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<http://dissidentvoice.org/2014/03/is-the-new-ukrainian-government-legal/>

## Is the New Ukrainian Government Legal?

by Alexander Mezyaev

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A number of international organizations are in the process of studying the legal aspects of the situation in and around Ukraine from the point of view of international law. The United Nations, in particular the Security Council, is the main entity authorized to come up with priority assessments according to article 21 of UN Charter and the very fact of Ukraine's membership in the organization.

For the last days the UN Security Council (UNSC) has had three times the issue on its agenda. The first time was on February 28. There was nothing but an official communique informing that a session took place. Then the issue was considered on March 1 and March 3.

First, Ukraine used the term "aggression" to describe Russia's actions. On February 28 and March 1 the UNSC sessions were called upon Ukraine's initiative for the reason of "Russia's aggression" against Ukraine. The official letter of Ukraine dated February 28 stated there was "a threat to Ukraine's territorial integrity" caused by "deteriorating situation in the Autonomous Republic of Crimea". The next day on March 1 another letter used the term "aggression against Ukraine".

On March 3 the United Nations Security Council deliberations were focused on two aspects of international law. First, Ukraine reported that Russia rejected its request to launch immediate consultations in accordance with article 7 of the 1997 bilateral Treaty on Friendship, Cooperation and Partnership. Second, it affirmed that “The Russian Federation has brutally violated the basic principles of the Charter of the United Nations, obliging all Member States, *inter alia*, to refrain from the threat or use of force against the territorial integrity or political independence of any State.”

Both arguments put forward by the so-called representative of Ukraine have weak points. The matter is that from a legal point of view there has been no request made asking Russia to hold any consultations. This affirmation is obvious because there is no legal entity in existence to do so.

On March 3 the Russian Permanent Representative presented to the UN Security Council members a letter signed by President Yanukovich on March 1 requesting Russian military assistance. It said:

As the legitimately elected President of Ukraine, I wish to inform you that events in my country and capital have placed Ukraine on the brink of civil war. Chaos and anarchy reign throughout the country. The lives, security and rights of the people, particularly in the south-east and in Crimea, are under threat. Open acts of terror and violence are being committed under the influence of Western countries. People are being persecuted on the basis of their language and political beliefs. I therefore call on President Vladimir Putin of Russia to use the armed forces of the Russian Federation to establish legitimacy, peace, law and order and stability in defence of the people of Ukraine.



Amb. Vitaly Churkin shows a letter to the U.N. Security Council in New York purportedly from ousted Ukrainian leader Viktor Yanukovich to Vladimir Putin asking the Russian leader for military assistance in Ukraine, March 3, 2014.

**Talking about the situation in Ukraine, the key issue is the legality of the government. Is it legal or not? This fundamental question provides a clue to all further deliberations.**

It's not legitimacy but rather **legality** that is in question; does the government have a right to function according to law? Many have absolutely forgotten this term making all considerations and analysis (if miserable and sometimes legally incompetent attempts could be termed so) boil down to "legitimacy". There is a significant difference. Legality or lawfulness is a strictly defined notion based on norms of internal and international law. Legitimacy is a purely theoretical legal term. It is defined by law scholars and has no commonly accepted or even legally binding criterion. Now why everybody keeps on talking over and over again about the "legitimacy" of power while fully ignoring the term "legality".

These are the words by US State Department spokesman:

We are in the same place we have been in, which is that we don't – we believe that Yanukovich has lost his legitimacy as he abdicated his responsibilities. As you know, he left Ukraine – or left Kyiv, and he has left a vacuum of leadership. So we continue to believe that he's lost legitimacy and our focus remains on the path forward.

This "explanation" has nothing to do with the law and is flagrantly incompetent. The USA demonstrates that it badly lacks legal arguments to substantiate its stance on Ukraine by substituting the notion of legality (lawfulness) with the blur conception of legitimacy. The West tries to cheat with a sleight-of-hand: it suggests that the legality of legal power be proven instead of making the putschists, who staged the coup, come with legal substantiations proving the legality of their actions!

Ukraine's Constitution envisions four ways to deprive the President of power according to article 11: resignation, health reasons, demise and impeachment. Nothing like that has taken place. The Verkhovna Rada's (parliament) vote to dismiss Yanukovich contradicts the Constitution making it a criminal act. Now the question comes up: why should Russia have any deals with criminals? There is no answer to this question from legal point of view.

Someone Sergeev, who speaks at the United Nations Security Council sessions, cannot be considered a legal representative of the Ukraine's government; it means that all letters sent by illegal authorities have no relevance whatsoever. That's why Russia is not going to discuss the bilateral Russia-Ukraine Treaty of 1997. There is no legal entity to talk with! The putschists and their Western sponsors pretend it's beyond their comprehension.

It's worth to pay attention on how the Ukrainian Association of International Law, or, to be more precise, its Presidential Council, reacted under the circumstances. Ukrainian lawyers argued that

Russia's decision to demonstratively reject the preliminary consultations with Ukraine and the guarantors of its territorial integrity (the US, the UK, France and China) is not only a violation of UN Charter and general international law, but also a show of disdain for the international obligations under the Budapest Memorandum of 1994. Any lawyer can see the trick here. To hold consultations with who? Displaying artificial open-heartedness, Ukrainian lawyers say "with Ukraine". Pretending to be naïve they get around the key legal issue – the criminal nature of the staged coup.

### **Why should Russia forget about legality and start to talk and make deals with the bandits in power?**

On March 5, the so called representative of Ukraine tried to prove that the request addressed by Yanukovich to Russia had no legal grounds. His statement said that according to article 85 (item 23) of the Constitution of Ukraine, the Verkhovna Rada has exclusive powers to allow the deployment of foreign armed forces on the national territory. Once there was no approval, the request of Yanukovich had no legal basis. This is another attempt to distort the reality: the Rada has the authority to *approve* the President's decision but not take it instead of him. The very fact that the Rada has not approved the decision does not automatically make it illegal. In his March 5 letter the so called Representative of Ukraine could not explain why Yanukovich should no longer be considered the President of Ukraine. The letter does not contain reference to any legal act.

From a legal point of view, what is happening in Ukraine is a crisis provoked by the coup staged in Kiev when armed extremists grabbed power in the country.

An armed coup is a **criminal offense**. Those who claim to be the new government of Ukraine have no legality and their actions have no legal ground from the point of view of the Russian Federation. Russia's stance fully corresponds to the national laws; the President's decision to use the armed forces abroad is taken in conformity with the Constitution and the effective federal law, as well as the laws of Ukraine. **Russia has not breached any international norms.** Whatever the West says about the violation of the United Nations Charter and other international documents is based on the wrong foundation because the legal status of the Ukraine's new government is an open question. The West has taken part in the overthrow of a democratically elected government and has recognized those who have been involved in the actions punishable by national criminal code. It means that the West itself is in flagrant violation of international legal norms...