Concerning the question of the rule of law (the rule of law question) in the context of Russian foreign policy.

Elena Lukyanova

Doctor of Legal Sciences,

Professor of NRU HSE

Unfortunately, in history there usually remains the judgment of history, not the judgment of law. All the more so it is important to analyze events on time to see their "legal purity". So that in circumstances of the other legal reality our descendants can enter not the closed but barely opened door of new international confidence.

Part 1. Law and its supremacy as a bone of contention.

When the President of the USA (the USA President) Barack Obama was commenting remarks of the President of Russian (of Russian President) Vladimir Putin concerning Ukraine, he said: "It seems that President Putin has a different set of lawyers. Probably he has a different set of interpretations"[1]. I must say that President Obama was rather diplomatic. German Chancellor Angela Merkel was tougher in her remarks. When she was giving a speech in front of the Bundestag members, she said "During the Ukrainian crisis Russia acted according to the laws of jungle, which was used in XIX-XX centuries"[2]. What is that? Tricks of our enemies? Attacks of geopolitical competitors who want to claim world dominance? But prior to that the logic of cooperation although not simple at all, did not account for such disruptions. Is it actually about the law? Let's try to figure it out.

On differences in interpretation

Law. Indeed, Russian lawyers understand law differently from their European and American colleagues. If you ask them what does the law mean, most of them (ones with a law degree) would likely say clearly and without hesitation that law is an aggregate of norms of behavior, sanctioned by the government, violation or noncompliance of which entails legal responsibility. However, few of them would specify that there is a whole bunch of requirements for the contents and form of those rules, to their formulation and applicability and most importantly to how they actually work.

This situation occurs because positive theory of law was actively developed in its legal, sociological and psychological aspects in Russia from the late XIX century to the 1920s. E. V. Vaskovsky, M. N. Gernet, S. K. Gogel, D. D. Grimm, D. A. Drill, A. A. Zhizhilenko, M. N. Kapustin, M. M. Kovalevsky, N. M. Korkunov, S. A. Muromcev, N. A. Necludov, N. I.

[1] RIA News. http://ria.ru/world/20140304/998156375.html

[2] "Vedomosti". 13 March 2014 г. // http://www.vedomosti.ru/politics/news/23913481/merkel-rossiya-dejstvuet-na-ukraine-po-zakonu-dzhunglej#ixzz3AqH4XNjK

Palienko, S. V. Pakhman, L. I. Petrazhickiy, A. A. Piontkovsky, S. V. Poznishev, P. A. Sorokin, I. Y. Foynickiy, G. F. Shershenevitch – this is a list if of Russian scientists, who made a great contribution to the development of that theory and it is far from being complete. Back then those ideas were new they had west European roots and the legal positivism was a worldwide trend. For the last century and a half, the views of state and law changed drastically in favor of natural legal approach, where apart from the law which is created by the state, there is also a "natural law", which has superior legal force to the positive law. It also includes the approaches to justice and common good and social institutes that protect free exchange and can stop and suppress aggressive violence.

On the contrary, in Russia there was a conservation of positivist views on the law. Since positive approach was beneficial for the authoritarian Soviet government, soviet scientists kept studying and developing postulates of positivist legal theory, disregarding the adverse "bourgeois" researches[3]. As a result, the only scientific contents of law which remained was the studying legal norms and the law was substituted with legalistic.

As a USSR heritage the traditions of legal positivism which used a model that was hundred years old came to the modern Russia as a main branch of science. Main one, yet fortunately not the only one. Because modern Russian science has a lot of interesting and contemporary things. For instance a liberal-legal concept of philosophy of law of academic Nersesyanc, theory of legal regulation of academic Tikhomirov, institutional theory of law of professor Chetvernin that allow to study law as not merely the official texts but as really working norms - as a phenomena of social life and a way of social communications[4]. But overall at its mass, Russian science and school that makes specialists for legal and law enforcement systems does not operate in such complicated categories. It does not understand that law is an extremely complicated social-political science with an enormous number of sophisticated internal interactions and inter-dependencies that cannot exist without one another.

Contradicting itself, mass Russian jurisprudence declares that life is a material source of law, yet it deems formal sources as the only reliable ones. Until present, it joyfully quotes a brilliant Russian philosopher of the second half of XIX century Nikolay Korkunov, who said that "law cannot be a measure for estimating interests from the position of good and evil. It merely determines boundaries of performing the interests and establishes certain rights and obligations of subjects of relations"[5]. It is different from the English, who have long done using merely a word "law". In their legal discourse they call it "law and morality".

[3] Zorkin V. D. "Pozitivistskaya teoriya prava v Rossii" – M, edit. Mosk. Un-ta. 1978.
[4] Nersesyanc V. C. «Filosofiya prava: liberalno-yuridicheskaya koncepciya». – questions of philosophy, 2002, №3 P. 3-15; Tikhomirov U. A. Pravovoe regulirovaneie: teoria I praktika. – M. Formula of Law. 2010, Chetvernin V. A. Lections on theory of state and law. - http: //www.teoria-prava-ru.1gb.ru/; jus/ http://audio-booki.ru/tiching/15351-vladimir-chetvernin-lekcii-po-teorii-prava-i-gosudarstva-audiokniga.html
[5] Korkunov N. M. Collection of articles. – SPb, 1998 P. 59.

Rule of Law. Russia's 1998 accession to the *European Convention for the Protection of Human Rights and Fundamental Freedoms*, in one fell swoop, added a vast number of new notions to the official legal lexicon. Such as, for example, a party injured by a violation of rights and freedoms, free and fair elections, priority of values, and numerous others. Law practitioners (including professors of various legal subjects) could hardly learn all the new terminology. It was even more difficult to fully understand its substance and learning that whole load of knowledge, ideas, hypotheses, and proofs that had taken scholars from various countries a long time to develop so that a common acceptable intercontinental legal regime could be established. In addition, just as the process of implementing European law got under way, Russia conducted a large-scale legal reform.

The scope of new substantive and procedural legal rules was so huge that lawyers were too busy to attend to lofty meanings and sophistication of European scholars.

The term that Russians found most difficult to perceive has been "*verkhovenstvo prava*". They tried to translate it verbatim and ended up with "*verkhovenstvo zakona*", i.e., rule of the law. In fact, with a subpar translation, the English "rule of law" denoting this "*verkhovenstvo prava*" would be translated to Russian as both "*verkhovenstvo prava*" and "*verkhovenstvo zakona*". However, in English, "law" means more like a legal writ with a higher meaning, rather than the form and text of a regulatory legal act of Parliament, which fails to fully match the Russian word "*zakon*" from a formal point of view. In fact, "law" does not authentically translate as "*pravo*", the way it is understood in Russia, and should not be translated as "*pravo*". "*Pravo*" means "right".

As a result, the English "rule of law" and its Russian translation represent radically different philosophical concepts. Because the rule of law, in addition to strict compliance with the statutes, judicial power, and hierarchy of regulatory acts, mostly means the rule of the meanings, whereas, in Russia, it is interpreted as the rule of the letter of the law. The Venice Commission's Report *on the Rule of Law* pays a lot of attention to the difference between the notions "rule of law" and "ruled by law". It says that "Some time ago, the essence of the rule of law in some countries was distorted so as to be equivalent to "rule by law", or "rule by the law", or even "law by rules". *These interpretations allowed to justify authoritarian actions by governments* and do not reflect the true meaning of the rule of law today."[6]

Law-Bound State. The Russian interpretation of the rule of law principle[7] has been further confused by the term "law-bound state" that is enshrined in the Russian Constitution in

[6] See *Report on the Rule of Law*, as approved by the European Commission for Democracy through Law (Venice Commission) at its 86th plenary session (Venice, 25-26 March 2011). - Strasbourg, 4 April 2011. Study No. 512 / 2009. CDL-AD(2011)003rev; *Serhiy Holovaty* "The Rule of Law". - Kyiv, Phoenix Publishing House (2006) LXIV, 1747 (Vol. 1: The Rule of Law: From Idea to Doctrine; Vol. 2: The Rule of Law: From Doctrine to Principle; Vol. 3: The Rule of Law: The Ukrainian Experience).

[7] Russian authors unwillingly follow English-speaking philosophers of law, who largely use the concept of "state" in terms of international law; as they discuss domestic legal system, they apply the term "government" normally translated into Russian as "*pravitelstvo*". The term "state" is most often used in the American English legalese to mean "legal status", then a "state" as a constituent territory of the USA, and less frequently as "*gosudarstvo*" in the Russian sense of this word. This gives rise to misunderstandings due to translations that distort the difference

Europe this term is the continental alternative to the Anglo-Saxon "rule of law"[8]. However, after twenty years, Russia has still "not developed the kind of unity that would suggest that the Russian legal science has a generally accepted doctrine of a law-bound state"[9].

It has not developed and it could not be developed. Because all Russian textbook definitions where a state is defined as a form of society's organization became obsolete. They are wrong with regard to any modern state, and twice as wrong for characterization of a law-bound state. Commonly used definitions could not, likewise, be viewed as suitable explanations for the nature of a law-bound state such as "the state is the political organization of society that extends its authority across the country's entire territory and its population, has a special government body for such purposes, issues generally binding decrees, and has sovereignty. A law-bound state can be defined not in itself; rather it must be defined through its relations with the civil society without which it cannot exist. Similarly, the civil society cannot fully develop unless there is a rule of law in the state[10].

So some interpretations have grown obsolete, others have not yet evolved, and the third are not yet agreed upon. And these are not just definitions these are extremely complicated judicial formulas, which carry on themself the legal consciousness and legal conduct. It turns out that Russia and most modern states live in different legal dimensions. In a single phrase, a fine constitutional lawyer and the forty-fourth President of the USA, Barak Hussein Obama has managed to express the essence of a problem that one day breached the limits of a purely scholarly discussion and brought severe conflict in a specific situation. As we speak about the same things, we have been assigning completely different meanings to what we say and therefore we could not understand each other.

On Different Lawyers

In Russia, lawyers likewise differ from their foreign counterparts. Of course, this does not apply to all of them. This nation counts numerous highly professional independent experts in the field of law. However, they are usually barred from decision-making within the government and the powers that be, because, over 20 years, the state has selected the sort of legal doers it found convenient for itself. The rest, one way or another, were gradually removed beyond the bounds of the state's legal activities. As a result, two legal communities have evolved; they speak completely different languages and use different legal constructs. One community comprises officials "in the field of law", judges, parliament members, election commissioners, and law

between the doctrine of Russian law-bound state in the RF Constitution and Kant's German *Rechtsstaat* in the German Constitution, on the one hand, and the Anglo-American doctrine of the rule of law, on the other hand.

[8] The concepts of *Rechtsstaat (law-bound state)* and *rule of law* differ on two counts: 1) the Anglo-American tradition does not believe that law could be reduced to a logical system controlled by the constitutional court only; 2) it does not believe that the citizen is vested with his or her rights by the state.

[9] *Zorkin, V.D.* Konstitutsionnoye razvitiye Rossii [*Russia's Constitutional Development*]. Moscow, 2011. pp. 52–53.

[10] See further: *Barenboim, P.D.* "Kontseptsiya Zorkina-Tancheva o sootnoshenii sovremennykh doktrin verkhovenstva prava i pravovogo gosudarstva" [Zorkin-Tanchev Concept of Relationship Between the Modern Doctrines of Rule of Law and Law-Bound State] - http://www.philosophicalclub.ru/?an=Barenboim_-_Kontseptsiya_Zorkina-Tancheva

enforcement officers. The other community is made up of lawyers, human rights activists, and some of the independent scholars.

At an international symposium "Doctrines of Law-Bound State and Rule of Law in the Modern World" hosted by the Russian Constitutional Court in October 2013, American Bar Association President James Silkenat described four universal requirements needed for a functioning system that could implement the rule-of-law principle. Namely:

1. The government apparatus, its officers, and officials are bound by law.
2. Statutes are clear and definitive, officially published, meet the requirements of stability and fairness, and are made with intent to secure and protect fundamental rights, including protection of the individual and property.
3. The process of statute acceptance, execution, and enforcement is open, fair, and reasonable.
4. Justice is administered by competent, highly moral and independent representatives or neutral parties that are available within the state in sufficient numbers, adequately resourced and reflect the structure of the society they serve[11].

To Mr. Silkenat, such principles appear simple and easy to grasp and he formed them very sharply. However, he would find it hard to recognize that most Russian government lawyers need further translation so that they can understand it clearly as well.

For example, you have to clarify to the judges what does their competence, high morality and independence mean. They have to be taught that, if prosecution evidence is found inadequate or unconfirmed in the course of judicial investigation or if the defense produces evidence that puts the defendant's guilt into doubt and that evidence is never refuted, the judges are required to follow the constitutional principle whereby the defendant has the benefit of irremediable doubt (Art. 49(3)).

Russian judges need further explanations that they cannot fail to include in the case evidence refuting the prosecution's position, cannot but carry out procedures they are obliged to perform in the course of a judicial investigation for establishing the truth. Because a Russian judge knows that any acquittal verdict he or she issues will be repeatedly questioned, examined, and appealed. Therefore, judges manipulate procedural rules and the bounds of judicial discretion to issue judgments that are safest for them. In order to make sure that this does not happen, the Russian judge, at the very least, needs further guaranties that any judgment he or she issues on the basis of law will pose no danger to his or her status. On the contrary, the judge should be confident that he or she would be held responsible for an unjust ruling knowingly issued, and that such "knowingness" will be a matter of fair public proof.

Mr. Silkenat would deem impossible a situation where the court chairperson requires each judge to provide daily reports on pending cases, particularly on those "involving government authorities and officials as litigants". A US lawyer will find it incomprehensible to see a judge that declines such requirement to be stripped of his status. In his ugliest nightmare, a US lawyer would never dream that the chair of a regional judge qualification panel, making a

[11] See: *Novaya Advokatskaya Gazeta*, 21/2013 (158) http://www.advgazeta.ru/arch/158/1188

claim in the Supreme Court for taking away a status from a "disobedient" judge, that a judge cannot be independent because he is part and parcel of the judiciary[12].

In Russia, such situations establish preconditions that make it impossible to apply virtually all requirements referenced by Mr. Silkenat. For instance, during election campaigns, electoral commissions deny complaints of electoral law violations and suggest that the complainants go to the court. And the court either refuse to accept evidence and order forensic reviews or issues judgments that have no legal ground whatsoever, contrary to fairness and common sense, using nothing but "just" a judicial discretion. After that, electoral commissions claim that the courts have not found any violations and go on to approve the outcome of unfair and unjust elections. As a result, given the inherently flawed selection system, the competence of representative authorities goes down gradually. The Parliament so elected manipulates procedural rules in the context of law-making. Three readings of a law could be held in a day without circulating the bill to parties that enjoy legislative initiative, which is a mandatory requirement, while amendments are voted on without discussion, using tables preapproved by the relevant committee for either "reject" or "pass" them. There were situations when the date when law comes to effect is established ahead of the earliest possible timeline, as to coincide with a special calendar date, a certain political objective must be achieved[13]. Such procedure cannot ensure that regulatory acts are clear, definitive, stable, and fair, which is a *sine qua non* for implementing the rule-of-law principle. Therefore, naturally, the least-working rule in the Constitution of Russia is the prohibition on passage of laws that violate or prejudice the rights and freedoms of the human being and citizen (Article 55(2)).

But not all Russian courts and judges like that, are they? Evgeny Semenyako, President of Russia's Federal Chamber of Lawyers, claims: "Whereas, in Europe, the agencies, standards, and principles of the European Union stand above each country's authorities, the last bastion defending the Constitution in Russia is its Constitutional Court"[14]. Indeed, special requirements are mandated by law for would-be judges of the Constitutional Court. As opposed to any other judges whose eligibility requirements only include Russian citizenship, a degree in law, and a certain length of service in the legal profession, to be appointed a judge of the Constitutional Court, the citizen must have an unimpeachable reputation and a recognized high qualification in the field of law. Constitutional Court judge Professor Nikolay Bondar' is confident that the Constitutional Court is a co-author of the Russian doctrine as regards the rule of law. He believes it is Constitutional Court judgments that provide understanding of that doctrine and balance of power, freedom, and property. For a number of years, Constitutional Court Chairman Valery

[12] See: "Ya Federal'ny sud'ya, a ne prodavschitsa" [*I Am a Federal Judge, Not a Shop Assistant*] // *Novaya Gazeta*, No. 95 of 22 December, 2008.

[13] For instance, Law No. 65-FZ (it introduces special liability for organization of public events) was approved by the State Duma without public discussion in two months; the Duma adopted it in its third reading on the eve of a scheduled protest rally, holding an unprecedented nighttime session. The Federation Council approved the law the very next day, a feat that is, yet again, perfectly impossible in procedural terms. However, that was not enough. The law came into effect in a completely unique manner, on the day of its publication, rather than in ten days thereafter as contemplated by the Law "On the Procedure of Publication and Effectiveness of Federal Constitutional Laws, Federal Laws, and Acts of Federal Assembly Chambers".

[14] See: *Novaya Advokatskaya Gazeta*, 21/2013 (158)

Zorkin sat on the European (Venice) Commission for Democracy through Law and only left it because, at the Commission meetings, he "had to, ever more often, make statements on the substance of legal rules that eventually end up reviewed by the Court, and such statements are prohibited by law"[15]. So it is very interesting to analyze Constitutional Court actions in a situation that prompted such drastic response on the international community.

Part 2. Rule of Law and Crimea

In analyzing the Crimean situation of 2014, I have to make a caveat: I can hardly be accused of Crimea phobia. I dearly love Crimea. For the past twenty years, I lectured on the status of territories gravitating to Russia, including the Republic of Crimea. Throughout the years, as the leader of a team of scholarly experts on these territories, I kept writing and telling people that Crimea required greater flexibility on the part of Ukrainian authorities and greater persistence on the part of Russian politicians. I sent papers to the President Administration but never received a reply…

In fact, I was not the only one. Even in 1992, Russia's Supreme Soviet deemed it "necessary to settle the Crimean issue through interstate negotiations between Russia and Ukraine with participation of Crimea"[16]. In the context of a Crimea-wide referendum held on 25 June, 1995, the State Duma suggested that "the Russian Federation Government take necessary steps to re-energize the process of negotiations with Ukraine"[17].

This is why I was very upset by the way Crimea was incorporated into Russia in 2014. Why now? It was not the first time that Crimea held a referendum. Why did they keep silent for 22 years and then annexed it in 23 days[18]? Why only Crimea? In September 2006, a similar referendum was held in the Pridnestrovian Moldavian Republic, with 97.1 % voters choosing to join Russia[19]. The Crimean annexation has endangered the entire European policies after 1945 Yalta Conference, created a dangerous precedent of a self-proclaimed state, already applied in the Eastern Ukraine. As a result, Russia started a conflict with its closest partner nation and обострила its relations with international community.

In this regard, I would like to cite the opinion of Ksenia Sobchak, a well-known Russian journalist holding International Relations degrees from the St. Petersburg State University and Moscow's MGIMO: "The truth is that Russia's Ukraine foreign policy has failed with a deafening thud, and political looting was employed in lieu of diplomatic solutions. One could even forget "morality" for, in the politics of any state, it always takes a back seat to measured calculation. However, the economic consequences that all of us are going to experience in the

[15]See: http://www.kommersant.ru/doc/2195731

[16]See: Resolution of the Russian Federation Supreme Soviet "On Legal Assessment of the 1954 Decisions by Supreme Government Authorities of the RSFSR to Change Crimea Status" dated 21 May 1992, No. 2809-1

[17] See: State Duma Resolution No. 771-1GD dated 17 May, 1995 as regards a petition by the Republic of Crimea

[18] A mere 23 days elapsed between the day when the ARC government offices were first occupied and the day the ARC was reconstituted as a member territory of the Russian Federation; by that time, only six days elapsed since the start of popular vote in Crimea.

[19] See: "Pridnestrovye poprosilos v sostav Rossii" [*Transnistria Asks to Be a Part of Russia*]- http://lenta.ru/news/2014/03/18/transnistria

coming years will be keenly felt by each and every Russian national. As a result, it turns out that our state has committed an unprecedented political act, condemned by the international community, yet derived no benefit and, instead, harmed its economy. Crimea WAS supposed to become a part of Russia… However, that historical wrong should have been righted through years of negotiations with Ukraine, cultivation of relationships, diplomatic bargaining, rather than by stealing a candlestick from the neighbor's blazing house, even though you may have given that candlestick away while blind drunk"[20].

The rapid procedure of Crimean annexation and the followed by propaganda that accompanied it have stupefied the Russian scholarly community. However, having stopped for a moment and looked at the developments with clear eyes, one could conclude that all these events perfectly fit the context of Russia's general legal paradigm. It is Crimea's annexation by Russia that offers a classical example of how the rule-of-law principle is breached by interpreting meanings and manipulating procedures.

A key role in this story was played by Russia's Constitutional Court. In performing one of its core actions contemplated by law in the context of incorporating a portion of a foreign state into Russia, i.e., in reviewing an international treaty for compliance with the Constitution, it breached its own procedures at least eight times and resorted to interpretation of statutory rules.

Now, what happened exactly? We need to revisit the ***chronicle of events*** to understand.

According to newswires[21], on the night of ***26 February*** and early morning of ***27 February 2014,*** a group of unknown persons captured the building that housed the Supreme Soviet and the Council of Ministers of the Autonomous Republic of Crimea ("hereinafter - ARC"). Russian flags were hoisted on top of the buildings. On February 27, the land connection between Crimea and mainland Ukraine was blocked. On the same day, the ARC Supreme Soviet announced a referendum as regards Crimea's autonomous status and an expansion of its powers. The vote was scheduled for **25 May 2014**. At that time, the question put up for referendum contained no provisions that violated Ukraine's territorial integrity. The referendum sought to "improve the ARC's status and make sure that the autonomy's rights are guaranteed notwithstanding any changes in Ukraine's central authorities or its Constitution".

On March 1, Russian President Vladimir Putin asked the Federation Council to grant him the right to use a limited military contingent outside the Russian Federation and received a blank check to move the military into the Ukrainian territory for the purpose of "normalizing the sociopolitical situation in that country". On the same day, the Crimean referendum was moved forward to **30 March 2014.**

On March 4, President Putin stated that Russia was not considering Crimea's incorporation into Russia. "It is only citizens themselves," – he said, "under conditions suitable for free manifestation of their will, who may and should determine their future".

[20] See: Ksenia Sobchak, Otkrytoye pismo Nikite Mikhalkovu [*Open Letter to Nikita Mikhalkov*] - http://www.snob.ru/profile/24691/blog/80450

[21] http://www.interfax.ru/history/27/02/2014/

On March 6, ARC and Sevastopol City authorities announced an amendment to the referendum question language and that the vote day had been rescheduled to ***March 16***. The referendum was held as scheduled. According to official data, 96.77% of those taking part in the referendum voted in favor of Crimea's reunification with Russia.

On March 17, based on the referendum results, the ARC Supreme Soviet declared Crimea to be an independent sovereign state, the Republic of Crimea, with the city of Sevastopol enjoying a special status.

On March 17, President Putin signed a decree recognizing the Republic of Crimea as a sovereign and independent state. At the same time, the Republic of Crimea asked Russia to incorporate it into the Russian Federation as a new member territory of the Russian Federation having the status of a republic. The Crimean Parliament quickly drafted an international treaty on joining the Russian Federation.

On March 18, Putin initiated the procedure of incorporating Crimea into Russia. He notified the Government and the Parliament chambers of the proposals made by the Crimean State Council and Sevastopol's Legislative Assembly on their admission into the Russian Federation and the establishment of new member territories. Next, he approved and signed an interstate Treaty admitting Crimea and Sevastopol as parts of Russia, whereby new member territories, i.e., the Republic of Crimea and the Federal City of Sevastopol were established within the Russian Federation. On the same day, Putin asked Russia's Constitutional Court to examine the Treaty so signed for compliance with the Constitution. The request was accepted for review forthwith, without any public hearings.

In the morning of March 19, the Constitutional Court ruled the Crimea accession Treaty compliant with the Russian Constitution.

On March 19, President Putin sent the Treaty along with relevant bills to the State Duma for ratification[22].

On March 20, the State Duma ratified the Treaty.

On March 21, the Federation Council ratified the Treaty. Putin signed the laws on Crimea's and Sevastopol accession to Russia. The Treaty came into effect.

On March 21, the Crimean Federal District was established within Russia, and the Russian Federation President's representative to Crimea was appointed.

At the first glance, in terms of the Federal Constitutional Law "On the Procedure of Admission to the Russian Federation and Establishment of a New Member Territory of the Russian Federation" (hereinafter referred to as the "Admission Law"), the procedure has been complied with. Indeed, a foreign state may be admitted as a new territorial subject of Russia by their mutual agreement pursuant to an international treaty. Following the referendum, the Republic of Crimea declared itself to be such a state. Russia recognized that state. An international treaty was entered into. The Constitutional Court reviewed it for compliance with the Constitution. The Parliament ratified that treaty while simultaneously adopting a relevant law

[22] Draft Federal Constitutional Law on establishment of new member territories of the Russian Federation and draft law amending Article 65 of Russia's Constitution.

and automatically adding the names of the new member territories to the Constitution. It looks like everything is all right. At the end of the day, the President might well have thought it unnecessary to hold any further consultations with the Parliament or the Government on Crimean accession. Likewise, he may have asked the Parliament to convene on an emergency meeting. The Parliament itself may have been so profoundly convinced that the question was properly put to it that it never discussed anything (as evidenced by the tally of Treaty ratification votes). Such things do happen, occasionally.

However, the review of the Treaty between the Russian Federation and the Republic of Crimea on Admittance of the Republic of Crimea into the Russian Federation and on Establishment of New Member Territories as Part of the Russian Federation (hereinafter referred to as the "Treaty"), by the Constitutional Court, does raise certain questions. In fact, it is the central legally significant action of the entire procedure. Under Article 91(2) of the Admission Law, "an international treaty shall not come into effect or be applied, i.e., it cannot be ratified or approved and cannot otherwise become effective for the Russian Federation if the Constitutional Court finds it non-compliant with the Constitution".

Truly, Russia's Constitutional Court found itself in a tricky situation. It only had one night to issue its ruling. It faced a choice of staying within the bounds of law or going with the flow. That is why the Constitutional Court Ruling issued on the night of 18 March 2014 requires special attention in and of itself.

Violation one. Inadmissible request. There is a lot of doubt as to whether the Constitutional Court properly admitted the request for the Treaty's review and whether the case could be examined at all. Article 36 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation" (hereinafter referred to as the "Constitutional Court Law") contemplates only one basis or reviewing a case, i.e., "an uncertainty found as to whether an international treaty which has not yet come into effect is compliant with the Constitution of Russian Federation". Article 89, titled *Admissibility of Request*, only calls for potential review of international treaty if such document is subject to ratification (Part 1) and "**the applicant believes that it may not be put into effect or applied** in the Russian Federation since it is non-compliant with the Constitution of Russian Federation" (Part 2). However, no uncertainty in the Treaty had been identified by anyone. The President, who lodged the request with the Constitutional Court, did not believe the Treaty to be unconstitutional. Therefore, the request itself was inadmissible and the Constitutional Court could not review it.

The reason for this conflict is clear. A lot of time passed between the adoption of the federal constitutional laws "On the Constitutional Court" (1994) and "On Admission" (2001), and the members of Parliament simply forgot to adapt one with the other. The Constitutional Court itself, being fully entitled to initiate legislation on "issues within its own competence", also "missed" this conflict between the two constitutional laws. However, the procedure had to be complied with. Consequently, the Court had to wiggle out of the situation right there, in its

own ruling[23]. Almost two pages of its text (paragraph 1) are dedicated to justification of why the Court eventually opted to breach the law and review the case. The Court honestly admitted that the request said nothing about the Treaty being unconstitutional and that, contrary to the procedure of assessing the Treaty, a disputing party was missing and that the Court failed to find "full procedural identity" between this situation and other instances of facultative constitutional supervision". Finally, the Court concluded that the Treaty's review constituted a mere "integral part of the legal substance of a government authorities' decision" and, therefore, is obligatory for the Court. That means, if it is prohibited but we want it real bad, then it is allowed.

Violation two. Non-compliance with the mandatory review procedure. In reviewing the Treaty, the Constitutional Court failed to comply with Articles 41 and 49 of the Constitutional Court Law. The Court should be given its due, for in its ruling it honestly admitted that the mandatory procedure of case review, as contemplated by law, was breached in reviewing the Treaty. It stated that it was "obliged to consider the case on merits without resorting, in this instance, ***given this case's specifics***, to procedures involving a prior examination of such request by a Constitutional Court judge and hearings of the case". Now, while a case may be reviewed, in principle, without hearings (Article 47.1), the Law prohibits reviewing the case unless the matter has been subjected to a prior scrutiny. However, as mentioned, the Court was only given a single night to issue its ruling. There was no time for prior scrutiny or appointing a *rapporteur* judge. Still, given lack of time, the Court might have used Article 42(2) of the Constitutional Court Law to request relevant authorities and officials to suspend entry into force of the international treaty of Russian Federation until the case review was completed. It could have used it but it did not. Why bother? All the same, everything has been predetermined "given this case's specifics".

Violations three, four, and five concern the binding limits for the Treaty's review. The Constitutional Court Law (Articles 86 and 90) lays down binding limits for reviewing an international treaty of the Russian Federation that has not yet come to an effect, for its compliance with the Constitution. The Law says that the Court is obliged to review any such treaty: 1) as to the substance of its rules; 2) as to its form; 3) as to the procedure of its signing, execution, adoption, publication, or enactment. In addition, the law requires the Constitutional Court to issue its ruling on the case while "assessing both the literal meaning of the act and the meaning given thereto by the official or other interpretation or the prevailing case law, and also minding its place in the system of legal acts" (Article 74(2)).

Analyzing the Court's ruling dated 19 March 2014 in terms of these mandatory requirements, it can be confidently said that the Court discharged itself from reviewing the Treaty on quite a number of mandatory parameters.

[23] Ruling No. 6-P of the RF Constitutional Court dated March 19, 2014 "On the Case of Constitutionality Review of an-as-yet Ineffective International Treaty Between the Russian Federation and the Republic of Crimea to Admit the Republic of Crimea into the Russian Federation and Establish New Member Territories of the Russian Federation" // Collected Laws of RF, 2014, No. 13, p. 1527

The Constitutional Court discharged itself from assessing the Treaty on whether the substance of its rules complies with the fundamentals of constitutional system of Russia. Text of the Treaty says that the Russian Federation concludes the Treaty "in accordance with generally recognized principles and rules of international law, bearing in mind close interconnection of other fundamental principles of international law laid down, in particular, in with the Charter of the United Nations and the Helsinki Final Act of the Conference on Security and Cooperation in Europe and with the principle of respect for and compliance with human rights and freedoms…"[24]. Was the Court obliged to check the validity of that provision? Most definitely so, but it did not.

Meanwhile, it is the 1975 Helsinki Final Act of the CSCE, that the entire European security system is based on and which is cited in the Treaty, that clearly requires its signatory states (including Russia as the USSR successor) to respect territorial integrity and border inviolability and not to violate them. The 1995 Memorandum on Maintaining Peace and Stability within the CIS states that Commonwealth members undertake to provide no support to separatist movements or separatist regimes, if any, within the territories of each other; establish no political, economic, or other relations therewith; prevent any use of territories and communications o CIS member-states by such regimes and movements; and provide no economic, financial, military or other assistance to them. "Nothing … shall be interpreted as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States which comply the principle of equal rights and self-determination of peoples," - the 1970 General Assembly Declaration on Principles of International Law explains the principles of territorial integrity and self-determination of peoples set forth in the UN Charter. In fact, these are the very documents that should have provided the context for a substantive review of the Treaty because they constitute effective obligations of Russia under international law.

Ultimately, as it waived a substantive analysis of the Treaty's contents, the Court failed to examine its compliance with Parts 2 and 4, Article 15 of the Constitution. The article states that "generally recognized principles and rules of international law and international treaties of the Russian Federation are an integral part of its legal system ["]. The Constitutional Court itself repeatedly reaffirmed it in its rulings: "In keeping with the principles of a law-bound state as laid down by the Russian Federation Constitution, government authorities, in their activities, are bound by both domestic and international law. Generally recognized principles and rules of international law, as well as international treaties, are an integral part of its legal system and

[24] See: *Rossiyskaya gazeta*, 19 March 2014, p. 1. (Nationwide issue No. 6334).

must be observed in good faith in accordance with Article 15(4) of the Russian Federation Constitution"[25].

Consequently, if an international which has not yet come into effect conflicts with other international treaties which were concluded earlier and with international obligations of Russia, which have not been denounced by its review date, such treaty must be reviewed for compliance with such obligations. Moreover, the Constitutional Court could not ignore unavoidable consequences ratification of that Treaty, i.e., adoption of Russian domestic laws that would be quite consistent with the "reviewed" treaty yet would result in an antagonistic conflict with other treaties.

However, as it would turn out, this does not apply to the Crimea situation. In its ruling, the Court honestly admits: "Since, pursuant to Article 3(3) of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation", the Constitutional Court of the Russian Federation addresses solely issues of law, it does not assess the political expediency of concluding an international treaty". So in some cases international law constitutes a crucial legal pillar of Russia's constitutional system in some cases, in others it boils down to legal expediency. Thus, the Court elegantly substituted some notions and avoided a difficult situation fraught.

The Constitutional Court removed itself from assessing the Treaty in terms of form. In its ruling, the Court knowingly excluded from the scope of Treaty review "analysis of the documents referenced in such treaty as its foundation". Clearly, it was the only way out for the Court in that situation; otherwise, had those documents been examined, the Court could hardly have held the Treaty compliant with the Constitution.

First, the Treaty is based on the Republic of Crimea's declaration of independence, the core legal position of which relies on a ruling made by the International Court of Justice in the Kosovo case. The declaration expressly states: "considering that, on 22 July 2010, the International Court of Justice, with regard to Kosovo, confirmed that a unilateral declaration of independence by a portion of a state does not violate any rules of international law … we resolve"[26]. However, such reference is made completely in bad faith. First, because the International Court of Justice is only competent to provide an advisory opinion on a request received thereby. The verdict issued by the International Court of Justice is in fact titled this way, Advisory Opinion of the International Court of Justice on Kosovo. Even though, nowadays, numerous parties present this document almost as an international authorization to secession, at

[25] See: Ruling No. 10-P of the RF Constitutional Court dated 31 July 1995 "On the Case of Constitutionality Review of the Russian Federation President's Decree No. 2137 dated 30 November 1994 "On Measures to Restore Constitutional Legality, Law, and Order within the Chechen Republic", Russian Federation President's Decree No. 2166 dated December 9, 1994 "On Measures to Disrupt Activities of Illegal Armed Units within the Chechen Republic and in the Ossetian-Ingush Conflict Area", Resolution No. 1360 of the Russian Federation Government dated 9 December 1994 "On Assuring State Security and Territorial Integrity of the Russian Federation, Legitimacy, and Citizens' Rights and Freedoms, plus Disarmament of Unlawful Armed Units within the Chechen Republic and Adjacent Regions of North Caucasus", and the Russian Federation President's Decree No. 1833 of 2 November 1993 "On Fundamental Provisions of the Russian Federation's Military Doctrine". // *Vestnik Konstitutsionnogo Suda RF*, 1995. No. 5.

[26] http://www.unian.net/politics/895069-rada-kryima-prinyala-deklaratsiyu-o-nezavisimosti.html

that time, 22 July 2010, the United Nation's judicial body had no discussion at all regarding the lawfulness or unlawfulness of ethno-political secession or a nation's right to self-determination as a principle. By that point in time, 69 of the 192 UN member nations had recognized Kosovo as an independent state. Meanwhile, the entire UN has not recognized Kosovo's independence yet, because two permanent members of its Security Council (Russia and China) are flatly against this unilateral self-determination by Serbia's breakaway autonomous region. Even Europe lacks consensus on recognizing Serbia's breakaway autonomous region as an independent entity (in fact, 5 EU member countries, namely Spain, Greece, Romania, Cyprus, and Slovakia have not recognized Kosovo)[27]. Please note: ***it is Russia that flatly rejects*** the Kosovo ruling by the International Court of Justice! However, it is this very ruling that underpins all documents on Crimea's accession to Russia, and the Constitutional Court cannot but be aware of that.

Second, the grounds for entry into the Treaty are constituted by Russia's recognition of the Republic of Crimea as an independent state. On 17 March 2014, the President of Russian Federation signed Decree No. 147 "On Recognition of the Republic of Crimea" which says: "Considering the will expressed by the people of Crimea at the Crimea-wide referendum held on 16 March 2014, recognize the Republic of Crimea wherein the City of Sevastopol enjoys special status, as a sovereign and independent state". However, the Crimean people expressed their will on a completely different matter. Two questions were put up for the Crimea-wide referendum: "Are you in favor of Crimea's reunification with Russia as a member territory of the Russian Federation?" and "Are you in favor of restoring the effect of the 1992 Constitution of the Republic of Crimea and in favor of Crimea's status as part of Ukraine?" There is no mentioning of independence. Should the Constitutional Court have reviewed that legal basis? Or is it, yet again, covered by the definition of legal expediency?

The Constitutional Court removed itself from assessing the Treaty in terms of its signature procedure. The Court only verified the authority of Russian party which was already evident. The Court stated that the Treaty "has been signed by the President of Russian Federation who, under the Constitution of Russian Federation and federal laws, is authorized to determine the key areas of the state's domestic and foreign policies". "Therefore, the execution of the reviewed Treaty by the President of Russian Federation complies with the Constitution of Russian Federation". Nothing else has been examined, even though there was a certain scope for such examination.

On Crimea's part, the Treaty was signed by Head of the Crimean Government Sergey Aksyonov, Speaker of the Crimean Parliament Vladimir Konstantinov, and Head/Mayor of the City of Sevastopol Aleksey Chaly. However, the status of Sevastopol as part of Ukraine

[27] On this matter see: *S.A. Golubok* "O sootvetstvii mezhdunarodnomu pravy odnostoronney deklaratsii nezavisimosti Kosovo. Konsultativnoye zaklyuchenie Mezhdunarodnogo Suda OON ot 22 iyulya 2010 goda" [*Accordance with International Law of the Unilateral Declaration of Independence In Respect of Kosovo. Advisory Opinion of the International Court of Justice dated 22 July 2010*] // Mezhdunarodnoye pravosudie, 2011, No. 1; *Markedonov, S. "*Kosovo: deklaratsii ili politicheskaya realnost?" [*Kosovo: Declarations or Political Reality?*] // *Noev kovcheg*, 2010, No. 09 (156) - http://noev-kovcheg.ru/mag/2010-09/2195.html

presumed no elected mayor at all. The so-called "popular" mayor, Russian national[28] Aleksey Chaly, had been elected by the residents at a public rally [29]. That is, at the time of his election, the mayor's position had not been contemplated by the Ukrainian Constitution. Even assuming it had been so contemplated, the person in question could in no case have been elected to such position since he had a foreign nationality[30].

At least as many questions arise regarding the procedure of electing Sergey Aksyonov as the Chairman of the Crimean Government. When, on 27 February 2014, the building hosting the Crimean Supreme Soviet was captured by a detachment of unknown armed individuals in battle camouflage, the captors let in a group of deputies, ***but not before they confiscated their cell phones***. However, the Ukrainian Constitution (Article 136) requires a nominee chairman of the Crimean Government to be agreed with the Ukrainian President. According to Supreme Soviet Speaker V.A. Konstantinov, V.F. Yanukovich, whom the parliament members considered the Ukrainian President, ***phoned*** him and approved Aksyonov's nomination orally[10]. How did that happen? Over a cell phone that had been confiscated?

As a result, the deputies elected Aksyonov as Prime Minister of the new Government (Resolution No. 1656-6/14). However, no video recording was made of the session and no reporters were allowed in. According to an official statement by the Supreme Soviet's press office, 53 deputies voted in favor of that decision[9]. *ZN.UA* claims that 53 deputies were initially in the room but some of them left the session. Moreover, a scandal broke out as they considered removal of former Prime Minister A.V. Mogilyov and appointing S.V. Aksyonov's to that position, and a group of deputies refused to vote. Deputy S.V. Kunitsyn notes that, at time of the vote, only 47 persons were in the room whereas a quorum of 51 was required[10]. According to certain deputies, the list of those who "voted" includes not only names of those who indeed voted but absentee names as well[11].

A question arises: given that the authority of two out of the three signatories was so doubtful, could the Constitutional Court rule the Treaty compliant with the Constitution as far as its signing procedure? Or it would turn out that the review of its signature form failed to address issues of law and was instead reduced to checking if the right sort of ink was used to sign the Treaty.

Violation six. In reviewing the Treaty's constitutionality in terms of its entry into force, the Constitutional Court legal interpretation for the purpose of attaining a predetermined objective. The Treaty (Article 10) states that it is "provisionally applied from the signature date and shall come into effect from the ratification date" whereas the Republic of Crimea stands to

[28] http://sevastopolnews.info/2014/02/lenta/politika/069214828/; http://www.aif.ru/dontknows/file/1127241
[29] http://ria.ru/world/20140223/996553169.html
[30] Aleksey Mikhailovich Chaly only acted as Sevastopol' governor for two weeks. On April 1, he was appointed to that office by deputies of Sevastopol' Legislative Assembly (formerly City Council) who supported his nomination unanimously. That decision was non-compliant with the Russian law whereby an acting governor is appointed by the President. However, a declaration was made on the same day that the existing executive system in Sevastopol would remain in existence for not more than a month, and that the city's Charter would be adopted by the end of April whereby acting governor appointments would follow the Russian practices.

be admitted to the Russian Federation from the Treaty signature date (Paragraph 1, Article 1). The Court ruled that such provisions are compliant with the Constitution and attempted to justify that ruling in detail (Paragraph 3 of the Ruling). Its justification refers to the Vienna Convention on the Law of Treaties, which permits such possibility[31], and to its own legal position[32]. Apparently, everything is convincing and proper. However, for some reason, Article 65(2) of the Russian Constitution is not mentioned anywhere, which, in this particular case, refers the Court to a special constitutional law that it must follow in assessing the Treaty.

That Law prescribes a strict rule applicable to a kind of international treaties like treaties on admitting a foreign state to Russia as its member territory. In that Law (Article 91(2) of the Admission Law) it is stated unequivocally: "**an international treaty shall not come into effect or apply, that is, it cannot be ratified, approved and cannot otherwise enter into force for the Russian Federation in any other way if the Constitutional Court finds it non-compliant with the Constitution**". So, until the Court issues its ruling, such treaty cannot be applied. And the Court knew that perfectly. Otherwise it would not describe its position so scrupulously.

Surprisingly, the Court did not even play its favorite trump card that it considers solely the issues of law, which it normally applies in sticky situations. The Court expressly stated: "Stipulation of Article 1 of the examined Treaty that the Republic of Crimea stands admitted to the Russian Federation from the Treaty signature date has the nature of a manifestation of political will".

Violation seven. The Constitutional Court issued the ruling contrary to its own legal position. Back in 1995 when it reviewed constitutionality of Yeltsin's Presidential Decrees on the use of military force in Chechnya, the Constitutional Court stated that national integrity was "on of the fundamental pillars of the constitutional system of Russian Federation". That "the Constitution of Russian Federation does not contemplate a potential unilateral decision on the matter of changing the status of a Russian Federation member territory or its secession from the Russian Federation"[33]. If so, then, based on the principles of good faith and consistency, Russia was also obliged to respect Ukraine's right to territorial integrity.

This legal position has been neither contested by anyone nor revised by the Court itself. This means it was binding. Article 6 of the Constitutional Court Law states: "Decisions of the Constitutional Court of Russian Federation are binding the whole territory of Russian Federation

[31] A treaty … is applied provisionally pending its entry into force if: (a) the treaty itself so provides; or (b) the negotiating States have in some other manner so agreed. (Paragraph 1, Article 25 of the Vienna Convention on the Law of Treaties dated 23 May 1969, of which the Russian Federation is a party. It is essentially reproduced in Article 23 of the Federal law No. 101-FZ dated 15 July 1995 "On International Treaties of the Russian Federation"). Such legal construct is also confirmed as admissible by the Russian Federation Constitutional Court in its Ruling No. 8-P of 27 March 2012.

[32] The Court refers to its Ruling No. 8-P of 27 March 2012, which, in particular, says that provisional application of an international treaty, as a rule, is used by the Russian Federation in its practice of interstate communication if the treaty subject is of particular interest to its parties.

[33] Ruling No. 10-P of the RF Constitutional Court dated 31 July 1995 // *Vestnik Konstitutsionnogo Suda RF*, 1995. No. 5.

for all representative, executive, and ***judicial bodies*** of government, local government bodies, enterprises, institutions, organizations, officials, citizens, and their associations.

Violation eight. The Sevastopol issue. This might be one of the most important issues: how did the city of Sevastopol come to be part of the Republic of Crimea accession treaty and what were the legal grounds for its accession to Russia?

As we remember, a foreign state could be admitted to Russia as a new member territory. While the Autonomous Republic of Crimea had enough statehood criteria, as a nation, for the purposes of self-determination, self-declaration, and recognition as an independent nation[34], the city of Sevastopol most certainly could not do that. That is because it was neither a part of the Crimean Region when the USSR collapsed nor a part of the Autonomous Republic of Crimea at the time of the Crimea-wide referendum.

Decree No. 761/2 issued by the Presidium of the RSFSR Supreme Soviet on 29 October 1948 took Sevastopol out of the Crimean Region and made it a city that was directly administered by the RSFSR government. The Resolution "On Transfer of the Crimean Region from the RSFSR to the Ukrainian SSR", as made by the Presidium of the RSFSR's Supreme Soviet of 5 February 1954, ***transferred the Crimean Region rather than the Crimean Peninsula***. By that time, Sevastopol had already not been part of the region for six years. Sevastopol was turned over to Ukraine under a bilateral treaty between Ukraine and Russia which entered into force on 19 November 1990, whereby the parties gave up any mutual territorial claims. Subsequently, this principle was consolidated in various treaties and agreements among CIS countries. Sevastopol's special status as part of the ARC was only referred to in the text of the 1992 Constitution of the Republic of Crimea, and the question on reintroducing that Constitution failed to win a majority vote in the Crimea-wide referendum of 16 March 2014.

It means that Sevastopol was not a foreign state that could be admitted to Russia using the same rules as the Republic of Crimea. With regard to such cases, the Admission Law (Article 4(2)) prescribes a completely different procedure: "a portion of a foreign state shall be admitted to the Russian Federation on mutual agreement of the Russian Federation and such foreign state under an international/intergovernmental treaty concluded between the Russian Federation and the foreign state".

In this case, as in the case of the Treaty's temporary application prior to its ratification, an express constitutional reference takes place: "Admission to the Russian Federation and creation of a new member territory thereof shall follow a procedure established by a federal constitutional law" (Article 65(2) of the Constitution). In order to establish the Treaty's compliance with the Constitution, the Court had to examine it for compliance with the Admission Law. However, it did not do that. What if it had? Perhaps history might have taken

[34] The modern international law contemplates a theoretical possibility whereby a new independent state may arise once the self-determination right of a certain people is recognized and its own state is created, provided the international community of nations acknowledges an existential threat to such people should it remain within a state that fails to comply with the principle of equal rights and self-determination of peoples.

another turn. When our domestic laws are only violated with regard to ourselves, it is not the end of the world. Ultimately, it is our internal business, but even that is not always true. Human rights issues have long been elevated to the international level. However, in this case, the situation is different, as the violation of our domestic law injured individuals and states outside this country. Moreover, it was the work of one of the highest Russian courts.

Part 3. Civilization Problem?

Nowadays, a lot is said and written to suggest that the root cause of the confrontation between Russia and its former international partners can be found in a civilization rift affecting the world in which Russia finds itself outside the system of European achievements and values[35]. The historical typology of civilizations is a nice-looking theory indeed. It sounds persuasively and compelling. The only thing of concern is its simplicity, for this theory can be used to easily justify almost any kind of bizarre behavior. And this is not how it works. There is no doubt that civilization models must be studied, since they make for a finer and deeper understanding of the world. However, you cannot explain any actions and processes through the insurmountable cultural and genetic differences. There is no credible evidence that every peoples can internalize and apply the achievements of human thought and other nations disregarding their cultural and historic intricacies.

The fatalist "загнанность pigeonholing" with reference to civilization models is artificial. It is merely a convenient propaganda ploy to justify a refusal to evolve or to cover up true reasons for such refusal. It is no coincidence that talks about Russia's unique civilization model reemerged with a greater force right at the time when its civil society embarked on a natural transition to the European development model. That happened when its citizens understood that the state is not a sacred entity conferred from above but merely an apparatus funded by their own taxes and meant to carry out publicly significant functions they themselves define. The point is, as long as the state continues to act as the holder of authority vested with a supreme proprietor, the civil society as the supervisor of and participant in government decision-making will face desperate resistance of the state. One of the leading Russian theorists of law, Vladimir Chetvernin asserts: "The Russian ruling groups objectively have no interest in modernizing and establishing an industrial society, particularly private property, because, under such development scenario, they will lose their dominant position. Democracy will only have its outward attributes. While the elite would explain tougher control over the country with the need to protect national values from hostile foreign influences"[36].

So the problem is not about any difference among civilizations at all. When population of Russia started to change its requests from the state and changed its view of the state's nature, purpose, and place in the society, those in power felt a real threat. Given that such changes

[35] See, e.g., Huntington S. "Clash of Civilizations", Moscow, Izdatel'stvo AST LLC, 2003.

[36] See: Chetvernin, V.A. Istorichesky progress pravovoy svobody i tsivilizovannaya istoricheskaya tipologiya [*Historical Progress of Legal Freedom and a Historical Typology of Civilizations*]. - http://teoria—prava.hse.ru/nersesyants-conference/3/57-chetvernin-abstrracts

appeared because of a set of multiple competitive factors (*competition of lifestyles, competition of meanings, competition of information, and globalization*[37]*),* the state's logical protective response was to fight those very factors. The first blows targeted the media, the internet, and education in the form of school curricula and textbooks. That was done in order to eliminate competing information and competing meanings. Next, under the guise of a response to international sanctions, they launched a campaign against competing lifestyles by restricting international exchanges, making leaving the country more complicated for individuals, and clearing store shelves of goods that prove substantial competitive advantages of their makers.

However, something from a civilization-based problem exists in here. However it is not about different types of civilizations but about the difference between civilization and barbarity. For, in the modern world, the difference between those two lies in the people's' attitude to law. In such conditions where a state more and more finds itself a service quality of which is assessed by the public, it is law that turns into a universal value of civilization that everyone seeks to preserve and develop. It is not a mere list of rules; it is a set of standards based on international morality of peaceful coexistence,[38] as agreed by various societies and nations. They have elevated such standards to the level of law and equipped them with special procedures, while everyone has undertaken to comply with them under mutual supervision and in interaction with each other.

Ironically, it was Valery Zorkin, Chairman of Russia's Constitutional Court, who expressed this idea most accurately. In his article "Civilization of Law", he said: "And the bulk of humanity agreed as follows. We hold fair elections. We accept the person trusted by the majority as our leader. We restrict such leader within the bounds of law. And we live until the next election. The humanity, tired from two world wars and fearing a prospective third world war, wanted elementary tranquility and joy of peaceful private life, thought that it could achieve stability on the basis of such basic social contract. That is how the civilization of law was ultimately established, on the foundation of huge sacrifices, through bloody trials and horrible errors"[39].

This is true. Russia also attempted to walk that path. However, almost straight away, two caveats formalized by law arose to prompt an unavoidable sideways swerve: sort of fair elections

[37] ***Competition of lifestyles*** means more than two decades of openness throughout the nation, whereby the population had a chance to see and compare for itself. ***Competition of meanings*** means access to alternative literature (fiction and research), rather than to officially recommended books only, whereby the generations growing up in those years have learned to think and analyze. ***Competition of information*** means an information-based society whereby people are not merely able to avoid constant bombardment by state propaganda, not merely able to have a viewpoint of their own, but can also initiate their own discussion on any issue, for they bypass the system of prior approvals and self-censorship of official media. ***Globalization*** means a harmonization of certain values based on their competitive advantages, as assessed by the humanity and as translated into interstate standards. Despite significant differences and antagonistic assessments of globalization by Russian researchers, all of them nevertheless are united on one point: the current period represents a global (and not merely Russian) phase of a mammoth transformation affecting diverse aspects of human life, from production processes to management to justice and individual values.

[38] The English language has no discourse at all based on the word "law". They refer to that as "law and morality".

[39] See, *Zorkin V.D.* Tsivilizatsiya prava [*Civilization of Law*]. – *Rossiyskaya Gazeta*, 12 March 2014, p. 1 http://www.rg.ru/2014/03/12/zorkin.html;

and the impossibility to keep the leader within the bounds of law. Therefore, nothing has come of it. Because law is a balanced multi-dimensional system. It features no trivial and minor points that could be painlessly ignored or sacrificed without threatening the existence of the system in its entirety.

It only should be added that, in assessing Russia's actions, Mrs. Merkel got her timeline somewhat wrong. A system where governing leaders are not bound by laws they have enacted is not "the law of the jungle dating back to the 19th or 20th century". A justification for such lack of bounds was given back in the 4th century B.C. in a Chinese book titled *Shang Chün shu* (*The Book of Lord Shang*)[40]. Now, Professor Valery Zorkin, Chairman of Russia's Constitutional Court, a specialist in history of political and legal doctrines, knows it all too well. "If law disappears, the world will find itself on the brink of a disaster", he wrote. Largely thanks to the court he chairs, we are already there, on that brink. Inability to provide an assessment while staying true to the spirit of law and the spirit of civilization founded on that law is a barbarity. Well, barbarity is curable. Not right away, but it's definitely curable. The recipe for the cure is quite simple: education and culture.

It seems appropriate to cite an old Buddhist parable whereby residents of a village asked Buddha to convince a blind man who never believed in existence of light. Claiming that no one could give him a single incontestable proof of its existence, the blind man was so convincing in his reasoning that even those knowing for sure that light exists were swayed by his arguments. Rather than disabusing the blind man, Buddha asked a doctor to cure him. When, in six months, the hitherto blind man gained his vision, Buddha suggested that they argue about light. However, the argument never happened because now they had the same reality.

Tags: rule of law, law-bound state, concept of law, positive law theory, jurisprudence, legalism, civilization of law, barbarity and civilization, independence of judges, judicial discretion, international standards, civil society, parliament, legislative process, fair elections, Venice Commission Report, Kosovo ruling, Russia's foreign policy, Russian-Ukrainian relationships, Crimea annexation, Sevastopol, Crimea-wide referendum, changed status of member territories, international recognition, ratification, UN Charter, sanctions, review bounds, review of international treaty yet to come into effect, Constitutional Court, Constitutional Court Ruling, compliance with constitution, Zorkin, Obama, Merkel, Nersesyants, Barenboim, James Silkenat, Vladimir Chetvernin, Yuri Tikhomirov, Ksenia Sobchak.

[40] See: Nersesyants, V.S. Istoriya politicheskikh i pravovykh ucheniy [*History of Political and Legal Doctrines*] – Moscow, 2004