to an international armed conflict between Ukraine and the Russian Federation.[6] This affirmed the status of Crimea as the territory under the Russian occupation.
6. In its resolution of 9 April 2014, **the Parliamentary Assembly of the Council of Europe** declared that the outcome of the Crimean referendum of 16 March 2014 and the illegal annexation of Crimea by the Russian Federation had no legal effect and were not recognised by the Council of Europe. The Assembly concluded that the drive for secession and integration into the Russian Federation had been instigated and incited by the Russian authorities.[7] Considering that the actions of the Russian Federation constituted, beyond any doubt, a grave violation of international law, the Parliamentary Assembly suspended the voting rights of the Russian Federation.[8]
7. In its resolution of 27 January 2015, **the Parliamentary Assembly of the Council of Europe** called on the Russian authorities to ensure the security and respect for human rights of all those who live under the *de facto* illegal control of the Russian Federation in Crimea.[9]
8. In its resolution of 12 October 2016, **the Parliamentary Assembly of the Council of Europe** reiterated its condemnation of the illegal annexation of the peninsula and its continuing integration into the Russian Federation, in breach of international law and the Statute of the Council of Europe.[10]
9. In its resolution of 23 January 2018, **the Parliamentary Assembly of the Council of Europe** expressed its alarm by the humanitarian situation which is a consequence of the occupation and attempted annexation of Crimea by the Russian Federation, as well as strongly

[5] UN General Assembly, Resolution on the problem of the militarization of the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine, as well as parts of the Black Sea and the Sea of Azov, A/RES/73/194, 17.12.2018; UN General Assembly, Resolution on the problem of the militarization of the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine, as well as parts of the Black Sea and the Sea of Azov, A/RES/74/17, 09.12.2019.
[6] International Criminal Court, Report on Preliminary Examination Activities, 14 November 2016, para. 158.
[7] Parliamentary Assembly of the Council of Europe, Resolution 1988 (2014) on recent developments in Ukraine: threats to the functioning of democratic institutions, paras. 14–16.
[8] Parliamentary Assembly of the Council of Europe, Resolution 1990 (2014) on reconsideration on substantive grounds of the previously ratified credentials of the Russian delegation; Resolution 2034 (2015) on challenge, on substantive grounds, of the still unratified credentials of the delegation of the Russian Federation.
[9] Parliamentary Assembly of the Council of Europe, Resolution 2028 (2015) on the humanitarian situation of Ukrainian refugees and displaced persons, 27.1.2015, para. 15.2.
[10] Parliamentary Assembly of the Council of Europe, Resolution 2132 (2016) on political consequences of the Russian aggression in Ukraine, 12.10.2016, para. 4.

condemned the Russian policy of shifting the demographic composition of the population of illegally annexed Crimea.[11]

10. In its resolution of 17 April 2014, **the European Parliament** denounced the Crimean referendum as illegal and illegitimate and declared that the annexation of the Ukrainian peninsula occurred against international law.[12] It also expressed its conviction that Russia's assertion of the right to use all means to protect Russian minorities in third countries was not supported by international law and contravened fundamental principles of international conduct in the 21st century.
11. In its resolution of 5 July 2015, **the OSCE Parliamentary Assembly** condemned the Russian Federation's unilateral and unjustified assault on Ukraine's sovereignty and territorial integrity.[13]
12. On 21–22 March 2014, **the Venice Commission of the Council of Europe** determined that the referendum of 16 March 2014 held in Crimea was illegal.[14]

There are no resolutions declaring the legality of the annexation of Crimea. Thus, there is a consensus within the international community regarding the non-recognition of the annexation and its treatment as a grave breach of peremptory norms of international law (aggression); Crimea is regarded as part of Ukraine under the temporary Russian occupation.

The Constitutional Court of the Russian Federation as an Instrument in Committing the Annexation of Crimea

1. The annexation of Crimea would not have occurred but for the opinion of the Constitutional Court of the Russian Federation on the legality of the so-called Crimea's accession treaty. This opinion was required under Article 7(4) of the Federal Constitutional Law on the Procedure of Admission to the Russian Federation and Creation of a New Subject of the Russian Federation in Its Composition (hereinafter also referred to as the Incorporation Law).[15] Article 8(1) of the same Law specifies that the treaty on admission of a new subject

[11] Parliamentary Assembly of the Council of Europe, Resolution 2198 (2018) on humanitarian consequences of the war in Ukraine, 23.1.2018, paras. 1, 7.
[12] European Parliament, Resolution 2014/2699(RSP) on Russian pressure on Eastern Partnership countries and in particular destabilisation of Eastern Ukraine, 17 April 2014.
[13] OSCE Parliamentary Assembly, Resolution on the continuation of clear, gross and uncorrected violations of OSCE commitments and international norms by the Russian Federation, 5 July 2015.
[14] European Commission for Democracy through Law (Venice Commission), Opinion no. 762/2014 on "Whether the decision taken by the Supreme Council of the Autonomous Republic of Crimea in Ukraine to organise a referendum on becoming a constituent territory of the Russian Federation or restoring Crimea's 1992 constitution is compatible with constitutional principles", adopted by the Venice Commission at its 98th Plenary Session (Venice, 21–22 March 2014).
[15] Конституционный закон "О порядке принятия в Российскую Федерацию и образования в ее составе нового субъекта Российской Федерации". This provision reads as follows: "[a]fter signature of the international treaty the

to the Russian Federation can only be ratified if the Constitutional Court of the Russian Federation agrees that this treaty complies with the Constitution of the Russian Federation. Therefore, had it acted in compliance with the rule of law, the Court could have precluded the annexation of Crimea and stopped the commission of the international crime. However, as it did not that, the members of the Constitutional Court of the Russian Federation bear the legal and moral responsibility for that crime and all of its consequences. One has to note that the legal responsibility may involve the criminal responsibility for the crime of aggression, while the moral responsibility is much wider in scope – for all the victims of the still ongoing Russian aggression against Ukraine.

2. The "Treaty on the Accession of the Republic of Crimea to the Russian Federation" was referred to the Constitutional Court on 18 March 2014 at 17:00.[16] The Constitutional Court of the Russian Federation issued a unanimous judgment (the opinion) on the constitutionality of this "Treaty" in less than a day after the "Treaty" was referred to it (actually within one night), i.e. 19 March 2014.[17] Such procedural expediency (dealing with the case actually per night) is not common for any Court, including the Constitutional Court of the Russian Federation, and raises a reasonable doubt about the independence of the Russian Constitutional Court in dealing with the requested opinion.
3. This doubt is strengthened by the fact that, in its opinion, the Constitutional Court of the Russian Federation omitted the most important issues which were within its mandate and should have been addressed. The Court emphasised that it did not consider the *questions of political practicability of concluding international treaties* and that its opinion only concerned the legal questions.[18] However, the following issues were clearly legal and were not discussed in the opinion:
    3.1. The Court did not consider whether Crimea was a state at the relevant time and, accordingly, whether the Court had indeed been asked to issue an opinion on an "international treaty" (i.e. whether the document concerned could be regarded as an international treaty). This is a key issue, as Article 4(2) of the Incorporation Law does

President of the Russian Federation shall apply to the Constitutional Court of the Russian Federation with a query concerning verification of the conformity of the particular international treaty to the Constitution of Russian Federation."

[16] See official news information on the website of the President of the Russian Federation, http://www.kremlin.ru/acts/news/20614.

[17] "On the verification of the constitutionality of the international treaty, which has not yet entered into force, and the formation of new constituent entities within the Russian Federation" (Russian: по делу о проверке конституционности не вступившего в силу международного договора между Российской Федерацией и Республикой Крым о принятии в Российскую Федерацию Республики Крым и образовании в составе Российской Федерации новых субъектов), 19 March 2014, available at www.ksrf.ru.

[18] Ibid., p. 5.

not allow for the incorporation of a new subject into Russia by a treaty between Russia and a sub-state entity. In its opinion, the Court implicitly affirmed that Crimea was a state merely in view of the fact that only Russia treated it as such, and completely disregarded the opinion of the whole international community. The issue was perceived as legally problematic even by the legislative body of the Russian Federation, as merely weeks before the conclusion of the alleged "Treaty", on 28 February 2014, the draft law amending the 2001 Incorporation Law was introduced in the Duma.[19] Its purpose was to add a clause, obviating the requirement to conclude an international treaty "*when it is not possible […] because of the absence of efficient sovereign state government in the foreign state*".[20]

3.2. The Court did not consider whether the circumstances of conclusion of the "Treaty" complied with the international obligations of the Russian Federation arising out of general international law, in particular the *ius cogens* obligations of non-use of force and non-intervention into the internal affairs of other states.[21] Under Article 53 of the 1969 Vienna Convention on the Law of Treaties, the treaty is void *ab initio* if, at the time of its conclusion, it conflicts with a peremptory norm of general international law.

3.3. The Court failed to address whether the so-called "Treaty" with Crimea complied with Russia's international obligations, specifically with respect to Ukraine. The Venice Commission concluded that the treaty-making authorities and the Constitutional Court had been bound to consider the other treaties entered into by Russia, namely those

[19] Art. 4(2.1) Draft Amendment to the Incorporation Law, reviewed in the Opinion of the European Commission for Democracy through Law (the Venice Commission) on "Whether Draft Federal Constitutional Law No. 462741-6 on Amending the Federal Constitutional Law of the Russian Federation on the Procedure of Admission to the Russian Federation and Creation of a New Subject within the Russian Federation is Compatible with International Law", Opinion no. 763/2014, Venice, 21 March 2014.

[20] The amendment was withdrawn on 17 March 2014, before the Venice Commission managed to issue its conclusion on the unacceptability of this amendment, and a day before the "Crimean treaty" was referred by President Putin to the Constitutional Court for "review". The Venice Commission, *inter alia*, concluded that the acts carried out in the implementation of the draft law "would be unlawful both under international law and under the Constitution of the Russian Federation and could be challenged not only at the international level, but also in the Constitutional Court of the Russian Federation." See: ibid., para. 45.

[21] Under Art. 15(4) of the Constitution of the Russian Federation, "Universally recognised principles and norms of international law as well as international agreements of the Russian Federation should be an integral part of its legal system." It has been an established practice of Russia's Constitutional Court that Russia is bound not only by internal, but also by international law. The Constitutional Court has found that "Universally recognised principles and norms of international law and international treaties are, according to Article 15, part 4 of the Constitution, constitutive parts of the legal system of the Russian Federation and must be observed in good faith, including in internal legislation." See 31 July 1995 Judgment No. 10-П "On the Measures to Restore Constitutional Law and Order on the Territory of the Chechen Republic", point 5.

affecting the status of Crimea and its borders and creating the rights and obligations under international law that might have been impaired by the "Crimean treaty".[22]

3.4. The Court also failed to consider whether this particular agreement actually complied with the OSCE principles, including the 1975 Helsinki Final Act (in particular, the well-established principles of territorial integrity of states and inviolability of their borders).

4. In general, being professionals and highly qualified lawyers, the judges of the Constitutional Court of the Russian Federation had to be and were perfectly aware of the apparently illegal and criminal character of the activity they were taking part in by adopting the opinion, in particular that they were opening the way for the completion of an international crime of aggression – the annexation of a foreign territory, which had been unequivocally prohibited by both general international law and bilateral treaties with Ukraine (as well as by the Constitution of the Russian Federation).

5. In such a manner, the Russian Constitutional Court also acted contrary to the main principles of the Conference of European Constitutional Courts, in particular the principles of judicial independence and the rule of law. According to paragraph 1(a) of Article 6 of the Statute of the Conference of European Constitutional Courts, the full members of this organisation have to conduct their judicial activities in accordance with the principle of judicial independence, the fundamental principles of democracy, the rule of law, and the duty to respect human rights. Therefore, after the adoption of the opinion that opened the way for the illegal annexation of Crimea, the Constitutional Court of the Russian Federation no longer complies with the criteria of the full membership in the Conference of European Constitutional Courts.

Public Statements of the Chairman of the Constitutional Court of the Russian Federation

In his extrajudicial publications and public speeches in his capacity as the chairman of the Constitutional Court of the Russian Federation Valery Zorkin openly concedes that the Russian conduct in some instances does not comply with what is required by international law, and presents

[22] European Commission for Democracy through Law (Venice Commission), Opinion no. 763/2014 on "Whether Draft Federal Constitutional Law No. 462741-6 on Amending the Federal Constitutional Law of the Russian Federation on the Procedure of Admission to the Russian Federation and Creation of a New Subject within the Russian Federation is Compatible with International Law", paras. 44–45. The "Crimean treaty" infringed several bilateral treaties of the Russian Federation with respect to the territory of Ukraine: 1) the Treaty on Friendship and Cooperation of 1997 between Russia and Ukraine (ratified by the Russian Federation on 2 March 1999); 2) the Treaty of 2003 between the Russian Federation and Ukraine on the Russia-Ukraine border (ratified by the Russian Federation on 22 April 2004).

theories which seek to justify the international conduct of the Russian Federation[23] as attempts to slow down "the trend of increasing international lawlessness" and a reaction to the "blunt violations of international law by the United States and its allies".[24] Russia is depicted by Mr Zorkin as the state defending itself and all the civilisation from another invasion of Western (and domestic pro-Western) "civilised barbarians", which allegedly occurs in the forms and mechanisms of postmodern falsification of information, blatantly impudent interpretations of law, and economic sanctions; however, according to Mr Zorkin, "by its scale and intentions, this invasion is fully comparable with the barbarian invasions of the Teutonic Knights or the armies of Napoleon."[25]

Such a discourse of the chairman of the Constitutional Court of the Russian Federation demonstrates that Mr Zorkin is acting as the voice of the Russian official state propaganda. In particular, this is also visible from his statements about the annexation of Crimea and other grave breaches of international law committed by his state.

1. In one of his first articles published after the annexation of Crimea (on 24 March 2015 in the official government newspaper *Rossiyskaya Gazeta* [*Российская газета*]),[26] Mr Zorkin attacks the critics of the opinion of the Russian Constitutional Court that opened the way for the illegal annexation of Crimea by stating that "our [Court's] interpretation was well-founded and permissible. Therefore, Crimea is absolutely ours." In the same article, Mr Zorkin also, in principle, acknowledges the fact that the Constitutional Court of the Russian Federation has performed an instrumental role in the process of the annexation of Crimea and has failed to act as an independent judicial institution, by stating that "Russia had – and, besides, once again – to react urgently (among other things, *through the agency of the Constitutional Court*) to a new threat for the citizens living in Crimea. This time – by considering and adopting legal decisions, following from the lawful and democratic expression of the will of those citizens."[27]

---

[23] Publicly available on the website of the Constitutional Court of the Russian Federation. See: Выступления Председателя Конституционного Суда Российской Федерации, http://www.ksrf.ru/ru/News/Speech/Pages/default.aspx.

[24] Zorkin, V., *Civilization of Law and Development of Russia*, 2015, p. 264. Also see the lecture "Trust to the Law – the Way to Resolve Global Crises" to the participants of the International Legal Forum, held in St. Petersburg on 19 May 2016: http://www.ksrf.ru/ru/News/Speech/Pages/ViewItem.aspx?ParamId=78.
In his article of 23 March 2015, Mr Zorkin argues that Russia's conduct with respect to Crimea was a hasty attempt to correct the most egregious breaches by the new authorities in Kiev of the key fundamental rights and freedoms of its own nationals. Available in Russian at: https://www.zakon.kz/4698714-pravo-i-tolko-pravo-v.-zorkin-doktor.html and at http://universe-tss.su/main/politika/russia/18573-valeriy-zorkin-pravo-i-tolko-pravo.html. Originally published in the *Российская газета* – ed. No. 6631 (60), 24 March 2015.

[25] Zorkin, V., "Pravo i tol'ko pravo", *Российская газета* – ed. No. 6631 (60), 24 March 2015: http://m.rg.ru/2015/03/23/zorkin-site.html.

[26] Ibid.

[27] Ibid.

2. In his book of 2015 *Civilization of Law and Development of Russia*, Mr Zorkin explicitly concedes that Russia was involved in the Crimean referendum and that, in doing so, it breached international law. Nevertheless, he justifies such conduct on the basis of false threats to security of the Russian population of Crimea:

> Did Russia help to hold this referendum? Certainly it did. The Russian Black Sea Fleet in Crimea blocked both the attempt of *Crimea-based terrorist Islamic organisations* (Hizb ut-Tahrir and others) to destabilise socio-political situation, and the attempts of *armed neo-Nazi militants from Western and Central Ukraine* to break into the peninsula for "pacification" of Russians.
>
> May these actions on behalf of Russia seem questionable according to international law? I assume they might. However, I must emphasise that it was a necessary and inevitable response to *blatantly illegal actions of the Kiev authorities that performed a coup*, as well as to a direct military threat to security of the Russian population of Crimea by *Islamic radicals and Ukrainian neo-Nazis*. Russia could not regard these threats as anything but military. And we all know that a military threat has a different legal framework of action as opposed to peacetime.[28]

3. In the lecture of 19 May 2016, using similar language, Mr Zorkin also openly acknowledges Russia's involvement from the very beginning of the annexation and presents the same justification:

> Due to these reasons Russia immediately responded to the results of the Crimea Referendum and the request for accession of Crimea and Sevastopol to Russia. Due to these reasons at a time when *neo-Nazi "Bandera troops"* began to recruit and arm "punitive trains" to suppress the population of the Crimea, units of the Russian naval base in Sevastopol took control of the railways and highways leading to the Crimea, and blocked the penetration of *neo-Nazi gangs* to the Peninsula.[29]

4. In justifying Russia's illegal acts, chairman of the Russian Constitutional Court Valery Zorkin is not hesitant in using insulting and degrading language with respect to people and nations who oppose Russia's actions:

   4.1. Mr Zorkin refers to the Maidan revolution (Revolution of Dignity) as *an armed neo-Nazi coup in Ukraine*. In his public lecture to the participants of the International Legal Forum in May 2016, he declared:

> In the beginning of 2014 the obvious and almost undisguised participation of the diplomatic agencies as well as certain non-profit entities of the US origin and a number of European Union countries in preparation and execution of the *armed neo-Nazi coup in Ukraine* was revealed. Such a manifest disregard of Russia's

---

[28] Zorkin, V., *Civilization of Law and Development of Russia*, 2015, p. 264.

[29] Zorkin, V., the lecture "Trust to the Law – the Way to Resolve Global Crises" to the participants of the International Legal Forum, held in St. Petersburg on 19 May 2016: http://www.ksrf.ru/ru/News/Speech/Pages/ViewItem.aspx?ParamId=78.

> crucial strategic interests in the region marked the final limitations to the latter's foreign policy flexibility.[30]

4.2. Mr Zorkin refers to the Ukrainian armed forces as the "*Ukrainian Nazi gangs*", the "*neo-Nazi Bandera troops*". Apart from the above-cited excerpt from his book, he has consistently used such language in his public speeches, e.g. he referred, in such a manner, to Ukraine and its authorities even six times in his speech of 19 May 2016.[31]

4.3. Mr Zorkin alludes that the indigenous Muslim population (Crimean Tatars), who are against the Russian occupation, have to be associated with *terrorist Islamic organisations* (see the quotation above from his book).[32]

5. Mr Zorkin justifies the Russian aggression against Georgia by distorting the meaning of international legal documents and the real facts and using insulting and degrading language with respect to the Georgian leadership:

5.1. Mr Zorkin describes the situation in Georgia in 2008 as the "Georgian aggression".[33]

5.2. Mr Zorkin argues that Georgia "attacked the facilities of Russian peacekeeping forces as well as cities and villages of the unrecognised Republic of South Ossetia *essentially committing the act of genocide*."[34]

5.3. Mr Zorkin describes the conflict in Georgia selectively, emphasising only the parts of the resolution of the Parliamentary Assembly of the Council of Europe which he finds convenient for his thesis:

> The Parliamentary Assembly of the Council of Europe recognised the fact that Georgia resorted to armed force first by adopting the resolution No. 1633 dated 2nd October 2008, which expressly states the initiation of shelling of Tskhinvali without warning by the Georgian military.[35]

Mr Zorkin does not even mention the parts of the same resolution where the Parliamentary Assembly of the Council of Europe describes the Russian counter-attack as "either a direct attack on the sovereignty of Georgia […], or an attempt by Russia to extend its influence over a "near abroad" state in violation of its accession commitment to denounce such a concept."

---

[30] Ibid.
[31] Ibid.
[32] Zorkin, V., *Civilization of Law and Development of Russia*, 2015, p. 264.
[33] Zorkin, V., "Projti po lezviû prava", 13.8.2008, available at: http://www.rg.ru/2008/08/13/zorkin.html; Zorkin, V., the lecture "Trust to the Law – the Way to Resolve Global Crises" to the participants of the International Legal Forum, held in St. Petersburg on 19 May 2016: http://www.ksrf.ru/ru/News/Speech/Pages/ViewItem.aspx?ParamId=78.
[34] Zorkin, V., "Projti po lezviû prava", 13.8.2008, available at http://www.rg.ru/2008/08/13/zorkin.html. Actually, Mr Zorkin uses the legal concepts of genocide and aggression outside the scope of their applicability.
[35] Zorkin, V., *Civilization of Law and Development of Russia*, 2015, p. 263.

He does not even refer to the conclusion of the Parliamentary Assembly of the Council of Europe that the notion of "protecting citizens abroad", which is eagerly defended by Mr Zorkin in his contributions, is not acceptable under current international law.[36]

5.4. Mr Zorkin has indirectly called the then Georgia's president Saakashvili "*a son of a bitch*":[37]

> There are always people, who place interests above values. These people do not necessarily openly deny values. They may start using values for the purpose of interests, by giving a wrong, distorted interpretation of these values, appealing to the high principles and sneering inside. Isn't it the same expression that we find in the statement "Yes, he is a son of a bitch; but, he is our son of a bitch"? And hasn't this statement become a principle for the USA in whitewashing the massive breaches of human rights by its puppet regimes? Until the politics employs the concept of "our son of a bitch", the winners will be the "sons of bitches", not even the interests over the values.[38]

6. In one of his recent articles published in the official government newspaper *Rossiyskaya Gazeta* [*Российская газета*]),[39] Mr Zorkin continues the line of the official Russian propaganda with regard to Ukraine, Lithuania and other countries using the same insulting and degrading language. In particular, he justifies the Russian aggression against Ukraine by accusing this country in pursuing neo-Nazi policy and questioning the legality of the Ukrainian authorities; the same accusations have been made against Lithuania and other countries that condemn the Russian aggressive policies:

> "… the legitimate Russian political and humanitarian support for the fight of south-east Ukrainian citizens against the armed Nazi "battalions of volunteers" has been defined as "Russian military aggression"."
>
> "… that the armed coup in Ukraine was primarily carried out as a result of mobilising the combat units of neo-Nazi Banderites, who had long ago been preparing for this, and that the coup took place under open Nazi slogans. Experts and politicians know that, in a paradoxical way, this manifestly neo-Nazi coup was publicly and officially backed by the US and leading European countries and (particularly fervently) by Lithuania. It was backed, despite the photographs and video materials published by western journalists with the evidence of the

---

[36] Resolution 1633 (2008) of the Parliamentary Assembly of the Council of Europe "The Consequences of the war between Georgia and Russia", paras 6–7.

[37] Informal translation. Full citation in Russian: "Всегда есть люди, ставящие интересы выше ценностей. Эти люди не обязательно будут открыто отвергать ценности. Они могут начать использовать ценности ради интереса, толкуя ценности превратно, извращая их, апеллируя к высоким принципам и внутренне ухмыляясь. Разве не выражением чего-то подобного является утверждение: 'Да, это сукин сын, но наш сукин сын'? И разве это утверждение не стало принципом США в отбеливании массовых нарушений прав человека своих марионеточных режимов? До тех пор пока в политике будут оперировать понятием 'наш сукин сын', торжествовать будут даже не интересы в ущерб ценностям, а просто эти 'сукины дети'". Zorkin, V., "Projti po lezviû prava", 13.8.2008, available at: http://www.rg.ru/2008/08/13/zorkin.html.

[38] Ibid.

[39] Zorkin, V., "На пути к беззаконию?", *Российская газета* – ed. No. 7388 (222), 3 October 2017: https://rg.ru/2017/10/02/zorkin-zapad-podmenil-mezhdunarodnoe-pravo-mifologizaciej-spravedlivosti.html

armed Nazi fighters on the Maidan barricades, and despite the mass torchlight marches of armed neo-Nazis chanting "knife the Moskals" in the streets of Kiev."

"The putsch in Kiev was immediately followed by a campaign of the official glorification of the leaders of Banderite Nazism, who had actively been collaborating with Hitler's German Nazis and annihilating Jews and other "non-Aryans" even more eagerly than their German patrons and instigators."

"To the regret and shame of the world community, such tendencies are not confined to Ukraine and Lithuania. Regular "marches of Waffen-SS veterans" also take place in other Baltic Republics."

"The gatherings and marches of neo-Nazis are also held in Poland, Bulgaria, Slovakia, Germany and other countries."

"… that a considerable number of neo-Nazis from many countries of the world gathered to support the neo-Nazi Banderite putsch in Kiev. Many of them were openly displaying Nazi symbols and Nazi slogans before the television cameras on the barricades in Kiev already at the time of the "Maidan protests" and, having subsequently joined the neo-Nazi "volunteer battalions", were actively involved in armed hostilities against the peaceful population of south-east Ukraine."

"… the financial, political and military support by the countries of NATO for the so-called "anti-terrorist operation" conducted by the illegally installed neo-Banderite government in Kiev against the citizens of eastern Ukraine with the inhumane use of heavy weapons against civilians and with the involvement in this undeclared war of large numbers of "volunteers", including Nazis from various countries of the world, seen as the noble "defence of the territorial integrity of Ukraine"? And why is the same support by Russia for the fight of east Ukrainian citizens, who did not accept the neo-fascist Banderite government in Kiev and were joined by similar volunteers from Russia and other countries of the world, against the Nazi "volunteer battalions" and the Ukrainian army considered to be "the Russian occupation of the territory of Ukraine"?"

7. Mr Zorkin's manner of selective references and distortions is also most clearly visible from his comment on the speech of President Obama, which he compared with that of *Adolf Hitler* and *German Nazi bosses*. Presenting his argument that the United States makes "excesses of direct political and military interventions in the internal affairs of sovereign states without a UN mandate", and emphasising that "the thesis of choosiness, exclusivity, and specific global rights of the American state and the American people" has become more insistent and outspoken in the US foreign policy documents and speeches of the US officials in recent years, Mr Zorkin states:

> This thesis and such persistence in its presentation cannot help but worry not only us, lawyers and jurists. Since any unbiased educated person knows that the US in the post-Soviet era constantly have evaded international UN standards in a similar manner as did Hitler's Germany, disregarding the Institution of the League of Nations. *Moreover, any unbiased educated person sees in this statement of Mr Obama an almost verbatim*

> *quoting of leading politicians and propagandists of the German Third Reich, including Adolf Hitler. In fact Mr Obama said the same as was earlier stated by the German Nazi bosses about the exclusivity of the Germans while starting the World War II*.[40]

Thus, Mr Zorkin's public statements are consistently aiming at justifying the serious breaches of international law committed by Russia (including the annexation of Crimea) and the Russian policy in general. They are full of distortions and falsifications of both facts and law, insulting and degrading expressions with respect to Ukraine, the Crimean tartars, other nations and people who oppose Russia's aggressive policy. Those public statements could be considered as contrary to public order and, in some instances, as very close to the criminally punishable acts, such as the propaganda of war, the instigation of national hatred or hate speech, the denial, justification or gross trivialisation of international crimes.

The Doctrine of the Russian Constitutional Court for Shielding Russia from Its International Commitments

In addition, against this background, it is worth noting that the Constitutional Court of the Russian Federation has recently developed the doctrine shielding the Russian Federation from compliance with its international obligations. This doctrine is already in use by the Russian Constitutional Court for releasing the Russian Federation from the duty to implement the judgments of the European Court of Human Rights (hereinafter also referred to as the ECtHR) that are not favourable to Russia. Without any doubt, this doctrine will be applied should the Russian Federation face any judgment by international courts related to the illegal annexation of Crimea or, in general, to the Russian aggression against Ukraine.

1. Mr Zorkin started to raise the idea of the supremacy of the Russian Constitution over its international commitments in public after the judgment of the ECtHR of 7 October 2010,[41] in which the ECtHR openly criticised the Russian Constitutional Court over its judgment of

[40] This statement apparently refers to the speech that President Obama gave at the United States Military Academy Commencement Ceremony on 28 May 2014. As Mr Zorkin referred only to the first sentence from the whole paragraph, reproducing the full paragraph may help to understand the full context: "I believe in American exceptionalism with every fiber of my being. But what makes us exceptional is not our ability to flout international norms and the rule of law; it is our willingness to affirm them through our actions. (Applause.) And that's why I will continue to push to close Gitmo – because American values and legal traditions do not permit the indefinite detention of people beyond our borders. (Applause.) That's why we're putting in place new restrictions on how America collects and uses intelligence – because we will have fewer partners and be less effective if a perception takes hold that we're conducting surveillance against ordinary citizens. (Applause.) America does not simply stand for stability or the absence of conflict, no matter what the cost. We stand for the more lasting peace that can only come through opportunity and freedom for people everywhere." The full speech is available at: https://obamawhitehouse.archives.gov/the-press-office/2014/05/28/remarks-president-united-states-military-academy-commencement-ceremony.

[41] For an excellent summary of this case see a blogpost "ECHR and Promotion of the Rule of Law in Russia" at: http://echrrussia.blogspot.lt/2012/08/konstantin-markin-threw-military-court.html, 26 August 2012.

2009. Following this ECtHR judgment, on 29 October 2010, in the *Rossiyskaya Gazeta*, Mr Zorkin published an article "The Limit of Compliance", in which he characterises the ECtHR judgment as a turning point in the relationship between the Russian Constitutional Court and the ECtHR.[42] In Mr Zorkin's view, it was necessary to define the "limit of submissiveness by Russia" with respect to the ECtHR "by creating a mechanism of protection of national sovereignty".[43]

2. At the conference of 17 May 2011 on the 65th commemoration of the Nuremberg trial, Mr Zorkin repeatedly expressed himself against the "libero-globalist" principle of "the supremacy of international law over national law", arguing that this principle is merely a meaningless copy of the unprecedented situation of the Nuremberg trial with respect to "separate and sometimes dubious international collisions".[44]
3. The doctrine was encapsulated by the judgment of the Russian Constitutional Court of 14 July 2015, in which the Court argues that the ECtHR develops the European Convention on Human Rights in a way that contravenes the Constitution of the Russian Federation. According to the Russian Constitutional Court's press release,

> Russia's participation in an international treaty does not imply relinquishment of national sovereignty; thus, neither the European Convention, nor ECtHR legal positions based on the Convention, can override the supremacy of the Russian Constitution. Their practical implementation in the Russian legal system is possible only on the condition that the Russian Basic Law is recognised as the supreme legal force. The Constitution of the Russian Federation and the European Convention are based on common core values, and conflicts usually do not occur, but may occur if the ECtHR interprets the Convention in a way that contravenes the Constitution. In such a situation, Russia, by virtue of the supremacy of the Basic Law, will be compelled to withdraw from literal compliance with a decision by the Strasbourg Court.[45]

This judgment of the Russian Constitutional Court also imposed an obligation on all lower national courts to stop the proceedings on any case submitted for their consideration and to apply to the Constitutional Court in order to review the constitutionality of legislation in which the ECtHR had found flaws.

---

[42] See Zorkin, V., "Предел уступчивости" ["The limit of compliance"], 29 October 2010: https://rg.ru/2010/10/29/zorkin.html.

[43] See "Russia: Chief Justice Insists on Limited Application of International Court Rulings 8 December 2010": http://loc.gov/law/foreign-news/article/russia-chief-justice-insists-on-limited-application-of-international-court-rulings/.

[44] Zorkin, V., "Правовые результаты Нюрнбергского процесса и их современное значение" (Санкт-Петербург, 16 мая 2011 г.). Доклад на международной научной конференции, посвященной 65-летию Нюрнбергского процесса (Санкт-Петербург, 16 мая 2011 г.). ["Legal Results of the Nuremberg Trial and Their Contemporary Meaning". A Conference Paper for the 65th Commemoration of the Nuremberg Trial, 16 May 2011]. Available in Russian at: www.ksrf.ru.

[45] Judgment of 14th July, 2015 No. 21-П/2015, summary in English available at: http://www.ksrf.ru/en/Decision/Judgments/Documents/resume%202015%2021-%D0%9F.pdf.

4. In 2015, the Federal Constitutional Law was adopted for solidifying the right of the Russian Constitutional Court to rule on the constitutionality of a Strasbourg judgment.[46] On 19 April 2016, the Russian Constitutional Court ruled that the enforcement of the 2013 ECtHR judgment in the case of *Anchugov & Gladkov v. Russia* was "impossible, because it was contrary to the Russian Constitution".[47] On 19 January 2017, the Russian Constitutional Court applied the same doctrine when it declared that the ECtHR judgment on the compensation payment in the *Yukos* case violated the Russian Constitution and could not be enforced.[48]

[46] Law No. 7-FKZ of 14 December 2015.

[47] Постановление Конституционного Суда Российской Федерации по делу о разрешении вопроса о возможности исполнения в соответствии с Конституцией Российской Федерации постановления Европейского Суда по правам человека от 4 июля 2013 года по делу "Анчугов и Гладков против России" в связи с запросом Министерства юстиции Российской Федерации, 19 апреля 2016 года, available at: www.ksrf.ru.

[48] Постановление Конституционного Суда Российской Федерации по делу о разрешении вопроса о возможности исполнения в соответствии с Конституцией Российской Федерации постановления Европейского Суда по правам человека от 31 июля 2014 года по делу "ОАО "Нефтяная компания "ЮКОС" против России" в связи с запросом Министерства юстиции Российской Федерации, 19 января 2017 года, available at: www.ksrf.ru.