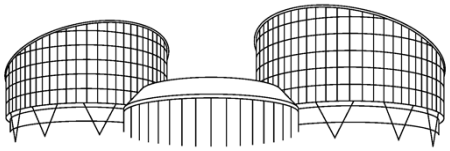

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

GRAND CHAMBER

CASE OF UKRAINE AND THE NETHERLANDS v. RUSSIA

(Applications nos. 8019/16, 43800/14, 28525/20 and 11055/22)

JUDGMENT
(Merits)

Art 33 • Inter-State application • Multiple, flagrant and unprecedented Convention violations by the respondent State in Ukraine • Downing of flight MH17 • Administrative practices of military attacks on Ukrainian territory and of other acts in occupied areas in Ukraine and in Russian sovereign territory • Repeated violations officially tolerated by the Russian authorities • Drawing of inferences from limited access by independent monitors and external observers • Russian law and legal acts of the "Donetsk People's Republic" ("DPR") and the "Lugansk People's Republic" ("LPR") and of the Russian occupying authorities not providing a valid legal basis for acts undertaken in Ukraine • General legal basis under international humanitarian law ("IHL") for taking measures in occupied territory must be reflected in specific legal provisions and appropriate guidance in domestic legal order • Court's jurisdiction *ratione temporis* extending no further than 16 September 2022 when the respondent State ceased to be a High Contracting Party to the Convention Art 36 • Twenty-six High Contracting Parties intervening as third parties
Art 35 § 1 • New complaints in application no. 11055/22 under Art 3, 8, 11, 13 and 14, and Art 2 P1 declared admissible
Art 1 • Respondent State's jurisdiction over areas in eastern Ukraine under separatist control from 26 January 2022 to 16 September 2022 • Respondent State's jurisdiction over areas under control of Russian armed forces after the invasion on 24 February 2022 • Effective control exercised by the respondent State over such territory by virtue of its control by the Russian armed forces after the invasion • Respondent State's jurisdiction for complaints concerning military attacks by separatists or the Russian armed forces on Ukrainian territory from 2014 to 2022 • Reality of extensive, strategically planned military attacks carried out with deliberate intention and indisputable effect of assuming authority and control, falling short of effective control, over areas, infrastructure and people in Ukraine wholly at odds with any notion of chaos • Degree of responsibility assumed by the respondent State over individuals affected by such attacks • Russian Federation's exercise of authority and control over such individuals • Acts and omissions of the Russian armed forces and the armed

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separatists of the DPR and the LPR attributable to the Russian Federation • Respondent State's jurisdiction for its authorities' actions in Russian sovereign territory

Art 32 • Importance of historical context of the Council of Europe • Nature and scale of violence and statements concerning Ukraine's very right to exist representing a threat to peaceful co-existence within Europe • Respondent State's disrespect for Council of Europe's fundamental values • Relationship between Convention and IHL • Duty of harmonious interpretation so far as possible • Court may interpret and assess compliance with IHL where necessary to carry out its role

Art 2 (substantive) • Downing of flight MH17 • Breach of the respondent State's negative and positive obligations • Unjustified intentional use of force resulting in the downing of the flight and the deprivation of the lives of the civilians on board • Launching of missile from Buk-TELAR in eastern Ukraine in breach of IHL • Launching of missile not lawful act of war and not justified under Art 2 § 2 • Existence of a real and immediate risk to life • Respondent State's failure to take preventive measures to significantly reduce or eliminate risk posed by Buk-TELAR to civilians travelling in civilian aircraft over eastern Ukraine

Art 2 (procedural) • Downing of flight MH17 • Failure to conduct an effective investigation • Piecemeal inquiries with aim of showing lack of Russian involvement and deflecting responsibility onto Ukraine • Disclosure of inaccurate and fabricated information • Failure to cooperate effectively with the investigation of the international joint investigation team ("JIT") • Obstructive approach of Russian Federation to attempts to elucidate cause and circumstances of crash • Refusal to execute requests for legal assistance • Material impact of failure to cooperate on ability of JIT to conclude its investigation into involvement of Russian armed forces and senior Russian politicians

Art 13 (+ Art 2) • Downing of flight MH17 • Lack of access to effective remedies in the respondent State for the relatives of the victims of the flight capable of establishing liability of State officials and awarding compensation

Art 3 (substantive) • Downing of flight MH17 • Continuing profound suffering of the next of kin of the victims of the flight amounting to inhuman treatment

Art 2 and 3 (substantive) • Art 1 P1 • Art 8 • Administrative practice of intense and sustained military attacks throughout Ukrainian territory conducted in breach of IHL • Breach of the respondent State's negative and positive obligations • Indiscriminate and disproportionate military attacks and attacks directed at residential areas and civilian infrastructure resulting in widespread death, injuries, suffering and damage to property and homes • Respondent State's failure to protect civilian lives and well-being when conducting sieges

Art 2 (substantive) • Administrative practice of extrajudicial killing of civilians and Ukrainian military personnel *hors de combat* in occupied territory in Ukraine

Art 3 (substantive) • Administrative practice of torture and inhuman and degrading treatment in occupied territory in Ukraine • Torture constituting a coordinated State policy of the Russian Federation in respect of Ukrainian civilians and prisoners of wars ("POWs") • Widespread and systemic use of rape and sexual violence • Use of rape as a weapon of war an act of extreme atrocity amounting to torture • Inadequate conditions of detention • Suffering of family members of those abducted or disappeared after 24 February 2022 in a context of mass arbitrary detentions and systematic abuse of detainees amounting to inhuman treatment

Art 4 § 2 • Administrative practice of forced labour in occupied territory in Ukraine

Art 5 • Administrative practice of unlawful and arbitrary detention of civilians, without any legal basis and without basic procedural safeguards, in occupied territory in Ukraine

Art 8 • Administrative practice of unjustified transfer and displacement of civilians in occupied territory in Ukraine and unjustified application of filtration measures • Displacement of civilians by Russian occupying authorities did not qualify as lawful evacuation under IHL • Environment of coercion, fear, violence and terror in Ukraine on account of mass human rights violations by Russian Federation substantially responsible for civilians' decision to flee • Displacement of such civilians amounted to forced displacement

Art 9 • Administrative practice in occupied territory in Ukraine of intimidation, harassment, and persecution of religious groups, aside from the Ukrainian Orthodox Church of the Moscow Patriarchate ("UOC-MP") • Abduction, ill-treatment and killing of religious leaders • Obligation on religious groups to register • Application of extremism laws against religious communities other than UOC-MP to ban religious organisations, seize religious premises and material and prevent religious worship

Art 10 • Administrative practice in occupied territory in Ukraine of unjustified interference with freedom to receive and impart information and ideas • Intimidation, detention, ill-treatment and killing of journalists • Registration and accreditation obligations on media outlets and journalists • Application of purported laws prohibiting and penalising dissemination of information in support of Ukraine including on social media • Application of terrorism and extremism laws • Excessive and arbitrary effects of measures blocking access to websites and broadcasters in occupied territory

Art 11 • Administrative practice of unjustified interference with right to peaceful assembly • Forcible dispersal of peaceful protests in occupied territory in Ukraine in March and April 2022

Art 1 P1 • Art 8 • Administrative practice of destruction, looting and expropriation without compensation of the property of civilians and private enterprises and looting of homes and personal possessions, in occupied territory in Ukraine

Art 2 P1 • Administrative practice in occupied territory in Ukraine of suppression of Ukrainian language in schools and of indoctrination in education • Failure to provide for teaching in Ukrainian language amounted to denial of substance of right to education • Views of parents in occupied territory on the history and status of Ukraine attained level of cogency, seriousness, cohesion and importance to be considered "convictions" • Arrangements made after 24 February 2022 for advancing narrative of occupying Power in schools pursued aim of indoctrination

Art 3 (substantive) • Art 5 • Art 8 • Administrative practice of transfer to Russia, and in many cases the adoption there, of Ukrainian children • Overwhelming evidence from shortly before the 2022 invasion of systemic practice of transferring children to Russia and facilitating their adoption there • Continuous sequence of acts between 2014 and 2022 demonstrated beyond reasonable doubt • Russian authorities' failure to take measures to secure the children's return and excessive difficulties faced by caregivers seeking reunification • Transfers did not qualify as lawful evacuations under IHL • Automatic imposition of Russian nationality in breach of IHL facilitated adoption of children in Russia • Children's treatment attained threshold of severity required to engage Art 3 • Children placed in care of hostile occupying State potentially indefinitely and in defiance of international law • Traumatising effect of military operations themselves and separation from caregivers particularly given uncertainty and fear of permanent and forcible separation • Evidence of ill-treatment of some children after their relocation • In exceptional circumstances of case children also deprived of their liberty and security

Art 14 (+ Art 2, 3, 4 § 2, 5, 8, 9, 10, and 11, and Art 1 and 2 P1) • Respondent State's failure to secure Convention rights and freedoms in occupied territory in Ukraine without discrimination on the grounds of political opinion and national origin

Art 13 (+ Art 2, 3, 4 § 2, 5, 8, 9, 10, 11 and 14, and Art 1 and 2 P1) • Failure to investigate credible allegations of administrative practices or to provide any redress

Art 38 • Non-compliance with obligation to furnish all necessary facilities for examination of case • Deplorable failure of respondent State to abide by fundamental duty of cooperation with Court inevitably affected Court's examination of case
Art 46 • Execution of judgment • Individual measures to be taken without delay • Respondent State to release or safely return all persons deprived of their liberty on Ukrainian territory under occupation by the Russian and Russian-controlled forces in breach of Art 5 before 16 September 2022 and still in the Russian authorities' custody • Respondent State to cooperate in establishing an international and independent mechanism to secure, in the children's best interests, the identification of all children transferred from Ukraine to Russia and Russian-controlled territory before 16 September 2022, the restoration of contact and the safe reunification of those children with their surviving family members or legal guardians
Art 41 • Just satisfaction • Adjourned • Importance of having due regard to other international developments when making any future award for just satisfaction • Application no. 28525/20 disjoined from remainder of the case for purposes of further proceedings only

Prepared by the Registry. Does not bind the Court.

STRASBOURG

9 July 2025

This judgment is final but it may be subject to editorial revision.

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In the case of Ukraine and the Netherlands v. Russia,

The European Court of Human Rights sitting as a Grand Chamber composed of:

Mattias Guyomar,
Síofra O'Leary,
Arnfinn Bårdsen,
Ioannis Ktistakis,
Gabriele Kucsko-Stadlmayer,
Krzysztof Wojtyczek,
Faris Vehabović,
Stéphanie Mourou-Vikström,
Georgios A. Serghides,
Tim Eicke,
Lətif Hüseynov,
Jovan Ilievski,
Jolien Schukking,
Erik Wennerström,
Anja Seibert-Fohr,
Diana Sârcu,
Mykola Gnatovskyy*, judges*,

and Abel Campos, *Deputy Registrar,*

Having deliberated in private on 12-13 June 2024 and 4 June 2025,

Delivers the following judgment, which was adopted on the latter date:

PROCEDURE

I. INTRODUCTION

1. The present case originated in four separate applications (nos. 20958/14, 43800/14, 42410/15 and 11055/22) against the Russian Federation lodged with the Court under Article 33 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by the Government of Ukraine ("the applicant Ukrainian Government") on 13 March and 13 June 2014, 26 August 2015 and 28 February 2022 respectively; and an application (no. 28525/20) against the Russian Federation lodged with the Court under Article 33 of the Convention by the Government of the Kingdom of the Netherlands ("the applicant Dutch Government") on 10 July 2020. The applicant Ukrainian Government alleged in the main that the Russian Federation had been responsible for administrative practices in breach of Articles 2, 3, 4 § 2, 5, 8, 9, 10, 11, 13 and 14 of the Convention, Articles 1 and 2 of Protocol No. 1 and Articles 2 and 3 of Protocol No. 4 in the context of the conflict in Ukraine which began in 2014 and whose scale and territorial reach greatly increased after the 2022 invasion. The applicant Dutch Government alleged that the Russian

Federation had been responsible for a violation of Articles 2, 3 and 13 of the Convention on account of the downing of flight MH17 over Ukraine on 17 July 2014.

2. At the present stage of the proceedings, the applicant Ukrainian Government were represented by Ms M. Sokorenko, of the Ministry of Justice. The applicant Dutch Government were represented by their Agent, Ms B. Koopman, of the Ministry of Foreign Affairs. The respondent Government did not take part in the proceedings (see paragraphs 21, 27 and 139-144 below).

II. APPLICATION NOS. 8019/16, 43800/14 AND 28525/20

3. On 9 February and 29 November 2016, a Chamber of the Third Section, to which application nos. 20958/14 and 42410/15 had been allocated, divided the applications into four separate cases. Complaints concerning events in Crimea remained registered under the above case numbers, while the complaints concerning events in eastern Ukraine were given new application nos. 8019/16 and 70856/16 respectively. On 11 June 2018, the Grand Chamber decided to join the two applications and renamed the case *Ukraine v. Russia (re Eastern Ukraine)*, no. 8019/16. The complaints concerning events in Crimea were examined separately (see *Ukraine v. Russia (re Crimea)* [GC], nos. 20958/14 and 38334/18, 25 June 2024).

4. On 27 November 2020 the Grand Chamber decided to join to *Ukraine v. Russia (re Eastern Ukraine)*, no. 8019/16, previously relinquished and pending before it, applications nos. 43800/14 and 28525/20, both pending before the First Section of the Court (see *Burmych and Others v. Ukraine* (striking out) [GC], nos. 46852/13 et al, § 213, 12 October 2017) in accordance with Rules 42 § 1 and 71 § 1 of the Rules of Court and in the interests of the efficient administration of justice. The joined case was named *Ukraine and the Netherlands v. Russia*.

5. A hearing on the admissibility of the applications was held on 26 January 2022. Representatives of all three Governments participated in the hearing and made oral submissions before the Court (see *Ukraine and the Netherlands v. Russia* (dec.) [GC], nos. 8019/16 and 2 others, § 33, 30 November 2022).

6. Further details of the procedure in respect of the case up to the adoption of the Court's admissibility decision on 30 November 2022 are set out in the Court's admissibility decision (ibid., §§ 1-40).

7. In its decision of 30 November 2022, delivered on 25 January 2023, the Grand Chamber (composed of judges Síofra O'Leary, President, Georges Ravarani, Marko Bošnjak, Pere Pastor Vilanova, Ganna Yudkivska, Krzysztof Wojtyczek, Faris Vehabović, Iulia Antoanella Motoc, Jon Fridrik Kjølbro, Yonko Grozev, Stéphanie Mourou-Vikström, Tim Eicke, Lətif Hüseynov, Jovan Ilievski, Jolien Schukking, Erik Wennerström and Anja

Seibert-Fohr, and also of Søren Prebensen, Deputy Grand Chamber Registrar), declared the applications partly admissible (see the operative part of the Court's decision). It joined to the merits the objection raised by the respondent Government regarding whether the applicant Ukrainian Government's complaints of administrative practices of shelling in violation of Article 2 of the Convention and Article 1 of Protocol No. 1 to the Convention, together with associated Article 14 complaints, fell within jurisdiction of the respondent State within the meaning of Article 1 of the Convention. It also joined to the merits the question whether the suffering of the relatives of the victims of the downing of flight MH17 met the minimum threshold of severity to fall within the scope of Article 3 of the Convention.

III. THE LODGING OF APPLICATION NO. 11055/22

8. On 28 February 2022 the applicant Ukrainian Government asked the Court to indicate urgent interim measures to the Government of the Russian Federation, under Rule 39 of the Rules of Court, in relation to their allegation of "massive human rights violations being committed by the Russian troops in the course of the military aggression against the sovereign territory of Ukraine". The request was registered under application no. 11055/22, *Ukraine v. Russia (X)*.

9. On 1 March 2022 the Court (the President of the Court) decided to apply Rule 39 calling on the respondent Government to refrain from military attacks against civilians and civilian objects, including residential premises, emergency vehicles and other specially protected civilian objects such as schools and hospitals; and to ensure immediately the safety of the medical establishments, personnel and emergency vehicles within the territory under attack or siege by Russian troops. The President further decided to give priority to the application under Rule 41. The respondent Government were requested to inform the Court as soon as possible of the measures taken to ensure that the Convention was fully complied with.

10. On 4 March 2022, in the context of a number of individual requests for interim measures, the Court indicated to the respondent Government under Rule 39 that, in accordance with their engagements under the Convention, notably in respect of Articles 2, 3 and 8, they should ensure unimpeded access of the civilian population to safe evacuation routes, healthcare, food and other essential supplies, rapid and unconstrained passage of humanitarian aid and movement of humanitarian workers.

11. On 5 March 2022 the respondent Government provided a response to the Court's request for information of 1 March 2022 (see paragraph 9 above). The applicant Ukrainian Government commented on the response on 14 March 2022.

12. On 16 March 2022 the applicant Ukrainian Government asked the Court to indicate to the respondent Government a number of interim measures

in addition to those which the Court had indicated on 1 March 2022 (see paragraph 9 above). On 24 March 2022 the Court invited the respondent Government to provide their comments on the requests and to reply to a number of specific questions relating to the requests. No reply was received from the respondent Government.

13. On 1 April 2022 the Court reiterated its previous Rule 39 indications (see paragraphs 9-10 above) and further indicated to the respondent Government, under Rule 39, that evacuation routes should allow civilians to seek refuge in safer regions of Ukraine.

14. On 23 June 2022 the Court received a completed application form from the Ukrainian Government. The President of the Court assigned the application to the Fourth Section and notice of the application was given to the respondent State on 28 June 2022, in accordance with Rule 51 § 1.

IV. PROCEEDINGS IN RESPECT OF ALL FOUR APPLICATIONS

15. As explained in the Court's admissibility decision concerning application nos. 8019/16, 43800/14 and 28525/20, the composition of the Grand Chamber was determined in accordance with the provisions of Article 26 §§ 4 and 5 of the Convention and Rule 24 of the Rules of Court (*Ukraine and the Netherlands v. Russia* (dec.), cited above, § 13). When their terms of office expired, Georges Ravarani, Iulia Antoanella Motoc, Jon Fridrik Kjølbro and Yonko Grozev were replaced in the composition of the Grand Chamber by Gabriele Kucsko-Stadlmayer, Arnfinn Bårdsen, Mattias Guyomar and Branko Lubarda, by virtue of Rule 24 §§ 2 (a) and 3. Ganna Yudkivska was replaced by Mykola Gnatovskyy in accordance with Rule 24 § 2 (b). The composition also included an *ad hoc* judge in respect of the Russian Federation appointed by the President from among its members, applying by analogy Rule 29 § 2 of the Rules of Court (see *Ukraine and the Netherlands v. Russia* (dec.), cited above, § 40).

16. On 17 February 2023 the Grand Chamber decided to join application no. 11055/22 to *Ukraine and the Netherlands v. Russia* (nos. 8019/16, 43800/14 and 28525/20), already pending before it, and notified the parties of this decision. The joinder decision was taken in accordance with Rules 42 § 1 and 71 § 1 and in the interests of the efficient administration of justice. The Grand Chamber also decided that the admissibility and merits of application no. 11055/22 would be examined jointly under Article 29 § 2 of the Convention and at the same time as the merits of the proceedings in the existing case.

17. On 10 March 2023, leave was granted to the Geneva Academy of International Humanitarian Law and Human Rights ("the Geneva Academy") and to twenty-six High Contracting Parties to the Convention (the Republic of Austria, the Kingdom of Belgium, the Republic of Bulgaria, the Republic of Croatia, the Czech Republic, the Kingdom of Denmark, the Republic of

Estonia, the Republic of Finland, the French Republic, the Federal Republic of Germany, the Republic of Iceland, Ireland, the Italian Republic, the Republic of Latvia, the Republic of Lithuania, the Grand Duchy of Luxembourg, the Netherlands, the Kingdom of Norway, the Republic of Poland, the Portuguese Republic, Romania, the Slovak Republic, the Republic of Slovenia, the Kingdom of Spain, the Kingdom of Sweden and the United Kingdom of Great Britain and Northern Ireland) to make written third-party submissions on application no. 11055/22 and on any aspects of the remainder of the joined case only in so far as they related to the issues raised in that application. The Governments of the twenty-six High Contracting Parties were further invited to coordinate their pleadings in so far as possible and submit to the Court, where possible, joint written submissions. The third parties granted leave to provide written submissions at the separate admissibility stage of the present case (see *Ukraine and the Netherlands v. Russia* (dec.), cited above, § 25) were invited to make further written submissions to the Court in the context of the merits stage of the proceedings.

18. In April 2023 the Court received third-party interventions from the Geneva Academy; the Human Rights Law Centre of the University of Nottingham ("the Human Rights Law Centre"); and, jointly, from the individual applicants in *Ayley and Others v. Russia* (no. 25714/16), *Angline and Others v. Russia* (no. 56328/18), *Bakker and Others v. Russia* (no. 22729/19) and *Warta and Others v. Russia* (no. 3568/20) (all of whom are relatives of those who lost their lives on flight MH17) and the MH17 Air Disaster Foundation in the Netherlands (see *Ukraine and the Netherlands v. Russia* (dec.), cited above, §§ 21 and 25) ("the MH17 applicants"). In June 2023 the twenty-six intervening Governments provided the Court with their common and national written submissions (see further paragraph 151 below).

19. Meanwhile, on 3 May 2023, after consulting the parties as to the written procedure in the case, the Court invited them to submit, by 2 October 2023, their memorials on the admissibility and merits of the issues raised in the case. In view of the lack of response from the respondent Government to the Court's communications since March 2022 and in order to facilitate planning of the future procedure in the case, that Government were further invited to confirm by 14 June 2023 whether they intended to submit a memorial and supporting evidence by the deadline. The parties' attention was drawn to their obligation under Article 38 of the Convention to assist the Court in the examination of the case and to Rules 44A-44C of the Rules of Court.

20. The applicant Governments submitted their memorials together with supporting material on 2 October 2023. At the same time, the applicant Ukrainian Government requested leave to submit additional evidence to their memorial by 2 January 2024. They were granted until 2 January 2024 to provide further items of evidence relevant to the submissions in their memorial and informed that a decision on whether these items would be

admitted to the file despite the expiry of the 2 October 2023 time-limit (Rule 38) would be taken after sight of the material.

21. The respondent Government did not reply to the Court's letter of 3 May 2023 (see paragraph 19 above) and did not submit a memorial.

22. On 2 January 2024 the applicant Ukrainian Government submitted further items of evidence relating largely to criminal investigations pending at domestic level and which were relevant to the submissions in their memorial of 2 October 2023. The President of the Grand Chamber subsequently decided to include these items of evidence in the case file for the consideration of the Court.

23. The Grand Chamber decided that it was necessary to hold an oral hearing on the admissibility and merits of the case (Rule 51 § 5 and Rule 58 § 2). On 26 February 2024, the parties were informed that the hearing had been scheduled for 29 May 2024.

24. On 12 March 2024 the President of the Grand Chamber postponed the hearing to 12 June 2024.

25. On 30 April 2024 the parties and the twenty-six intervening Governments were informed that it had been decided to grant the intervening Governments' request to make a common oral presentation at the hearing. They were further informed that the Government of the United Kingdom had been granted leave to make separate oral submissions at the hearing. On 15 May 2024 the parties and the twenty-six intervening Governments were informed that the Government of Poland had also been granted leave to make separate oral submissions at the hearing.

26. On 7 June 2024, in the light of the written submissions made by the parties and the intervening Governments before the Grand Chamber and in order to facilitate the oral proceedings, the President communicated to them questions concerning the alleged jurisdiction of the Russian Federation in respect of military attacks and invited them to address the questions at the hearing.

27. On 12 June 2024 a hearing on the admissibility and merits of the case took place in public in the Human Rights Building, Strasbourg. The respondent Government did not notify the Court of the names of their representatives in advance of the hearing and did not appear, although they had been formally notified of the date of the hearing. In the absence of sufficient cause for the failure of the respondent Government to appear, the Grand Chamber decided to proceed with the hearing, being satisfied that such a course was consistent with the proper administration of justice (Rule 65).

28. There appeared before the Court:

(a) *for the Government of Ukraine*

Ms I. MUDRA, Deputy Head of the Office of the President of Ukraine;
Ms M. SOKORENKO, *Agent*,
Mr T. OTTY, KC,
Mr B. EMMERSON, KC,
Lord VERDIRAME, KC, *Counsel*,
Mr A. LUKSHA,
Ms O. KOLOMIIETS,
Ms O. SOLOVIOVA, *Advisers*;

(b) *for the Government of the Kingdom of the Netherlands*

Ms B. KOOPMAN, *Agent*,
Mr R. LEFEBER,
Ms S. CEMERIKIC,
Ms M. BRILMAN,
Ms R. GERAERTS,
Ms C. COERT, *Advisers*,
Mr P. PLOEG, Chair of the MH17 Air Disaster Foundation.

(c) *for the third-party intervening Governments*

Common oral submission

Ms H. BUSCH, Agent of the Government of Norway;

Separate oral submissions

for the Government of Poland

Ms E. SUCHOŻEBRSKA, *Agent*;

for the Government of the United Kingdom

Ms S. DICKSON,
Ms S. MACRORY, *Agents*,
Sir JAMES EADIE, KC, *Counsel*,
Mr P. LUCKHURST, *Adviser*.

29. The Court heard addresses by Ms Mudra, Mr Otty, Mr Emmerson, Lord Verdirame, Ms Sokorenko, Ms Koopman, Mr Ploeg, Ms Busch,

Ms Suchożebrska and Sir James Eadie. Mr Emmerson, Mr Otty, Ms Koopman, Mr Lefeber, Ms Suchożebrska and Sir James Eadie replied to judges' questions.

30. On 17 June 2024 the President of the Grand Chamber exceptionally granted the intervening Governments leave to reply in writing to the questions communicated by the Court on 7 June 2024 (see paragraph 26 above). The intervening Governments were requested to provide their collective or individual written replies to the Court by 3 July 2024. They were further requested to strictly confine their written submissions to answering the questions.

31. Eighteen intervening Governments responded in writing. Two (the Governments of Austria and France) indicated that they had no further submissions. The remaining sixteen Governments (the Governments of Belgium, Croatia, the Czech Republic, Denmark, Finland, Estonia, Germany, Iceland, Latvia, the Netherlands, Norway, Poland, Portugal, Romania, Spain and Sweden) provided submissions in response to the questions.

32. Síofra O'Leary's term of office came to an end. She was replaced as President in subsequent deliberations by Mattias Guyomar. Branko Lubarda, Marko Bošnjak and Pere Pastor Vilanova, prevented from sitting, were subsequently replaced by Diana Sârcu, Ioannis Ktistakis and Georgios A. Serghides, respectively, first, second and third substitute judges.

THE FACTS

I. INTRODUCTION

33. The present proceedings concern events in the Donetsk and Luhansk regions, in the east of Ukraine, which began in the spring of 2014, and events throughout Ukraine from 24 February 2022, the start of the full-scale invasion by the Russian Federation (see paragraph 146 below).

34. This section provides an overview of the relevant facts and the context. The facts described in this section are either uncontested or are not seriously contested, or are indisputably established on the evidence. For these reasons, there are no cross-references in this section to the evidence or submissions which may be relevant to the facts described here. More information on the individuals and armed groups identified in this section may be found in the admissibility decision in *Ukraine and the Netherlands v. Russia* ((dec.), cited above, §§ 98-166).

II. OVERVIEW

A. Chronology of the conflict

35. In November 2013 the government of Ukraine announced that they would suspend the preparations for signing an Association Agreement with the European Union (EU) and would renew the dialogue on trade and economic matters with the Russian Federation. This led to mass protests against the government across the country. These deteriorated into violent clashes between security forces and protesters. The protest movement became known as "Euromaidan" (after Independence Square ("Maidan Nezalezhnosti") in Kyiv: see *Shmorgunov and Others v. Ukraine*, nos. 15367/14 and 13 others, §§ 9-17, 21 January 2021).

36. Violence escalated sharply on the evening of 18 February 2014. Hundreds of protestors, and some law enforcement officials, were killed or injured over the following days. On 21 February 2014, the then President of Ukraine, Viktor Yanukovych, and opposition leaders signed a compromise agreement which envisaged early elections by the end of the year.

37. On 22 February 2014 President Yanukovych left Kyiv and went to the Russian Federation. The Ukrainian Parliament voted to remove him from office on account of his failure to perform his constitutional duties. It elected a new speaker, who became acting President of Ukraine pending new elections on 25 May 2014. A new interim government was put in place. The interim government was not recognised by the government of the respondent State.

38. In late February 2014 unidentified armed men in green military uniforms without insignia began taking over strategic infrastructure in the Autonomous Republic of Crimea ("Crimea"). On 27 February 2014 armed groups took over the building of the Supreme Council of the Autonomous Republic of Crimea. Later that day, at gunpoint, members of the Supreme Council dismissed the government of Crimea and appointed Sergey Aksyonov as "Prime Minister". It was also decided to hold a "referendum" on the future status of Crimea (see *Ukraine v. Russia (re Crimea)* [GC] (dec.), nos. 20958/14 and 38334/18, §§ 32-66 and 149-168, 16 December 2020).

39. The "referendum" in Crimea took place on 16 March 2014 and according to the published results there was overwhelming support for Crimea joining the Russian Federation. On 18 March 2014 Crimea therefore purported to join the Russian Federation.

40. Meanwhile, in early March 2014, pro-Russian protests began across eastern regions of Ukraine, including in the Donetsk and Luhansk regions. The protestors objected to what they claimed to have been an unconstitutional change of power in Ukraine.

41. At the request of the government of Ukraine, the Office of the United Nations (UN) High Commissioner for Human Rights (OHCHR) established

the UN Human Rights Monitoring Mission in Ukraine ("HRMMU") to monitor and report on the human rights situation in Ukraine. The HRMMU was deployed on 14 March 2014.

42. The Special Monitoring Mission to Ukraine ("SMM") was deployed by the Organization for Security and Co-operation in Europe (OSCE) on 21 March 2014, following a request by Ukraine's government and a consensus decision by all fifty-seven OSCE participating States, including the respondent State. The SMM's main tasks were to observe and report on the situation in Ukraine and to facilitate dialogue among all parties to the crisis.

43. From early April 2014 there was a rapid escalation of violence in eastern Ukraine. Armed groups were formed and they started to take control by force of public buildings as well as of police and security facilities in cities and towns across the Donetsk and Luhansk regions. They set up barricades and checkpoints to maintain control of the areas seized.

44. On 6 April 2014 armed groups in Luhansk seized the regional office of the Security Service of Ukraine ("SBU") and declared it to be the headquarters of the "South-East Army".

45. That night, armed groups occupied the Regional State Administration building in Donetsk and, on 7 April 2014, they declared the independence of the "Donetsk People's Republic" ("DPR").

46. On 12 April 2014 a group of armed men led by Russian national Igor Girkin seized public buildings in Sloviansk, in the Donetsk region. Public administration buildings in a number of surrounding towns were also seized in the following days.

47. On 14 April 2014 the government of Ukraine launched an "Anti-Terrorist Operation" ("ATO") to re-establish control over territory controlled by the separatist armed groups, deploying units of the Ukrainian Armed Forces supported by volunteer battalions. Meanwhile, an increasing number of troops of the armed forces of the Russian Federation were deployed in the border area near Ukraine.

48. On 17 April 2014, following negotiations between the representatives of Ukraine, the EU, the United States of America and the Russian Federation, the Joint Geneva Statement on Ukraine was published. The parties notably agreed that all sides should refrain from any violence, intimidation or provocative actions; that all illegal armed groups should be disarmed; that all illegally seized buildings should be returned to legitimate owners; and that all illegally occupied streets, squares and other public places in Ukrainian cities and towns should be vacated.

49. On 27 April 2014 the "Lugansk People's Republic" ("LPR") was declared in Luhansk. On 29 April 2014, the Luhansk Regional State Administration building was stormed and occupied by separatist armed groups.

50. In the following days and weeks, further buildings in towns and cities in the Donetsk and Luhansk regions were taken over by separatist armed groups.

51. On 11 May 2014, so-called "independence referendums" took place in the parts of the Donetsk and Luhansk regions under separatist control. The "DPR" and the "LPR" announced that a majority had voted in favour of independence. They declared themselves to be sovereign states and formed new "governments".

52. On 6 June 2014 the "Normandy Format", composed of Germany, France, Ukraine and the Russian Federation, was established. The diplomatic efforts of this group led to the establishment of the Trilateral Contact Group for the peaceful settlement of the situation in eastern Ukraine, composed of senior representatives from Ukraine, the Russian Federation and the OSCE. The Trilateral Contact Group held its first session on 8 June 2014.

53. In the course of June and July 2014, the Ukrainian armed forces regained control over a number of towns and strategic positions in Donbas. On 5 July 2014 the separatist forces retreated to Donetsk from Sloviansk and surrounding towns. There was heavy fighting in the south-eastern part of the Donetsk region as the separatists sought to hold the territory they had occupied and to gain control over a passage of land which would link the "DPR" to the Russian border in the south. The Ukrainian forces used heavy artillery and air support to attack separatist positions.

54. On 17 July 2014 Malaysian Airlines flight MH17 from Amsterdam to Kuala Lumpur was downed near Snizhne, in the Donetsk region. All 298 civilians aboard were killed. 196 of the victims were nationals of the Netherlands. According to the passenger manifest, the remaining victims were nationals of Malaysia, Australia, Indonesia, the United Kingdom, Belgium, Germany, the Philippines, Canada or New Zealand. Some of the deceased had dual nationality. The Netherlands, working closely with Ukraine and other affected States, coordinated the recovery and repatriation efforts.

55. A new round of peace talks started on 31 July 2014 in Minsk, Belarus, in the context of the Trilateral Contact Group (see paragraph 52 above), with the informal participation of representatives of the "DPR" and the "LPR".

56. On 5 September 2014 senior representatives of Ukraine, the Russian Federation, the OSCE, the "DPR" and the "LPR" signed the Protocol on the results of consultations of the Trilateral Contact Group ("Minsk Protocol"), which set out a 12-point peace plan including an immediate ceasefire. Despite the ceasefire, fighting continued. A Memorandum was signed on 19 September 2014 outlining the parameters for the implementation of commitments of the Minsk Protocol. A line of separation was created but fighting across the contact line persisted.

57. In early 2015 active hostilities began to increase considerably. In February 2015 intense fighting began around Debaltseve. As a result of peace

talks held on 11 and 12 February 2015 in Minsk, the Package of Measures for the Implementation of the Minsk Agreements ("Minsk II") was adopted. Minsk II provided for a ceasefire to enter into force from 15 February 2015, the withdrawal of heavy weaponry from the contact line, the establishment of a security zone and the withdrawal of foreign armed formations, mercenaries and weapons from the territory of Ukraine.

58. Over the ensuing years, the conflict continued with regular attacks across the line of contact in eastern Ukraine. The intensity fluctuated, with a number of ceasefires being agreed which led to a reduction in hostilities in the immediate aftermath. However, these were followed in due course by escalations in hostilities.

59. On 22 July 2020 the Trilateral Contact Group, with the participation of "DPR" and "LPR" representatives, reached an agreement regarding additional measures to strengthen the ceasefire. Following the enactment of the measures on 27 July 2020, the security situation in the conflict zone improved significantly. However, from March 2021 hostilities began to escalate once again. This coincided with a substantial build-up in April of Russian troops in areas bordering Ukraine, ostensibly for military exercises. Russia subsequently began to withdraw its troops and hostilities in the conflict zone decreased to levels similar to those seen in the second half of 2020.

60. From October 2021 there was a significant increase in Russian military activity along the border with Ukraine and in Crimea. A large number of troops and substantial amounts of military equipment were deployed to the border areas. This coincided with an escalation in active hostilities in eastern Ukraine. In November 2021 armed engagement across the contact line decreased. However, the military build-up continued to increase through to February 2022.

61. On 18 February 2022 the OSCE SMM reported a dramatic increase in activity along the contact line in eastern Ukraine over the preceding days. On the same date, the leaders of the "DPR" and the "LPR" announced a mass evacuation of residents of the two separatist entities to Russia.

62. On 21 February 2022 Vladimir Putin, President of the Russian Federation, adopted decrees on the recognition of the "DPR" and the "LPR" as "sovereign and independent states". The decrees instructed the Ministry of Defence of the Russian Federation to carry out "functions on supporting peace" in the "DPR" and the "LPR". That same evening, President Putin ordered the deployment of Russian troops in eastern Ukraine on a "peacekeeping mission".

63. On 22 February 2022 the State Duma ratified the "Treaty of Friendship, Cooperation and Mutual Assistance between the Russian Federation and the Donetsk People's Republic" and the "Treaty of Friendship, Cooperation and Mutual Assistance between the Russian Federation and the Lugansk People's Republic".

64. By 23 February 2022 up to 190,000 Russian troops were estimated to be deployed in areas bordering Ukraine and in Crimea.

65. On 24 February 2022 the Russian President announced that he had decided "in accordance with Article 51 (Chapter VII) of the Charter of the United Nations ... to conduct a special military operation with the approval of the Federation Council of Russia and pursuant to the treaties on friendship and mutual assistance with the Donetsk People's Republic and the Lugansk People's Republic". He specified that the purpose of the "special operation' was "to protect people who have been subjected to abuse and genocide by the Kiev regime for eight years". He stated that the Russian Federation had to stop "a genocide" against millions of people and that it would seek the prosecution of those who had committed numerous bloody crimes against civilians, including citizens of the Russian Federation.

66. On the same day, Russian troops crossed various border points into Ukraine, including through Belarus, and launched attacks by land, air and sea. Airstrikes were reported across Ukraine. Fighting opened on four fronts.

67. On the northern front, Russian armed forces advanced towards Kyiv from several directions, including from within Belarus, and conducted strikes on the capital, but fell short of capturing it. Russian troops took Hostomel airport and also took control of the Chornobyl Nuclear Power Plant. On the way to Kyiv, the Russian armed forces surrounded Chernihiv, which became the scene of heavy airstrikes and artillery fire. By the end of March 2022 the offensive towards Kyiv had stalled and the Chornobyl Nuclear Power Plant had been returned to Ukrainian personnel. After Ukrainian armed forces had regained control of areas north of Kyiv and Russian troops had withdrawn from localities they had temporarily occupied, evidence of grave human rights and international humanitarian law violations and large-scale destruction started to accumulate.

68. On the north-eastern front, Kharkiv and Sumy cities quickly became the scenes of heavy urban warfare with heavy shelling of residential and other key buildings that led to large-scale destruction. Starting on 28 February 2022, Russian armed forces attempted to capture the city of Izium, in the Kharkiv region. On 24 March 2022 the Russian Federation Ministry of Defence declared that Izium was under the full control of its forces. By April 2022 the Russian armed forces had withdrawn from the area around Sumy city. However, fighting in and around Kharkiv continued.

69. On the south-eastern front, as of 24 February 2022 Russian armed forces and "DPR" separatists launched attacks on the city of Mariupol from within Russian-controlled areas in the Donetsk region and from Crimea. By 1 March 2022 they had encircled the city. They gradually gained control of swathes of territory as attacks intensified, leading to large-scale destruction. Heavy fighting hampered evacuation efforts and curtailed access to basic necessities for civilians. On 10 March 2022 the International Committee of the Red Cross (ICRC) announced that the humanitarian situation in Mariupol

was becoming increasingly dire and desperate, and that hundreds of thousands of people had no food, water, heat, electricity, or medical care. The siege of Mariupol continued until 20 May 2022, when the Russian Federation declared that it had gained full control of the city.

70. On the southern front, on 2 March 2022 the city of Kherson became the first major Ukrainian city to fall. Russian armed forces gradually occupied surrounding localities. In the neighbouring Zaporizhzhia region, they seized Melitopol, Berdiansk, and Enerhodar. They took control of the Zaporizhzhia Nuclear Power Plant, Europe's largest such facility.

71. A second phase of the armed conflict was initiated in April 2022 with the launch of the "Battle for Donbas", which, according to Sergei Lavrov, Minister of Foreign Affairs of the Russian Federation, was aimed at the "full liberation" of the "DPR" and the "LPR". The offensive of the Russian armed forces concentrated on the Donetsk and Luhansk regions and other eastern areas, with the support of separatist armed groups.

72. On 25 May 2022 the President of the Russian Federation signed a decree simplifying the process for residents of Ukraine's Russian-occupied Kherson and Zaporizhzhia regions to acquire Russian citizenship.

73. On 30 May 2022 the President of the Russian Federation signed a decree facilitating the acquisition of Russian nationality by orphaned children or children without parental care from the "DPR", "LPR" and in the occupied areas of the Zaporizhzhia and Kherson regions. The decree authorised the heads of orphanages and other State institutions located in these areas to apply for Russian nationality for children under their care.

74. From late August 2022 Ukrainian forces led counter-offensive operations in the regions of Kharkiv, Donetsk, Luhansk and Kherson which resulted in their retaking hundreds of settlements. Populations from recovered cities and settlements reported large-scale atrocities, such as unlawful killings, summary executions, torture, sexual violence and unlawful confinement during the period of occupation.

75. From 23 to 27 September 2022, Russian authorities in the occupied territory of the regions of Donetsk, Luhansk, Kherson and Zaporizhzhia purported to hold "referendums" on these regions becoming part of the Russian Federation. On 30 September 2022 the President of the Russian Federation signed so-called "Treaties on the Accession of the Donetsk People's Republic, the Lugansk People's Republic, the Zaporozhye Region and the Kherson Region to the Russian Federation". Part of the regions concerned was not in the hands of the Russian Federation at the time and Ukrainian control over further parts has since been restored.

76. In October 2022 Ukrainian armed forces continued to recover control of cities and villages in eastern Ukraine. There was heavy fighting in the Donetsk and Luhansk regions.

77. On 10 October 2022, two days after an explosion caused damage to the "Crimean Bridge" connecting the Russian Federation with Crimea, the

Russian Federation launched a wave of missile and uncrewed aerial vehicle attacks targeting Ukraine's critical infrastructure. During the subsequent weeks and months, further similarly intense and large-scale attacks with missiles and uncrewed aerial vehicles were carried out. The attacks affected numerous regions of Ukraine, targeting energy-related infrastructure. As a consequence, millions were left without heating, electricity and water. In the south, missile strikes hit the cities of Mykolaiv and Zaporizhzhia. Military activities and shelling repeatedly occurred at the Zaporizhzhia Nuclear Power Plant.

78. In November 2022 Ukrainian armed forces retook control of the Kherson city area, while Russian armed forces gradually withdrew.

79. Over the subsequent years, control over territory in Ukraine has shifted in the face of Russian advances and Ukrainian counter-offensives. The conflict remains intense, with heavy fighting continuing on multiple fronts. Russian aerial strikes continue across Ukraine.

B. International developments following 24 February 2022

1. Council of Europe

80. On 24 February 2022 the Committee of Ministers condemned in the strongest terms the armed attack on Ukraine by the Russian Federation in violation of international law (CM/Del/Dec(2022)1426bis/2.3). It urged the Russian Federation to immediately and unconditionally cease its military operations in Ukraine. It further decided to examine without delay, and in close coordination with the Parliamentary Assembly and the Secretary General, what measures should be taken in response to the serious violation by the Russian Federation of its statutory obligations as a Council of Europe member State.

81. On 25 February 2022, following an exchange of views with the Parliamentary Assembly, the Committee of Ministers decided to launch the procedure provided for by Article 8 of the Statute of the Council of Europe and agreed to suspend the Russian Federation from its rights of representation in the Council of Europe (CM/Del/Dec(2022)1426ter/2.3).

82. On 10 March 2022 the Committee of Ministers published a decision expressing deep concern for the civilian victims of Russia's aggression against Ukraine, particularly vulnerable groups such as the elderly, disabled and children (CM/Del/Dec(2022)1428bis/2.3). The Committee of Ministers condemned as atrocious the bombing of a maternity and paediatric hospital in Mariupol on 9 March 2022, and strongly urged Russia to comply with the interim measures indicated by the Court on 1 and 4 March 2022 (see paragraphs 9-10 above). It decided to consult the Parliamentary Assembly on potential further use of Article 8 of the Statute.

83. On 15 March 2022 the Parliamentary Assembly adopted Opinion 300 (2022) on the Consequences of the Russian Federation's aggression against Ukraine. It noted:

> "1. In continuation of the war of aggression waged by the Russian Federation against Ukraine since 20 February 2014, as of 24 February 2022, the Russian Federation has escalated its military activities against Ukraine to unprecedented levels, causing thousands of civilian casualties, displacing millions of people and devastating the country. In launching this further military aggression, the Russian Federation has chosen recourse to force over dialogue and diplomacy to achieve its foreign policy objectives, in violation of the legal and moral norms that govern the peaceful coexistence of States. This conduct shows disregard for the very essence of the Council of Europe, as enshrined in its Statute (ETS No. 1), which is the conviction that the pursuit of peace based upon justice and international co-operation is vital for the preservation of human society and civilisation."

84. The Parliamentary Assembly condemned, in the strongest terms, the Russian Federation's aggression against Ukraine. It considered that the Russian Federation's armed attack on Ukraine was a serious breach of Article 3 of the Statute of the Council of Europe and a violation of the obligations and commitments that the Russian Federation had accepted upon becoming a member of the Organisation, including the commitments to settle international and internal disputes by peaceful means and to denounce the concept of treating neighbouring States as a zone of special influence called the "near abroad". The Parliamentary Assembly further deplored that the Russian leadership had "persisted in its aggression, escalating the violence in Ukraine and making threats should other States interfere". It continued:

> "5. ... Through its attitude and actions, the leadership of the Russian Federation poses a blatant menace to security in Europe, following a path which also includes the act of military aggression against the Republic of Moldova and in particular the occupation of its Transnistrian region, the act of military aggression against Georgia and the subsequent occupation of two of its regions in 2008, the illegal annexation of Crimea and the Russian Federation's role in eastern Ukraine, which culminated in the illegal recognition of the self-proclaimed republics of Donetsk and Luhansk as 'independent States'."

85. The Parliamentary Assembly expressed itself to be deeply disturbed by evidence of serious violations of human rights and international humanitarian law by the Russian Federation, including attacks against civilian targets; indiscriminate use of artillery, missiles and bombs, including cluster bombs; attacks on humanitarian corridors intended to allow civilians to escape from besieged towns and cities; and hostage-taking. It noted "with shock the reckless attacks by Russian armed forces on nuclear facilities in Ukraine".

86. The Opinion included the following passages:

> "9. The Assembly is deeply concerned about the situation of Ukrainians who have been forced to flee their country in fear of their lives, in the biggest refugee exodus seen in Europe since the Second World War. The Assembly applauds the generosity

> and solidarity shown by neighbouring countries that continue to take in hundreds of thousands of refugees, most of them women and children ...
>
> 10. The Assembly notes that the unfolding Russian aggression in Ukraine has been very widely condemned by the international community, in particular by States and international organisations ...
>
> 11. In the Russian Federation, however, anti-war protests are stifled. The Assembly condemns the measures taken by the Russian authorities to further curtail freedom of expression and freedom of assembly through the closure of almost all remaining independent news organisations, the intensifying crackdown on civil society, the harsh repression of peaceful protests and severe restrictions on access to social media. It deplores the fact that, as a result, the Russian population is deprived of information from independent sources and is exposed only to State-controlled media that amplify a distorted narrative of the war.
>
> 12. These tragic events confirm the relevance of and continuing need for the Council of Europe as a value-based intergovernmental organisation working to promote democracy, human rights and the rule of law. Through its numerous bodies and institutions, and in accordance with its remit and mission, the Council of Europe should be on the front line in providing assistance and expertise to support Ukraine and Ukrainians."

87. The Parliamentary Assembly accordingly called on the Russian Federation to cease hostilities against Ukraine and immediately, completely and unconditionally withdraw its military forces from the territory of Ukraine within its internationally recognised borders, and to comply strictly with its obligations under human rights and international humanitarian law.

88. Taking into account all of the above and that the Russian Federation had committed serious violations of the Statute of the Council of Europe that were incompatible with the status of a Council of Europe member State, had not honoured its undertakings to the Council of Europe and had not complied with its commitments, the Parliamentary Assembly considered that the Russian Federation could no longer be a member State of the Organisation. It considered that the Committee of Ministers should request the Russian Federation to immediately withdraw from the Council of Europe. If the Russian Federation did not comply with the request, the Parliamentary Assembly suggested that the Committee of Ministers determine the immediate possible date from which the Russian Federation would cease to be a member of the Council of Europe.

89. On 16 March 2022 the Committee of Ministers adopted Resolution CM/Res(2022)2, by which it decided that the Russian Federation ceased to be a member of the Council of Europe from 16 March 2022.

90. On 22 March 2022 the Court, sitting in plenary session in accordance with Rule 20 § 1, adopted the "Resolution of the European Court of Human Rights on the consequences of the cessation of membership of the Russian Federation to the Council of Europe in light of Article 58 of the European Convention on Human Rights". It stated that the Russian Federation would cease to be a Party to the Convention on 16 September 2022.

91. On 16-17 May 2023 at the 4th Summit of Heads of State and Government, the Council of Europe established, through an Enlarged Partial Agreement, the Register of Damage Caused by the Aggression of the Russian Federation against Ukraine. Forty-three States and the European Union have joined the Register.

92. On 2 April 2024 the Register of Damage Caused by the Aggression of the Russian Federation against Ukraine opened the claims submission process for compensation of damage, loss or injury caused by Russian aggression against Ukraine.

93. Meanwhile, work was begun by a group of senior legal experts from around forty States working with the Ukrainian authorities, the EU Commission, the European External Action Service and the Council of Europe (the Core Group) on the preparation of draft legal instruments required to establish a Special Tribunal for the Crime of Aggression against Ukraine within the framework of the Council Europe, consisting of an agreement between Ukraine and the Council of Europe, a Statute for the Special Tribunal and an Enlarged Partial Agreement governing the modalities of support to the Special Tribunal, its financing and other administrative aspects. On 14 May 2025 the Committee of Ministers welcomed the finalisation of these draft documents by the Core Group. Following receipt of a formal request from Ukraine for the establishment of the Special Tribunal, the Committee of Ministers invited the Secretary General of the Council of Europe to steer the process for the establishment of the Special Tribunal within the Council of Europe.

2. United Nations (UN)

94. On 25 February 2022 the UN Security Council rejected a draft resolution intended to end Russia's military action. The draft, submitted by Albania and the United States, had garnered support from eleven members but was vetoed by the Russian Federation. Three States abstained. As a result, on 27 February 2022 the UN Security Council called an emergency special session of the General Assembly to examine the same matter (S/RES/2623 (2022)).

95. On 2 March 2022 the UN General Assembly adopted resolution A/RES/ES-11/1 with one hundred and forty-one votes in favour, five against and thirty-five abstentions. The resolution condemned the 24 February 2022 declaration by the Russian Federation of a "special military operation" in Ukraine, reaffirmed that no territorial acquisition resulting from the threat or use of force would be recognised as legal and expressed grave concern at reports of attacks on civilian facilities such as residences, schools and hospitals, and of civilian casualties, including women, older persons, persons with disabilities and children. The preamble to the resolution continued:

> "Recognizing that the military operations of the Russian Federation inside the sovereign territory of Ukraine are on a scale that the international community has not

> seen in Europe in decades and that urgent action is needed to save this generation from the scourge of war,
>
> Endorsing the Secretary-General's statement of 24 February 2022 in which he recalled that the use of force by one country against another is the repudiation of the principles that every country has committed to uphold and that the present military offensive of the Russian Federation is against the [UN] Charter,
>
> Condemning the decision of the Russian Federation to increase the readiness of its nuclear forces,
>
> Expressing grave concern at the deteriorating humanitarian situation in and around Ukraine, with an increasing number of internally displaced persons and refugees in need of humanitarian assistance ..."

96. The General Assembly reaffirmed its commitment to the sovereignty, independence, unity and territorial integrity of Ukraine within its internationally recognised borders, extending to its territorial waters, and "deplored in the strongest terms the aggression by the Russian Federation against Ukraine in violation of Article 2 (4) of the Charter". It demanded that the Russian Federation immediately cease its use of force against Ukraine and refrain from any further unlawful threat or use of force against any Member State; and that it "immediately, completely and unconditionally" withdraw all of its military forces from the territory of Ukraine within its internationally recognised borders. The General Assembly further condemned all violations of international humanitarian law and violations and abuses of human rights, and called upon all parties to respect strictly the relevant provisions of international humanitarian law and international human rights law.

97. On 4 March 2022 the UN Human Rights Council ("HRC") adopted resolution A/HRC/RES/49/1 condemning "in the strongest possible terms the human rights violations and abuses and violations of international humanitarian law resulting from the aggression against Ukraine by the Russian Federation". It expressed grave concern at the documented harm to the enjoyment of many human rights, including the rights to life, to education, and to the highest attainable standard of physical and mental health, caused by Russian shelling and bombing in populated areas. It urgently established an Independent International Commission of Inquiry on Ukraine ("Commission of Inquiry") comprised of three human rights experts to investigate all alleged violations and abuses of human rights and violations of international humanitarian law, and related crimes in the context of the aggression against Ukraine by the Russian Federation, and to establish the facts, circumstances and root causes of any such violations and abuses (see also resolutions A/HRC/RES/52/32 and A/HRC/RES/55/23 extending the Commission of Inquiry's mandate).

98. On 24 March 2022 the UN General Assembly passed resolution A/RES/ES-11/2 in which, among other things, it deplored the dire humanitarian consequences of the hostilities by the Russian Federation against Ukraine, including the besiegement of and shelling and air strikes on

densely populated cities of Ukraine as well as attacks striking civilians and civilian objects; and expressed grave concern at the deteriorating humanitarian situation in and around Ukraine, in particular at the high number of civilian casualties and the increasing number of internally displaced persons and refugees in need of humanitarian assistance. It reiterated its demand for an immediate cessation of the hostilities by the Russian Federation against Ukraine, in particular of any attacks against civilians and civilian objects; and called for an end to sieges of cities which further aggravated the humanitarian situation for the civilian population and hampered evacuation efforts. The General Assembly further condemned all violations of international humanitarian law and violations and abuses of human rights, and called upon all parties to the armed conflict to strictly respect international humanitarian law.

99. On 7 April 2022 the UN General Assembly passed resolution A/RES/ES-11/3 suspending Russia's membership in the HRC. It expressed grave concern at the ongoing human rights and humanitarian crisis in Ukraine, in particular at the reports of violations and abuses of human rights and violations of international humanitarian law by the Russian Federation, including "gross and systematic violations and abuses of human rights".

100. On 12 May 2022 the HRC adopted resolution A/HRC/RES/S-34/1 on the deteriorating human rights situation in Ukraine stemming from the Russian aggression. It expressed deep concern at the alarming number of civilian casualties caused by the aggression against Ukraine and strongly condemned attacks against civilians and civilian infrastructure, including attacks on residential areas, schools, kindergartens and medical facilities, and attacks carried out through the use of cluster munitions, air strikes and artillery, as well as the use of torture and other cruel, inhuman or degrading treatment, arbitrary executions, extrajudicial killings, enforced disappearances, sexual and gender-based violence, forced transfers of population, or violations and abuses committed against children. The HRC strongly condemned "the violations and abuses of human rights and serious violations of international humanitarian law, confirmed by the High Commissioner [for Human Rights], that were committed in the areas of Kyiv, Chernihiv, Kharkiv and Sumy regions under the control of Russian armed forces in late February and in March 2022, including the very large number of reported cases of summary executions of men, women and children, of sexual and gender-based violence, of the use of torture and other ill-treatment, and of other violations that may amount to war crimes and related crimes". It expressed deep concern "at the grave human rights and humanitarian situation in the city of Mariupol, the near total destruction of its residential and civilian infrastructure caused by Russian bombing and shelling, reports of tens of thousands of civilian casualties and of mass graves near the city, and the limited progress in ensuring the safe and unhindered evacuation of civilians to safe areas under the control of the Government of Ukraine".

101. The HRC reiterated its demand for an immediate cessation of military hostilities against Ukraine, any attacks against civilians and civilian objects, and other violations of international humanitarian law and of any human rights violations and abuses in Ukraine, as well as of any disinformation, propaganda for war and national hatred related to the aggression against Ukraine. It requested the Commission of Inquiry to conduct an inquiry to address the events in the areas of Kyiv, Chernihiv, Kharkiv and Sumy regions in late February and March 2022 with a view to holding those responsible to account.

102. From 24 February 2022 to 18 September 2022 the OHCHR recorded 14,532 civilian casualties in Ukraine: 5,916 killed and 8,616 injured. The OHCHR noted that the actual figures were considerably higher, as the receipt of information from some locations had been delayed and many reports were still pending corroboration at the time.

103. On 12 October 2022 the UN General Assembly adopted resolution A/RES/ES-11/4 on the "Territorial integrity of Ukraine: defending the principles of the Charter of the United Nations". It recalled States' obligation under Article 2 of the UN Charter to refrain from the threat or use of force against the territorial integrity or political independence of any State. It further reaffirmed the principle of customary international law, as restated in its resolution 2625 (XXV) of 24 October 1970, entitled "Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations", that no territorial acquisition resulting from the threat or use of force would be recognised as legal. The General Assembly condemned the organisation by the Russian Federation of illegal "referendums" in regions within the internationally recognised borders of Ukraine and the attempted illegal annexation of the Donetsk, Kherson, Luhansk and Zaporizhzhia regions of Ukraine (see paragraph 75 above). It declared that these unlawful actions had no validity under international law and called upon all States not to recognise any alteration by the Russian Federation of the status of any or all of the Donetsk, Kherson, Luhansk or Zaporizhzhia regions of Ukraine.

104. On 14 November 2022 the UN General Assembly adopted resolution A/RES/ES-11/5 on "Furtherance of remedy and reparation for aggression against Ukraine". It recalled its previous resolutions and expressed grave concern at the "loss of life, civilian displacement, destruction of infrastructure and natural resources, loss of public and private property and economic calamity" caused by the aggression of the Russian Federation against Ukraine. It recommended the creation of an international register of damage to serve as a record, in documentary form, of evidence and claims information on damage, loss or injury to all natural and legal persons concerned, as well as to the State of Ukraine, caused by internationally wrongful acts of the Russian Federation in or against Ukraine, and to promote and coordinate evidence-gathering.

105. On 21 February 2023 the OHCHR reported that from 24 February 2022 to 15 February 2023, there had been 21,293 civilian casualties in 1,141 settlements of Ukraine, including 8,006 killed and 13,287 injured.

106. On 23 February 2023 the UN General Assembly adopted resolution A/RES/ES-11/6 on "Principles of the Charter of the United Nations underlying a comprehensive, just and lasting peace in Ukraine". It underscored the need to reach, as soon as possible, a comprehensive, just and lasting peace in Ukraine in line with the principles of the UN Charter. It further reiterated its demand that the Russian Federation "immediately, completely and unconditionally" withdraw all its military forces from the territory of Ukraine within its internationally recognised borders, and called for a cessation of hostilities. It called for full adherence by the parties to the armed conflict to their obligations under international humanitarian law to take constant care to spare the civilian population and civilian objects, to ensure safe and unhindered humanitarian access to those in need, and to refrain from attacking, destroying, removing or rendering useless objects indispensable to the survival of the civilian population. It also called for an immediate cessation of the attacks on the critical infrastructure of Ukraine and any deliberate attacks on civilian objects, including residences, schools and hospitals. It emphasised the need to ensure accountability for the most serious crimes under international law committed on the territory of Ukraine through appropriate, fair and independent investigations and prosecutions at the national or international level and to ensure justice for all victims and the prevention of future crimes.

107. On 15 February 2024 the OHCHR reported 30,457 civilian casualties, including 10,582 killed and 19,875 injured, since 24 February 2022.

108. The Commission of Inquiry (see paragraph 97 above), whose mandate was extended in 2023, 2024 and 2025, has published a total of six reports (three to the UN General Assembly in October 2022, October 2023 and October 2024, and three to the UN HRC in March 2023, March 2024 and March 2025) and two conference room papers (August 2023 and May 2025) to date. According to these documents, the body of evidence collected showed that Russian authorities had committed a wide range of violations of international human rights law and international humanitarian law in many regions of Ukraine and in the Russian Federation. Many of these amounted to war crimes and included wilful killings, attacks on civilians, unlawful confinement, torture, rape, and forced transfers and deportations of children. The Commission of Inquiry has concluded that Russian armed forces carried out attacks with explosive weapons in populated areas with an apparent disregard for civilian harm and suffering. It has documented indiscriminate and disproportionate attacks, and a failure to take precautions, in violation of international humanitarian law. It has found sufficient evidence to enable it to determine that the Russian authorities had perpetrated torture and enforced

disappearance as part of a widespread and systematic attack against the civilian population and pursuant to a coordinated State policy of torture. It has concluded that the Russian authorities committed enforced disappearances and torture as crimes against humanity.

3. International Courts

(a) International Court of Justice

109. On 26 February 2022 the applicant Ukrainian Government filed an application instituting proceedings against the Russian Federation before the International Court of Justice (ICJ) relating to the interpretation, application and fulfilment of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide. They contended that the Russian Federation had falsely claimed that acts of genocide had occurred in the Donetsk and Luhansk regions of Ukraine, and on that basis had recognised the "DPR" and the "LPR", and had then declared and implemented a "special military operation" against Ukraine.

110. On 16 March 2022 the ICJ indicated the following provisional measures in the case:

> "The Russian Federation shall immediately suspend the military operations that it commenced on 24 February 2022 in the territory of Ukraine;
>
> ...
>
> The Russian Federation shall ensure that any military or irregular armed units which may be directed or supported by it, as well as any organizations and persons which may be subject to its control or direction, take no steps in furtherance of the military operations referred to in point 1 above;
>
> ...
>
> Both Parties shall refrain from any action which might aggravate or extend the dispute before the Court or make it more difficult to resolve."

111. On 2 February 2024 the ICJ handed down its judgment on preliminary objections raised by the Russian Federation. The ICJ found that it had jurisdiction to examine Ukraine's claim requesting it to "[a]djudge and declare that there is no credible evidence that Ukraine is responsible for committing genocide in violation of the Genocide Convention in the Donetsk and Luhansk oblasts of Ukraine", and that the claim was admissible.

(b) International Criminal Court

112. On 17 March 2023 a pre-trial chamber of the International Criminal Court (ICC) issued arrest warrants for President Putin, and Maria Lvova-Belova, Commissioner for Children's Rights in the Office of the President of the Russian Federation. It considered that there were reasonable grounds to believe that each suspect bore responsibility for the war crime of unlawful deportation of population (children) and that of unlawful transfer of

population (children) from occupied areas of Ukraine to the Russian Federation, to the prejudice of Ukrainian children, under articles 8(2)(a)(vii) and 8(2)(b)(viii) of the Rome Statute.

113. On 5 March 2024 a pre-trial chamber of the ICC issued arrest warrants for two individuals in the context of the situation in Ukraine: Sergei Kobylash, a Lieutenant General in the Russian Armed Forces who at the relevant time had been the Commander of the Long-Range Aviation of the Aerospace Force, and Viktor Sokolov, an Admiral in the Russian Navy, who at the relevant time had been the Commander of the Black Sea Fleet. The chamber considered that there were reasonable grounds to believe that each suspect bore responsibility for the war crime of directing attacks at civilian objects (article 8(2)(b)(ii) of the Rome Statute), the war crime of causing excessive incidental harm to civilians or damage to civilian objects (article 8(2)(b)(iv) of the Rome Statute), and the crime against humanity of inhumane acts (article 7(1)(k) of the Rome Statute) in respect of missile strikes carried out by the forces under their command against the Ukrainian electric infrastructure from at least 10 October 2022 until at least 9 March 2023. The chamber found that there were reasonable grounds to believe that these strikes had been directed against civilian objects, and, where directed against installations that might have qualified as military objectives at the relevant time, the expected incidental civilian harm and damage "would have been clearly excessive to the anticipated military advantage". It also determined that the alleged campaign of strikes constituted a course of conduct involving the multiple commission of acts against a civilian population, carried out pursuant to a State policy.

114. On 24 June 2024 a pre-trial chamber of the ICC issued arrest warrants for Sergei Shoigu, Minister of Defence of the Russian Federation at the time of the alleged conduct, and Valery Gerasimov, Chief of the General Staff of the Armed Forces of the Russian Federation and First Deputy Minister of Defence of the Russian Federation at the time of the alleged conduct. It considered that there were reasonable grounds to believe that the two suspects bore responsibility for the missile strikes carried out by the Russian armed forces against the Ukrainian electric infrastructure from at least 10 October 2022 until at least 9 March 2023 (see paragraph 113 above).

4. Organisation for Security and Cooperation in Europe (OSCE)

115. On 3 March 2022 the Moscow Mechanism of the human dimension of the OSCE, established in 1991 to provide participating States with the possibility of establishing *ad hoc* missions of independent experts to assist in the resolution of a specific human dimension problem, was invoked by Ukraine, supported by 45 participating States.

116. On 7 March 2022 the SMM suspended its reporting activities in Ukraine (see paragraph 42 above). It discontinued its operations in Ukraine on 31 March 2022.

117. Meanwhile, a Mission of three experts was appointed under the Moscow Mechanism on 14 March 2022. Its mandate was to establish the facts and circumstances surrounding possible contraventions of OSCE commitments, and violations and abuses of international human rights law and international humanitarian law, and to establish the facts and circumstances of possible cases of war crimes and crimes against humanity, including due to deliberate and indiscriminate attacks against civilians and civilian infrastructure; and to collect, consolidate, and analyse this information with a view to presenting it to relevant accountability mechanisms, as well as national, regional, or international courts or tribunals that have, or may in future have, jurisdiction. The Moscow Mechanism was subsequently used on a further four occasions.

118. A total of four mission reports have been prepared (13 April and 14 July 2022, 4 May 2023 and 24 April 2024), either with a general mandate to establish facts and circumstances surrounding possible contraventions of OSCE commitments, violations and abuses of international human rights law and international humanitarian law, or with more targeted mandates concerning the forcible transfer of children or the arbitrary deprivation of liberty. The missions found clear patterns of international humanitarian law violations by the Russian forces in their conduct of hostilities and concluded that international human rights law had been extensively violated in the conflict in Ukraine. Some of the most serious violations included targeted killing of civilians, including journalists, human rights defenders or local mayors; unlawful detentions, abductions and enforced disappearances of such persons; large-scale deportations of Ukrainian civilians to Russia; various forms of mistreatment, including torture, inflicted on detained civilians and prisoners of war (POWs); the failure to respect fair trial guarantees; and the imposition of the death penalty.

5. European Union (EU)

119. On 23 February 2022, in response to Russia's recognition of the "DPR" and the "LPR" and the deployment of its armed forces in the regions of Donetsk and Luhansk (see paragraph 62 above), the EU adopted a first package of related sanctions against Russia.

120. Following a special meeting on 24 February 2022, the European Council condemned in the strongest possible terms Russia's unprovoked and unjustified military aggression against Ukraine. The European Council demanded that Russia immediately cease its military actions, unconditionally withdraw all forces and military equipment from the entire territory of Ukraine and fully respect Ukraine's territorial integrity, sovereignty and independence within its internationally recognised borders.

121. On 1 March 2022 the European Parliament adopted a resolution on the Russian aggression against Ukraine (2022/2564(RSP)), which condemned in the strongest possible terms the Russian Federation's illegal,

unprovoked and unjustified military aggression against and invasion of Ukraine. The European Parliament demanded that the Russian Federation immediately terminate all military activities in Ukraine, unconditionally withdraw all military and paramilitary forces and military equipment from the entire internationally recognised territory of Ukraine and fully respect Ukraine's territorial integrity, sovereignty and independence within its internationally recognised borders.

122. On 30 May 2022 the EU adopted Regulation (EU) 2022/838 amending Regulation (EU) 2018/1727 as regards the preservation, analysis and storage at the European Union Agency for Criminal Justice Cooperation (Eurojust) of evidence relating to genocide, crimes against humanity, war crimes and related criminal offences. The Regulation referred to there being "a reasonable basis to believe that crimes against humanity and war crimes have been and are being committed in Ukraine in the context of the current hostilities". Pursuant to the amended Regulation, Eurojust's operational functions include supporting Member States' action in combating genocide, crimes against humanity, war crimes and related criminal offences, including by preserving, analysing and storing evidence related to those crimes and related criminal offences and enabling the exchange of such evidence with, or otherwise making it directly available to, competent national authorities and international judicial authorities, in particular the ICC. The amendments permit the establishment of a new automated data management and storage facility for this purpose. They also authorise Eurojust to process and store satellite images, photographs, videos and audio recordings.

123. On 23 November 2022 the European Parliament adopted a resolution on recognising the Russian Federation as a State sponsor of terrorism (2022/2896(RSP)). In the resolution, the European Parliament recognised Russia as a State sponsor of terrorism and as a State which used means of terrorism, in the light of the deliberate attacks and atrocities carried out by the Russian Federation against the civilian population of Ukraine, the destruction of civilian infrastructure and other serious violations of human rights and international humanitarian law which amounted to acts of terror against the Ukrainian population and constituted war crimes. The European Parliament expressed its unreserved outrage at, and condemnation of, these attacks and atrocities and the other acts that Russia had committed in pursuit of its destructive political aims in Ukraine and on the territory of other countries.

124. On 19 January 2023 the European Parliament adopted a resolution on the establishment of a tribunal on the crime of aggression against Ukraine (2022/3017(RSP)). It underscored the urgent need for the EU and its Member States, in close cooperation with Ukraine and the international community, preferably through the UN, to push for the creation of a special international tribunal to prosecute the crime of aggression against Ukraine perpetrated by the political and military leadership of the Russian Federation and its allies and to find a legally sound, common way forward on this matter.

125. By May 2025, 17 packages of sanctions had been adopted in response to Russia's actions in Ukraine from February 2022. They concern a total of over 2,400 individuals and entities considered to have undertaken actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine.

C. Investigations and proceedings concerning the downing of flight MH17

126. On 7 August 2014 authorities from the Netherlands, Australia, Belgium and Ukraine established a joint investigation team ("JIT") to carry out a criminal investigation into the crash of flight MH17, with the participation of Malaysia and Eurojust.

127. On 9 September 2014 the Dutch Safety Board ("DSB"), tasked with the technical investigation in accordance with Article 26 of the 1944 Convention on International Civil Aviation (Chicago Convention) into the cause of the crash of flight MH17, published its preliminary report. The report disclosed that no technical or operational issues had been found in respect of the aircraft or the crew and that the damage appeared to indicate that the aircraft had been penetrated by a large number of high-energy objects from outside.

128. On 13 October 2015 the DSB published its final report in the context of the technical investigation into the cause of the crash of flight MH17. It concluded that flight MH17 had been downed by a Buk missile fired from separatist-held territory. It said that further forensic research was required to determine the exact launch location.

129. On 28 September 2016 the JIT presented its first partial findings from its criminal investigation into the downing of flight MH17. It said that flight MH17 had been downed by a Buk missile from the 9M38-series, that the missile had been launched by a Buk-TELAR from a field south of Snizhne and west of Pervomaiskyi under the control of separatists, and that the Buk-TELAR had been transported from the Russian Federation into Ukraine and had returned to Russia after the launch.

130. On 24 May 2018 the JIT announced that the Buk-TELAR that had downed flight MH17 belonged to the 53rd Anti-Aircraft Missile Brigade ("AAMB") of the armed forces of the Russian Federation.

131. In a joint diplomatic note of 25 May 2018 to the Ministry of Foreign Affairs of the Russian Federation from their embassies, the Netherlands and Australia invoked the State responsibility of the Russian Federation for the downing of flight MH17. They invited the Russian Federation to enter into negotiations in relation to the legal consequences flowing from that responsibility. A number of meetings subsequently took place; the parties involved agreed to the confidentiality of the meetings. The Russian Federation withdrew from negotiations in October 2020.

132. Meanwhile, on 19 June 2019 the JIT announced that the Public Prosecution Service of the Netherlands ("OM") was bringing charges against four men (three Russian nationals and one Ukrainian) for causing the crash of flight MH17, resulting in the death of all persons on board, and for the murder of the 298 persons on board that flight. The defendants were Mr Girkin, Sergey Dubinskiy, Oleg Pulatov and Leonid Kharchenko.

133. The criminal trial started on 9 March 2020 before the first instance court in The Hague. Only Mr Pulatov instructed legal representation and entered an appearance in the proceedings. The other defendants were tried *in absentia*.

134. In March 2022 Australia and the Netherlands initiated legal proceedings against the Russian Federation in the International Civil Aviation Organisation (ICAO) Council, under Article 84 of Chicago Convention, concerning the downing of flight MH17. They alleged that Russia had violated Article 3 bis of the Chicago Convention, which prohibits the use of weapons against civil aircraft in flight.

135. On 17 November 2022 the first instance court in The Hague delivered its verdict. It determined that flight MH17 had been downed by a Buk missile fired from an agricultural field near Pervomaiskyi, resulting in the deaths of all 283 passengers and 15 crew members. It further found that the Russian Federation had had overall control over the "DPR" from mid-May 2014 until at least the crash of flight MH17 and that the conflict was thus an international armed conflict. It found Mr Girkin, Mr Dubinskiy and Mr Kharchenko guilty of both charges and sentenced them to life imprisonment. Mr Pulatov was acquitted. Neither the defendants nor the OM appealed the judgment, which accordingly became final under Dutch law.

136. On 8 February 2023 the JIT held a further press conference on its investigation into the crew of the Buk TELAR that shot down MH17 and those responsible for supplying the weapon system. It announced that it had uncovered further information about the crew and about the decision-making process leading to the supply of the Buk TELAR. It underlined that any further evidence had to be sought in the Russian Federation. However, the Russian authorities continued to deny any involvement in the conflict in eastern Ukraine on and around 17 July 2014 and had, on multiple occasions, provided the JIT with falsified evidence exonerating the Russian Federation or had simply refused to provide any information. The information gathered by the JIT was not sufficiently conclusive and the JIT saw no further scope for investigation at that time without the cooperation of the Russian authorities. The investigation was therefore suspended. The JIT concluded that new information or a change in circumstances might lead to the resumption of the investigation or institution of new criminal proceedings.

137. In March 2023 the ICAO Council found that it had jurisdiction to consider the case filed in March 2022 (see paragraph 134 above). On 17 June 2024 the Russian Federation announced that it would no longer participate in

the proceedings before the ICAO Council on the basis that it did not acknowledge "the Council's authority to entertain the allegations from Australia and the Netherlands, nor any decisions stemming from them" (B474). On 12 May 2025 the ICAO Council voted that the Russian Federation failed to uphold its obligations under international air law in the 2014 downing of flight MH17. The Council agreed that the claims brought by Australia and the Netherlands (see paragraph 134 above) were well founded in fact and in law (B475).

RELEVANT LEGAL FRAMEWORK AND PRACTICE

138. Details of relevant domestic provisions and of international legal material relevant to the issues in the present case are set out in the Annex ("Annex A") to the Court's admissibility decision (see *Ukraine and the Netherlands v. Russia* (dec.), cited above, § 41) and in Annex B to the present judgment.

THE LAW

I. PARTICIPATION OF THE RESPONDENT STATE

139. As explained above, in light of the 24 February 2022 invasion and upon the request of the applicant Ukrainian Government, on 1 March 2022 interim measures under Rule 39 of the Rules of Court were indicated to the respondent Government. The Government were asked to inform the Court of the measures taken to ensure full compliance with the Convention (see paragraph 9 above).

140. In their two-page response of 5 March 2022 (see paragraph 11 above), the respondent Government described in three paragraphs alleged violations by Ukraine of the interim measure which had been in place in respect of both parties since March 2014 (see *Ukraine and the Netherlands v. Russia* (dec.), cited above, § 2). The purpose of these passages appears to have been to present "the basis for conducting a special military operation in Donetsk and Lugansk Peoples' Republics". A further paragraph of the 5 March 2022 response was devoted to explaining the steps taken to evacuate to Russia civilians from the "DPR" and the "LPR" prior to 24 February 2022, and the provision made for them there.

141. The response of the respondent Government to the Court's request for information (see paragraph 9 above) was limited to a number of bare assertions not supported by any evidence. These assertions were that "the Russian forces are not attacking civilians or civilian objects, only military targets"; that "a lot of the so-called 'evidence' circulating online actually portrays the aftermath of attacks of Ukrainian armed formations"; that "the nationalist forces are hiding their military equipment in residential areas, near

schools, hospitals and kindergartens"; and that "the Russian military forces provide humanitarian corridors and transport means in all the zones of armed conflict in Donbass in order to afford civilian population to move to a save place [sic]". The respondent Government concluded by stating that the Russian Federation was taking "every measure to avoid civilian casualties and ensure full compliance with the Convention". Under cover of a letter of 10 March 2022, the respondent Government subsequently provided a video file "in support of the legal stance of the Russian Federation".

142. This was the last correspondence received from the respondent Government in this case. No further correspondence whatsoever has been received since that date. In particular, there was no reply to the Court's request for a further update and responses to the specific requests for information in the context of the Rule 39 indication (see paragraph 12 above). The respondent State has not participated at all in the proceedings on the merits in respect of application nos. 8019/16, 43800/14 and 28525/20 or in the proceedings on the admissibility and merits of application no. 11055/22 and, consequently, did not provide a memorial and did not attend the hearing on 12 June 2024 (see paragraphs 21 and 27 above). This is a matter that will be examined later by reference to Article 38 of the Convention (see paragraphs 1630 et seq. below).

143. In order to respect the adversarial nature of and the need for equality of arms between the parties in the proceedings before it, the Court continues to engage in correspondence with the respondent Government in the normal manner. It has at all relevant times used, and continues to use, the electronic secured Government website as the means of communication with the authorities of the Russian Federation (see the Practice Direction on secured electronic filing by Governments, issued by the President of the Court in accordance with Rule 32 of the Rules of Court on 22 September 2008 and amended on 29 September 2014 and 5 July 2018). The site remains secure and accessible to the authorities of the respondent State (see the Grand Chamber judgment in *Ukraine v. Russia (re Crimea)*, cited above, § 22).

144. Finally, the Court underlines that pursuant to Rule 44C § 2 of the Rules of Court, failure or refusal by a respondent Contracting Party to participate effectively in the proceedings shall not, in itself, be a reason for it to discontinue the examination of an application. In the absence of sufficient cause for the failure of the respondent Government to submit a memorial or to participate in the hearing of 12 June 2024, the Grand Chamber decided to proceed with its examination of the case, being satisfied that such a course was consistent with the proper administration of justice (see, similarly, *Cyprus v. Turkey* [GC], no. 25781/94, §§ 10-12, ECHR 2001-IV, and *Georgia v. Russia (II)* (just satisfaction) [GC], no. 38263/08, §§ 25-26, 28 April 2023).

II. TERMINOLOGY

145. As regards the terminology employed in the present judgment, the Court observes that whether the conduct of the Russian Federation in Ukraine amounted and amounts to an invasion, to an occupation and to an annexation is a matter of fact to be established on the evidence.

146. According to the ordinary meaning of the word "invasion" in the context of an armed conflict, it broadly describes a situation where armed forces of one State enter the territory of another State with hostile intent. The Court is satisfied that the entry of Russian armed forces into Ukrainian territory from 24 February 2022 in the circumstances outlined above (see paragraphs 65 et seq. above) amounted to an invasion, in accordance with the ordinary meaning of the word (see also the Grand Chamber judgment in *Ukraine v. Russia (re Crimea)*, cited above § 197).

147. The terms "occupation" and "annexation" have particular meanings in the context of international armed conflict. A situation will amount to occupation when an area is actually placed under the authority of a hostile army; a State occupies territory that is not its own when, and to the extent that, it exercises effective control over it (see, most recently, *Advisory Opinion on the Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*, 19 July 2024 ("*Advisory Opinion on the Occupied Palestinian Territory")*, §§ 86 and 90-92 at B319-20, and also Article 42 of the Regulations concerning the Laws and Customs of War on Land, annexed to the 1907 Hague Convention (IV) respecting the Laws and Customs of War on Land ("the Hague Regulations") at B131). The Court has already found that the Russian Federation exercised effective control over Ukrainian territory in the relevant parts of Donbas from 11 May 2014 (Ukraine and the Netherlands v. Russia (dec.), cited above, § 695-97). It will have to determine in the present judgment whether the Russian Federation exercised effective control over additional territory in Ukraine. To the extent that Ukrainian territory is found to be under the effective control of the Russian Federation for the purposes of that State's jurisdiction under Article 1 of the Convention, the Court considers it appropriate to refer to such territory as occupied territory.

148. The ICJ has further explained in its *Advisory Opinion on the Occupied Palestinian Territory* that, in that context, annexation was the forcible acquisition by the occupying Power of the territory that it occupied, namely its integration into the territory of the occupying Power. It presupposed the occupying Power's intent to exercise permanent control over the occupied territory and was unlawful (ibid., §§ 158-60 and 175 at B322). Applying this definition to the facts of the present case, the Court considers that any Ukrainian sovereign territory under the effective control of the respondent State which the latter has purported formally to integrate into the Russian Federation, and to which it has, accordingly, applied its own laws in

the place of the applicable Ukrainian law, may be described as annexed territory. The terms "annexed" and "annexation", where used by the Court in the present judgment, do not imply any recognition of a transfer of sovereignty over the areas in question.

149. Any description of the conduct of the Russian Federation in Ukraine as an invasion, an occupation and an annexation is not intended to do more than describe the situation as it presents itself as a matter of fact and is without prejudice to any different assessment of the facts made by any other tribunal in separate legal proceedings. It does not reflect any evaluation of, or judgment as to, the legality or otherwise as a matter of international law more generally of the acts in question.

III. THIRD-PARTY INTERVENERS

A. The interveners

150. Thirty third-party interveners provided written submissions to the Court.

151. Twenty-six High Contracting Parties (see paragraph 17 above) subscribed to a common pleading, comprised of an introduction, submissions on jurisdiction, submissions on the relationship between the Convention and international humanitarian law, and closing remarks. Eleven of those High Contracting Parties (Belgium, Croatia, the Czech Republic, France, Latvia, Lithuania, the Netherlands, Poland, Slovakia, Spain and the United Kingdom) submitted, in addition, national pleadings which contained varying degrees of shared content among those Parties.

152. The Geneva Academy and the Human Rights Law Centre (see *Ukraine and the Netherlands v. Russia* (dec.), cited above, § 25, and paragraphs 17-18 above) provided submissions on Article 1 jurisdiction and the relationship between the Convention and international humanitarian law.

153. The MH17 applicants (see *Ukraine and the Netherlands v. Russia* (dec.), cited above, § 25, and paragraphs 17-18 above) provided submissions on the complaints made by the applicant Dutch Government regarding the downing of flight MH17.

154. The twenty-six High Contracting Parties also made a common oral submission at the hearing. The Government of Poland and the Government of the United Kingdom made additional national oral submissions. After the hearing, sixteen High Contracting Parties provided written answers to questions put by members of the Court prior to the hearing on 12 June 2024, having exceptionally been granted leave by the President to do so (see paragraph 31 above).

155. The content of the relevant third-party submissions concerning jurisdiction, the relationship between the Convention and international humanitarian law, and the alleged violations of the Convention in respect of

the downing of flight MH17 is summarised in the corresponding parts of this judgment.

B. The submissions of the intervening Governments

156. It is unprecedented for twenty-six High Contracting Parties to intervene as third parties in a case before the Court. This reflects their perception of the importance of this case to the Convention system as a whole. It is therefore unsurprising that their common third-party submissions express not only their joint position on the specific legal issues arising in the case but also their shared view of the conduct of the respondent State in the light of the underlying aims and objectives of the Council of Europe. It is important to record their submissions in this respect.

157. In their common pleading, they underlined their "support [for] accountability for all violations of international law by the Russian Federation". They expressed support for efforts to hold the Russian Federation and its politicians and military personnel accountable, under applicable international legal frameworks, "for the aggression of the Russian Federation in violation of Article 2 (4) of the Charter of the United Nations ..., as deplored in the strongest terms by the United Nations General Assembly in its resolution A/RES/ES-11/1, and for the breaches of international humanitarian law ... perpetrated by Russian forces". They continued:

> "3. At the Reykjavík Summit of the Council of Europe held on 16-17 May 2023, the Heads of State and Government described Russia's war of aggression against Ukraine as a flagrant violation of international law. They also reaffirmed the need for an unequivocal international legal response for all victims, as well as for the State of Ukraine. The Enlarged Partial Agreement on the Register of Damage Caused by the Aggression of the Russian Federation Against Ukraine was established, and is intended to constitute the first component of a future international comprehensive compensation mechanism. In the Declaration in support of this Enlarged Partial Agreement adopted at the Reykjavík Summit, the Heads of State and Government condemned all violations of international law, including international human rights law and IHL, in particular attacks against civilians and civilian objects, including civilian infrastructure, cultural and religious heritage and the environment of Ukraine, and expressed their conviction of the exigent necessity to ensure comprehensive accountability in the context of the Russian Federation's aggression against Ukraine. In the Declaration of the Summit they also noted that only by respecting the right to truth, to justice, to reparation and to guarantees of non-repetition will it be possible to overcome the past and create solid foundations to build unity in the spirit of harmony and co-operation with respect for human rights, democracy and the rule of law.
>
> 4. The Council of Europe was founded in the wake of the Second World War, born out of the conviction that the pursuit of peace based upon justice and international cooperation is vital for the preservation of human society and civilisation. It is a peace project, built on the promise of 'never again', a promise that has been fundamentally challenged by Russia's war of aggression against Ukraine. The Council of Europe Statute reaffirms the devotion of member States to the spiritual and moral values which are the common heritage of their peoples and the true source of individual

freedom, political liberty and the rule of law, principles which form the basis of all genuine democracy. Article 3 of the Statute clearly requires:

Every member of the Council of Europe must accept the principles of the rule of law and of the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms, and collaborate sincerely and effectively in the realisation of the aim of the Council as specified in Chapter I.

...

10. The Russian Federation has failed to comply with [the] interim and provisional measures [of the Court and of the ICJ] and persists in its grave breach of the prohibition on the use of force, a fundamental principle of international law contained in Article 2(4) of the UN Charter.

11. The intervening Governments are strongly committed to the protection and promotion of the international rule of law and recall that the system of the Convention is fundamental to the protection of human rights as well as peace and justice in Europe. They submit the present intervention bearing in mind their responsibility for the protection and collective enforcement of the rights and freedoms enshrined in the Convention, as applicable in the Convention's legal space.

...

46. The intervening Governments reiterate their unwavering support for the sovereignty, independence and territorial integrity of Ukraine within its internationally recognised borders and their condemnation of the egregious violations of international law perpetrated by the Russian Federation."

158. In their common oral submissions, the twenty-six High Contracting Parties reiterated that:

"The Council of Europe was founded on the sacrifice of millions of women, children and men. The horrors of war inspired the resolute will to strengthen the international order and the protection of democracy and human rights. The Council of Europe has remained committed to the promise of 'never again'. The Convention and this Court remain a hallmark in the protection of human rights and fundamental freedoms of individuals.

But the horrors of war are once again present in Europe. Women, children and men are once again facing what should be unthinkable and unbearable.

All of the intervening Governments wish to reiterate their unequivocal support for Ukraine in its quest to hold the Russian Federation accountable for the continuing violations of international law, including human rights law, committed by Russia's authorities and armed forces. We echo the declarations made by the 46 Heads of State and Government at the Reykjavík Summit of the Council of Europe a year ago. We reiterate the need to ensure comprehensive accountability for all violations of human rights, and more specifically the Convention, committed in the context of the Russian Federation's aggression against Ukraine.

...[T]he joined cases clearly show that aggression and systematic violations of human rights by the Russian Government and its agents was going on long before the beginning of the full-scale invasion. The intervening Governments therefore welcome the decision of the Court to join these cases and to consider the situation in Ukraine as it has developed. The events which have given rise to the three other applications will provide the necessary context for the consideration of case no. 11055/22 ...

> ... The failure of the Russian Federation to comply with interim and provisional measures of this Court and the failure to cooperate with the Court in general is further proof of the contempt that the present Government of the Russian Federation shows towards binding international law including the Convention. This is also evidenced by the absence of any representative from the Russian Government here today. Their silence speaks volumes.
>
> Instead of complying and cooperating with the Court, the Russian Federation persists in its ... ongoing breach of the prohibition on the use of force, a fundamental principle of international law contained in Article 2 § 4 of the Charter of the United Nations.
>
> The intervening Governments are strongly committed to the protection and the collective enforcement of the rights and freedoms enshrined in the Convention, as applicable in the Convention's legal space. This is why we have submitted common written observations and why we appear before you today.
>
> ...
>
> In the preamble to the Convention, the signatory Governments expressed their profound belief in the fundamental freedoms as the foundation of justice and peace in the world. This Court was established to ensure the observance of the engagements undertaken by the Parties to the Convention. It is in this spirit that the intervening Governments reiterate their unwavering support for Ukraine and reaffirm their condemnation of the egregious violations of international law perpetrated by the Russian Federation."

IV. PRELIMINARY OBSERVATIONS

A. Introduction

159. Under the terms of Article 32 of the Convention, the Court's jurisdiction "[extends] to all matters concerning the interpretation and application of the Convention and the protocols thereto which are referred to it as provided in Articles 33, 34, 46 and 47". "In the event of dispute as to whether the Court has jurisdiction", the decision is a matter for the Court (see *Ukraine and the Netherlands v. Russia* (dec.), cited above, § 383). Its principal role, as defined by Article 19, is "to ensure the observance of the engagements undertaken by the High Contracting Parties in the Convention and the Protocols thereto" (see, in this respect, *Cyprus v. Turkey*, cited above § 78).

160. Article 33 of the Convention empowers any High Contracting Party to "refer to the Court any alleged breach of the provisions of the Convention and the Protocols thereto by another High Contracting Party" (see *Ukraine and the Netherlands v. Russia* (dec.), cited above, § 384).

161. The Court has repeatedly emphasised that the purpose of the High Contracting Parties in concluding the Convention was not to concede to each other reciprocal rights and obligations in pursuance of their individual national interests but to realise the aims and ideals of the Council of Europe, as expressed in its Statute, and "to establish a common public order of the free democracies of Europe with the object of safeguarding their common

heritage of political traditions, ideals, freedom and the rule of law" (see the Commission's decision on the admissibility of application no. 788/60, *Austria v. Italy*, 11 January 1961, Yearbook, vol. 4, p. 116 at p. 138, and *Ukraine and the Netherlands v. Russia* (dec.), cited above, § 385). It follows that when a High Contracting Party or Parties refer an alleged breach of the Convention to the Court under Article 33 of the Convention, they are not to be regarded as exercising a right of action for the purpose of enforcing their own rights, but rather as bringing before the Court "an alleged violation of the public order of Europe" (*Austria v. Italy*, cited above, p. 140. See also *France, Norway, Denmark, Sweden and the Netherlands v. Turkey*, nos. 9940/82, 9942/82, 9944/82, 9941/82 and 9943/82, Commission decision of 6 December 1983, Decisions and Reports 35, p. 143 at p. 169, and *Ukraine and the Netherlands v. Russia* (dec.), cited above, § 385).

162. It is important for the Court to acknowledge and set out the full context in which it is examining the present inter-State case. The Court will accordingly first review the historical context of the Council of Europe and the Convention, before turning to examine the present conflict.

B. Historical context

163. On 5 May 1949 the Heads of State and Government of ten European States signed the Statute of the Council of Europe in London. This was a historic moment for the European continent, in a century that had already seen two world wars waged on its soil. As the High Contracting Parties recently underlined at the conclusion of the 4th Summit of Heads of State and Government of the Council of Europe in Reykjavík in May 2023 and, again, in their submissions to the Court (see paragraph 157 above and B342):

> "The Council of Europe was founded in the wake of the Second World War, born out of the conviction that the pursuit of peace based upon justice and international cooperation is vital for the preservation of human society and civilisation. It is a peace project, built on the promise of 'never again' ..."

164. The Preamble to the Statute reflects this context, with the first recital referring to the High Contracting Parties' conviction that the "pursuit of peace based upon justice and international co-operation is vital for the preservation of human society and civilisation". In creating the Council of Europe, the founding States were "[r]eaffirming their devotion to the spiritual and moral values which are the common heritage of their peoples and the true source of individual freedom, political liberty and the rule of law, principles which form the basis of all genuine democracy" (second recital at B63).

165. The aim of the Council of Europe, set out in Article 1 of the Statute, is to achieve a greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage and facilitating their economic and social progress. Pursuant to Article 3 of the Statute, every member of the Council of Europe must "accept

the principles of the rule of law and of the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms, and collaborate sincerely and effectively in the realisation of the aim of the Council" (B64-65).

166. In the preamble to the European Convention on Human Rights, the High Contracting Parties expressly reaffirmed "their profound belief in those fundamental freedoms which are the foundation of justice and peace in the world and are best maintained on the one hand by an effective political democracy and on the other by a common understanding and observance of the Human Rights upon which they depend". This underlines that their purpose in concluding the Convention on 4 November 1950 was to realise the aims and ideals of the Council of Europe and to establish a common public order of the free democracies of Europe with the object of safeguarding their common heritage of political traditions, ideals, freedom and the rule of law (see the Commission's decision on the admissibility of application no. 788/60, *Austria v. Italy*, 11 January 1961, Yearbook, vol. 4, p. 116 at p. 138). The Convention is the cornerstone of the Council of Europe's activities and its ratification is a prerequisite for joining the Organisation.

167. The past seventy-five years have been largely characterised by peace in Europe and cooperation among Council of Europe member States. This does not mean that conflict has been entirely absent. In the early days of operation of the Convention system, the former Commission was confronted with large-scale human rights violations in the context of the Turkish invasion of northern Cyprus in July and August 1974 and the continuing division of the territory of Cyprus (see, for example, *Cyprus v. Turkey*, nos. 6780/74 and 6950/75, Commission decision of 26 May 1975, D.R. 2, p. 125; *Cyprus v. Turkey*, no. 8007/77, Commission decision of 10 July 1978, DR 13, p. 85; and *Chrysostomos, Papachrysostomou and Loizidou v. Turkey*, nos. 15299/89, 15300/89 and 15318/89, 4 March 1991, D.R. 68, p. 216). Several cases arising out of that conflict later came before the Court (see, notably, *Loizidou v. Turkey* (preliminary objections), 23 March 1995, Series A no. 310; *Loizidou v. Turkey* (merits), 18 December 1996, *Reports of Judgments and Decisions* 1996-VI; and *Cyprus v. Turkey* [GC], cited above). In the 1990s, a number of regional conflicts erupted in what were at the time non-Contracting Parties, many linked to the fall of Communism and the break-up of the USSR and Yugoslavia. These States subsequently became members of the Council of Europe but in some cases were left with "frozen conflicts" that have continued to flare up from time to time and to generate a sizeable proportion of the Court's case-load (see, for example, *Ilaşcu and Others v. Moldova and Russia* [GC], no. 48787/99, ECHR 2004-VII; *Catan and Others v. the Republic of Moldova and Russia* [GC], nos. 43370/04 and 2 others, ECHR 2012 (extracts); *Mozer v. the Republic of Moldova and Russia* [GC], no. 11138/10, 23 February 2016; *Chiragov and Others v. Armenia* [GC], no. 13216/05, ECHR 2015; *Sargsyan v. Azerbaijan* [GC],

no. 40167/06, ECHR; 2015; and *Georgia v. Russia (II)* [GC], no. 38263/08, 21 January 2021).

C. The present conflict

168. The present case arises from events dating back to the spring of 2014 with the occupation and annexation by Russia of Crimea, part of Ukrainian sovereign territory, and the appearance of separatist armed groups in eastern Ukraine who subsequently took control of territory in the Donetsk and Luhansk regions and declared independence from Ukraine. The Court concluded that the events in Crimea from February 2014 fell within the jurisdiction of the Russian Federation and subsequently found multiple violations of the Convention on account of acts attributable to Russia within that territory (see *Ukraine v. Russia (re Crimea)* (dec.) and the Grand Chamber judgment in *Ukraine v. Russia (re Crimea)*, both cited above). In its admissibility decision in respect of eastern Ukraine, the Court held that by 11 May 2014, the separatist operation as a whole in the Donetsk and Luhansk regions was being managed and coordinated by the Russian Federation and that these areas were under the latter State's effective control (*Ukraine and the Netherlands v. Russia* (dec.), cited above, §§ 693 and 695).

169. Following the initial period of intense fighting in eastern Ukraine after hostilities first began in April 2014, the ensuing years of the conflict saw continuing skirmishes at the contact line, with repeated attempts to agree lasting ceasefires resulting in periods of reduced hostilities followed by periods of more intense and extensive hostilities as ceasefires broke down. This was the context of the conflict that was before the Court at the time of its admissibility hearing on 26 January 2022. The admissibility hearing took place against the backdrop of increasing tensions in the region. Widespread reports of a renewed massive build-up of Russian troops at the border had been circulating since late 2021 (B380, 443, 2233 and 3353). The Minister of Justice of Ukraine appeared before the Court at the hearing in January 2022 and referred in his oral submissions to the fact that Russia had "recently ... amassed enormous forces along the border of Ukraine, threatening ... invasion and an all-out war". He said, "Ukraine is facing a threat of invasion by [a] fully prepared Russian army of over one hundred thousand servicemen".

170. Since the admissibility hearing, the nature of the conflict has substantially changed. By February 2022 it was estimated that there were some 190,000 Russian troops deployed in Russian border areas near Ukraine (see paragraph 64 above and B444 and 3356-57). Less than one month after the admissibility hearing, on 24 February 2022, the Russian Federation began its full-scale invasion of Ukraine. Russian armed forces entered Ukrainian sovereign territory at various border points from Russia and Belarus and from Crimea and launched attacks by land, air and sea. In the north of Ukraine, Russian troops crossed into Ukraine from Belarus advancing towards Kyiv

and were involved in attacks on Chernihiv, Slavutych, Bucha, Irpin, Hostomel and Vorzel. Russian forces also attacked from the north-eastern part of Ukraine, targeting Kharkiv, Sumy, Okhtyrka, Brovary, Volnovakha and Izium. Russian troops in the east attacked from Donbas, extending "DPR" and "LPR" territory there. In the south of Ukraine, Russian forces moved from Crimea in the direction of Odesa and attacked Kherson, Mykolaiv, Melitopol and Mariupol. Ukrainian towns and cities in these areas and beyond were subjected to heavy airstrikes and artillery fire causing large-scale death, injury and destruction. On 30 September 2022 the Russian Federation announced the "accession" to the Russian Federation of the partially-occupied Donetsk, Kherson, Luhansk and Zaporizhzhia regions of Ukraine (B27-29). As the Court deliberated on the case before it, the hostilities continued on Ukrainian territory, with every month that passed bringing new deaths and extensive destruction.

171. The actions of the Russian Federation have met with widespread condemnation from the international community. On 25 February 2022 the Russian Federation was suspended from its rights of representation in the Council of Europe (see paragraph 81 above). On the same day, a draft resolution demanding that the Russian Federation cease its use of force against Ukraine failed to pass in the United Nations Security Council owing to a veto by the Russian Federation (see paragraph 94 above). On 2 March 2022 the General Assembly of the United Nations demanded that the Russian Federation immediately cease its use of force against Ukraine and immediately, completely and unconditionally withdraw all of its military forces from the territory of Ukraine (see paragraph 95 above). On 16 March 2022 the ICJ issued provisional measures ordering the Russian Federation *inter alia* immediately to suspend the military operations commenced on 24 February 2022 (see paragraph 110 above).

172. Meanwhile, on 15 March 2022, the Parliamentary Assembly of the Council of Europe unanimously expressed the view that the military aggression of the Russian Federation had shown "disregard for the very essence of the Council of Europe, as enshrined in its Statute" and had seriously breached Article 3 of the Statute of the Council of Europe (see paragraph 165 above). The Parliamentary Assembly concluded that the Committee of Ministers should request the Russian Federation to withdraw immediately from the Council of Europe, or expel the Russian Federation from the Council of Europe (see paragraph 88 above). On 16 March 2022 the Committee of Ministers decided that as of that day the Russian Federation ceased to be a member of the Council of Europe (see paragraph 89 above). On 22 March 2022 the Court declared that the Russian Federation would cease to be a High Contracting Party to the Convention on 16 September 2022 (see paragraph 90 above).

173. At the Reykjavík Summit of the Council of Europe, the Heads of State and Government underlined that the "promise of 'never again'" upon

which the Council of Europe had been built (see paragraph 163 above) had been "fundamentally challenged by Russia's war of aggression against Ukraine". The declaration continued:

> "It underpins why we, the Leaders of Europe, have come together to state our resolve to unite around our values and against Russia's war of aggression against Ukraine, a flagrant violation of international law and everything we stand for. We have a common responsibility to fight autocratic tendencies and growing threats to human rights, democracy and the rule of law. Those core values are the bedrock of our continued freedom, peace, prosperity and security for Europe.
>
> As we approach the 75th anniversary of the Council of Europe, our vision for the Organisation remains the same. Our European democracies are not established once and for all. We need to strive to uphold them each and every day, continuously, in all parts of our continent. The Council of Europe remains the guiding light that assists us in fostering greater unity among us for the purpose of safeguarding and realising these ideals and principles which are our common heritage ...
>
> We reaffirm our deep and abiding commitment to the European Convention on Human Rights and the European Court of Human Rights as the ultimate guarantors of human rights across our continent, alongside our domestic democratic and judicial systems. We reaffirm our primary obligation under the Convention to secure to everyone within our jurisdiction the rights and freedoms defined in the Convention ..."

174. Even before the sharp escalation of military operations on 24 February 2022, a narrative seeking to undermine Ukraine's statehood which asserted Ukraine's history as part of Russia and claimed that it was "entirely a product of the Soviet era" was being deliberately and strategically circulated in the Russia media (B1515-20). The transformation from covert to openly acknowledged operations in Ukraine has brought transparency to the objectives of the Russian Federation. These objectives appear to be no less than the destruction of Ukraine as an independent sovereign State, through the forcible acquisition of Ukrainian territory and the subjugation of any remaining Ukrainian nation to Russian influence and control. Through written articles, oral comments and posts on social media, the President of the respondent State and other senior Government figures have sought to portray the use of armed force and the forcible acquisition of territory in Ukraine as support for the right to self-determination of those residing in Russia's "historical lands", as the defence of ethnic Russians against "genocide" and as a matter of Russia's territorial integrity and sovereignty (for example, B1521-33, 1547-48, 1588-89 and 1592).

175. It is noteworthy that in disseminating this narrative, the Russian Federation has not identified any clear limitations to its territorial ambitions, either in Ukraine or beyond. On the contrary, representatives of the respondent State have publicly alluded to the forcible acquisition of the entire territory of Ukraine all the way to the Polish border (B1588-89, 1591-92 and 1595). Ukrainian cities, including Kyiv and Odesa, have been referred to as "Russian cities" and reference has also been made to "temporarily occupied Poland and our Baltic provinces" (B1590 and 1593. See also B1591-92). The

President of the respondent State referred in January 2024 to Russians being "pushed out of" Latvia and other Baltic countries, adding that these were "very serious matters that directly affect our country's security" (B1557). Similar rhetoric has been employed in respect of the Transnistrian region of the Republic of Moldova (B1575-76).

176. The potential for further escalation has frequently been invoked by senior Russian political figures. When announcing the start of the February 2022 invasion the President of the Russian Federation warned that Russia would respond immediately to anyone who tried to stand in its way, with consequences "such as you have never seen in your entire history" (B1532). He underlined that "all the necessary decisions in this regard have been taken". He later warned that if Russia's territorial integrity or its people were threatened "we will certainly make use of all weapon systems available to us", adding "[t]his is not a bluff." (B1542). While making the point that nuclear weapons could only be used in exceptional circumstances, he has nonetheless continuously repeated the grounds on which their use would be justified (B1548-49 and 1567-68), reiterating in February 2024 that "the strategic nuclear forces are on full combat alert and the ability to use them is assured (B1564). Other senior Russian political figures have been more explicit (B1596). As the Commission of Inquiry observed in its October 2022 report, "the threat by the Russian Federation of use of its nuclear capabilities became a major concern for the international community" (C.II.32). On 25 September 2024 the President of the respondent State announced that changes to the conditions for the use of nuclear force by the Russian Federation were under consideration. He outlined that under the new proposals Russia would consider an attack from a non-nuclear state but "involving or supported by" a nuclear state to be a "joint attack" and that Russia would consider using nuclear weapons if it received "reliable information about a massive launch of air and space attack weapons and their crossing our state border" (B1570). On 19 November 2024 the President of the respondent State signed an Executive Order implementing these changes. The amended State policy further permits the use of nuclear weapons in the event of "aggression" against the Russian Federation and/or Belarus with the use of conventional weapons, which creates a "critical threat to their sovereignty and/or territorial integrity" (B22-23).

D. Conclusions

177. As noted above, the Court has previously been required to examine applications arising out of situations of conflict in Europe (see paragraph 167 above). However, the events in Ukraine are unprecedented in the history of the Council of Europe. The nature and scale of the violence as well as the ominous statements concerning Ukraine's statehood, its independence and its very right to exist represent a threat to the peaceful co-existence that Europe

has long taken for granted. As already explained, this dangerous rhetoric has also on occasion been extended to encompass other Council of Europe member States, including Poland, Moldova and the Baltic countries. These actions seek to undermine the very fabric of the democracy on which the Council of Europe and its member States are founded by their destruction of individual freedoms, their suppression of political liberties and their blatant disregard for the rule of law. In none of the conflicts previously before the Court has there been such near universal condemnation of the "flagrant" disregard by the respondent State for the foundations of the international legal order established after the Second World War and such clear measures taken by the Council of Europe to sanction the respondent State's disrespect for the fundamental values of the Council of Europe: peace, as already underlined, but no less importantly human life, human dignity and the individual rights guaranteed by the Convention.

178. The Court's task under Article 19 is limited to ensuring the observance by the High Contracting Parties of the engagements undertaken in the Convention and its Protocols. The Court is not called upon to decide on the legality of Russia's invasion and occupation of Ukraine in the abstract or the individual criminal responsibility of those implicated in the events, but rather to decide on the conformity of the actions of the respondent State with the fundamental guarantees contained in the Convention and its Protocols.

179. Pursuant to the 1969 Vienna Convention on the Law of Treaties ("the Vienna Convention"), the Court endeavours, in each case to come before it, to interpret the Convention in good faith in accordance with the ordinary meaning to be given to its terms in their context and in the light of its object and purpose. The underlying objectives of the Convention – namely to realise the aims and ideals of the Council of Europe by promoting peace based on justice and international cooperation – are of critical importance for the Court today in its interpretation of the Convention's provisions.

V. THE TEMPORAL JURISDICTION OF THE COURT

A. The parties' submissions

1. The applicant Ukrainian Government

180. The applicant Ukrainian Government underlined that although Russia had ceased to be a member of the Council of Europe on 16 March 2022, this did not relieve it from its obligations under the Convention concerning any act performed by that State before 16 September 2022, the date on which it ceased to be a Party to the Convention ("the termination date"). Moreover, where the interference had occurred before the termination date but the failure to remedy it had occurred after the termination date, it was the date of the interference that had to be retained for determining the Court's temporal jurisdiction (citing *Pivkina and Others v. Russia* (dec.),

nos. 2134/23 and 6 others, § 53, 6 June 2023). Where an administrative practice was alleged, evidence might be admissible to corroborate the existence of such a practice even where the events said to make up the pattern continued after the State concerned had ceased to be a Contracting Party, provided that the administrative practice was also in existence during the time period under consideration by the Court. Thus, while the Court might decline to make a finding of an individual violation falling outside the temporal scope of the case declared admissible, evidence of events occurring outside the time frame could be admitted as relevant to the existence of an administrative practice during the relevant period.

181. Moreover, the applicant Ukrainian Government contended that events occurring after 16 September 2022 remained within the jurisdiction of the Court in so far as they arose directly out of, and/or were connected to, incidents occurring prior to that date. They relied in particular in this respect on the judgment of the International Court of Justice in *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia), Judgment, I.C.J. Reports 2022, p. 266)* (B293-95), and argued that the same approach should be followed in this case.

2. The respondent Government

182. The respondent Government did not take part in the present proceedings on the merits of application nos. 8019/16, 43800/14 and 28525/20 and the admissibility and merits of application no. 11055/22 (see paragraph 142 above). As a result, no submissions were received from them as to the Court's temporal jurisdiction, either in general or in response to the specific arguments of the applicant Ukrainian Government.

B. The Court's assessment

183. In its admissibility decision (*Ukraine and the Netherlands v. Russia* (dec.), cited above, § 393), the Court noted:

> "Since the allegation is that the administrative practices are ongoing, in accordance with its usual practice the Court will consider the evidence available to it up to 26 January 2022, the date of the admissibility hearing, in order to determine the admissibility issues arising, including the question of jurisdiction. Evidence of events post-dating the admissibility hearing will be relevant to the Court's determinations at any subsequent merits stage as to whether any Russian jurisdiction established continued after 26 January and up until 16 September 2022, the date on which the Russian Federation ceased to be a High Contracting Party to the Convention ...; and as to the period during which the administrative practice in question, if found established, took place."

184. In view of the arguments advanced by the applicant Ukrainian Government, the Court must now consider whether it may take into account incidents subsequent to 16 September 2022 and, if so, whether such events

themselves fall within its temporal jurisdiction such that a violation of the Convention might be found in respect of them.

185. In *Pivkina and Others v. Russia* (cited above), the Court had to determine its approach to acts spanning the termination date. In respect of allegations of ongoing violations, it explained that a "continuing situation" that spanned the termination date fell within its temporal jurisdiction only for the part occurring before that date. However, where it could be demonstrated that the specific allegation related to the "continuous" effect of an act that preceded the termination date, the entire period in which the effect of that act was felt fell within the Court's temporal jurisdiction. Thus a period of detention authorised before the termination date but extending beyond it fell within the Court's temporal jurisdiction in its entirety on account of the "continuous" effect of the detention order. In contrast, a factual situation such as allegedly inhuman conditions of confinement, even if continuous, had no "overflowing" effects and jurisdiction therefore ended at the termination date (ibid., § 61). In *Pivkina and Others*, the Court accordingly found a complaint against Russia about pre-trial detention until 11 October 2022 to fall within the Court's temporal jurisdiction on the basis that the decision authorising that period of detention had been taken before the termination date. This approach has since been confirmed and applied in the Grand Chamber judgment in *Ukraine v. Russia (re Crimea)* (cited above, §§ 892-97).

186. In the present case, the allegations do not concern continuing situations in respect of alleged individual violations, but rather alleged ongoing administrative practices affecting a large number of individuals over a wide geographical area and a lengthy period of time. The Court has no jurisdiction to examine new occurrences of the alleged administrative practices which took place after the termination date. It notes, moreover, that the allegations advanced under Article 5 of the Convention in the present case do not concern the continuous effects of detention orders but rather an ongoing practice of arresting, abducting and detaining individuals, without any legal authority, which practice began before the termination date and continued after it.

187. The case of *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia)* (cited above) does not assist the applicant Ukrainian Government in this respect. In that case, the ICJ found that it was competent to examine events which had taken place after the denunciation of the treaty giving it jurisdiction to rule on a dispute concerning compliance with international customary law had taken place. However, it is noteworthy that the treaty concerned in that case merely regulated the question of the court's jurisdiction: it had no impact on the continuing existence of the underlying obligations of the respondent State in that case, which arose from customary international law. This Court's jurisdiction extends, under Article 32 of the Convention, to "all matters concerning the interpretation and application of the Convention and the

Protocols thereto which are referred to it as provided in [Article] 33 ...". Article 19 clarifies that the Court was established to "ensure the observance of the engagements undertaken by the High Contracting Parties in the Convention and the Protocols thereto". The jurisdiction of the Court is thus explicitly linked to the existence of obligations under the Convention itself and it does not have the authority to ensure compliance with international treaties or obligations other than the Convention. The obligations of the Russian Federation under the Convention ceased after 16 September 2022. It is, therefore, irrelevant in this respect that the same or similar obligations may continue to exist under other treaties or indeed under customary international law (see *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* [GC], no. 53600/20, § 454, 9 April 2024).

188. In conclusion, having regard to the nature of the allegations it is called upon to examine in the present case, the Court finds that its temporal jurisdiction in this case extends no further than 16 September 2022 (cf. the judgment in *Ukraine v. Russia (*re *Crimea)*, cited above, § 897). However, facts which fall outside the temporal jurisdiction of the Court as having occurred after the termination date may nonetheless be relevant to the overall context of the case (see, for example, paragraphs 330, 347, 1144, 1174, 1476-1478 and 1556-1563 below). The Court may, therefore, have regard to facts which occurred following the termination date in so far as it considers appropriate in its assessment of whether there was a violation of the Convention in respect of acts which occurred prior to the termination date (see, *mutatis mutandis*, *Broniowski v. Poland* (dec.) [GC], no. 31443/96, § 74, ECHR 2002-X; *Kurić and Others v. Slovenia* [GC], no. 26828/06, §§ 240-41, ECHR 2012 (extracts); and *Savickis and Others v. Latvia* [GC], no. 49270/11, § 211, 9 June 2022. Regarding the relevance of the pre-ratification case-law in this context, see *Pivkina and Others*, cited above, § 50).

VI. APPROACH TO EVIDENCE

A. Evidence in the case

189. The evidential material before the Court is summarised in annexes to the Court's admissibility decision in *Ukraine and the Netherlands v. Russia* ((dec.), cited above) and to the present judgment. Annex A contains summaries of the evidence before the Court at the separate admissibility stage of the proceedings. Annex B contains summaries of the remaining evidence before the Court at this admissibility and merits stage of the proceedings. Annex C contains reports of the Commission of Inquiry (see paragraph 108 above). In view of the volume of the material submitted to the Court, the vast majority of the evidence is necessarily presented in the annexes in summary form. When reviewing the evidence in the context of the present judgment,

the Court has, however, had regard to the source material. For this reason, the judgment may on occasion make reference to extracts of documents not summarised in the annexes. For reasons of readability, footnotes have been omitted in quotes from source material contained in the present judgment.

190. In its separate admissibility decision in *Ukraine and the Netherlands v. Russia*, the Court explained that, aside from the parties' submissions and the evidential material provided by them, it had had regard to material in the public domain (ibid., § 405). It has once again followed this approach in the context of its present examination of the merits of application nos. 8019/16, 43800/14 and 28525/20 and the admissibility and merits of application no. 11055/22.

191. As the Court indicated in its separate decision on admissibility, the present case concerns the extent of the responsibility of the respondent State for the Convention violations alleged (ibid., § 395). Potential violations of the Convention or international humanitarian law by Ukraine are not therefore the subject of the Court's examination (see, in this respect, *Russia v. Ukraine* (dec), no. 36958/21, 4 July 2023; there are also approximately 4,000 applications pending against Ukraine related to the conflict). As a consequence, the summary of relevant evidence in the present judgment focuses on evidence concerning the conduct of Russia's *de jure* and *de facto* armed forces. Material related to the actions of the Ukrainian armed forces or volunteer battalions, and the shelling of territory in the hands of the "DPR" and the "LPR" by the Ukrainian armed forces, is not included in the summaries.

192. The evidence is vast and the factual material included in the present judgment is, necessarily, a summary of the most relevant reports and other material that have been submitted by the parties. Further relevant evidence to which the Court has had regard can be found in the annexes to the separate admissibility decision in *Ukraine and the Netherlands v. Russia* ((dec.), cited above) and to the present judgment, and in the source material itself.

B. The burden of proof and the drawing of inferences

193. The Court set out, in *Ukraine and the Netherlands v. Russia*, its general approach to evidence and to the burden and standard of proof and the drawing of inferences (ibid., §§ 396 and 434-53). It explained how it approached the particular allegations and the different categories of evidence in the case-file (ibid., §§ 454-81). These passages are equally relevant to the Court's examination of the evidence now before it. The Court will accordingly apply the principles and approaches outlined in its decision with one exception: in light of the fact that the Court is now also examining the merits of the alleged violations, the applicable standard of proof to be satisfied is that of "beyond reasonable doubt" (see the judgment in *Ukraine v. Russia (re Crimea)*, cited above, §§ 849-51; and compare § 454 *in fine* of *Ukraine*

and the Netherlands v. Russia (dec.), cited above, concerning the lower standard of proof applicable at the admissibility stage of proceedings).

C. The Court's approach to new categories of evidence

1. Introduction

194. There are two notable, new categories of evidence now before the Court: the reports and 2023 conference room paper of the Commission of Inquiry established by the UN HRC on 4 March 2022; and the reports of the missions of experts appointed under the OSCE Moscow Mechanism on 14 March 2022 (see paragraphs 97, 108 and 115-118 above). The Court considers it helpful to explain how it has approached this evidence.

2. The findings of the Commission of Inquiry

195. The findings of the Commission of Inquiry rely primarily on first-hand information, including numerous visits to Ukraine to collect and preserve evidence of violations and related crimes; hundreds of interviews conducted in person and remotely; inspection of sites of destruction, graves, places of detention and torture, and weapon remnants; and consultation of a large number of documents and reports. The Commission of Inquiry has met with government authorities, international organisations, civil society and other relevant stakeholders. According to its published methodology, it has included findings in its report when, based on a body of verified information, an objective and ordinary prudent observer would have reasonable grounds to conclude that the facts had taken place as described. It has drawn legal conclusions when there were reasonable grounds to conclude that the facts met all the elements of a violation or abuse and, where possible, that an individual or entity was responsible.

196. The Court will therefore give significant weight to the objective, factual reporting contained in the reports and the 2023 conference room paper of the Commission of Inquiry. The legal conclusions of the Commission of Inquiry, which address questions of compliance with international law, may also be relevant to the Court's examination of the issues arising. The Court will, however, approach these conclusions with some caution since the Commission of Inquiry has a fact-finding and evidence-gathering mandate (see paragraph 97 above and C.I.11) and its legal conclusions are made in the context of, and to the extent necessary for it to fulfil, this mandate. In any case, the Court's task is to reach its own conclusions on the respondent State's compliance with the Convention applying its own standard of proof.

3. The reports by the OSCE missions of experts

197. The reports prepared by the OSCE missions of experts each contain a section outlining the methodology followed in the preparation of the report.

According to the reports, the first mission did not carry out an on-site visit but relied on a large variety of sources and reached out to a large number of contacts within international organisations with knowledge about the situation including, in particular, the Office of the High Commissioner for Human Rights (OHCHR), the UN Educational, Scientific and Cultural Organization (UNESCO), the World Health Organization (WHO), the Food and Agriculture Organization (FAO), the International Organization for Migration (IOM), the Office of the UN High Commissioner for Refugees (UNHCR), the UN International Children's Emergency Fund (UNICEF) and the Council of Europe. The mission held direct interviews with persons possessing particular knowledge on the matter and actively followed relevant media reports. The second mission included a visit to Ukraine which allowed the experts to collect essential direct information as well as to confirm information learned from other sources.

198. The third and fourth missions relied on written materials, including submissions via a special email channel established for these purposes by the OSCE Office for Democratic Institutions and Human Rights (ODIHR); and interviews with victims, witnesses, representatives of international organisations, non-governmental organisations (NGOs), human rights defenders, academics, members of the legal profession and journalists. The experts also undertook visits to Ukraine where they met representatives of Ukrainian State organs and of civil society, including legal professionals and journalists; and visited places where Ukrainian civilians had been detained during the period of Russian occupation in spring 2022 in the Kyiv region (mainly Bucha and Irpin). The third and fourth reports specify that the missions applied the "reasonable grounds to believe" standard of proof in their assessment of factual and legal aspects. This standard was considered to be met when at least two credible primary sources independently confirmed the veracity of certain facts or information. The missions actively sought to verify and cross-check all data used in their report. The reports refrain from making any allegations related to criminal responsibility of concrete individuals.

199. The reports by the OSCE mission of experts contain important factual information on the events in Ukraine after 24 February 2022, much of it from primary sources. The Court therefore considers it appropriate to place substantial weight on the objective factual reporting contained in these reports. The Court further observes that the experts appointed by the OSCE to undertake these missions were legal experts with backgrounds in international humanitarian law and international human rights law who were mandated to report on potential violations of international humanitarian law. The Court will accordingly have regard to the legal conclusions reached in the mission reports when examining relevant issues in the present case, although as already noted (see paragraph 196 above) it will reach its own legal conclusions on the legal matters arising in the case.

4. Other reports

200. The methodologies of other reports relied on by the Court are described in the relevant annexes.

VII. ARTICLE 1 JURISDICTION AND ATTRIBUTION

201. Article 1 of the Convention provides:

> "The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of [the] Convention."

A. The complaints

1. Complaints in respect of which jurisdiction has been established

202. In its admissibility decision (*Ukraine and the Netherlands v. Russia* (dec.), cited above), the Court found that areas under separatist control in eastern Ukraine were within the respondent State's jurisdiction, within the meaning of Article 1, from 11 May 2014 up to the date of the admissibility hearing on 26 January 2022. It explained:

> "695. The vast body of evidence above demonstrates beyond reasonable doubt that, as a result of Russia's military presence in eastern Ukraine and the decisive degree of influence and control it enjoyed over the areas under separatist control in eastern Ukraine as a result of its military, political and economic support to the separatist entities, these areas were, from 11 May 2014 and subsequently, under the effective control of the Russian Federation .... The threshold for establishing Russian jurisdiction in respect of allegations concerning events which took place within these areas after 11 May 2014 has therefore passed. Moreover, in response to the invitation in June 2020 to clarify the nature of the current relationship between Russia and the separatist entities ..., the respondent Government replied that "[t]here has been no change to the relationship outlined above". In the absence of any evidence demonstrating that the dependence of the entities on Russia has decreased since 2014, the Court finds that the jurisdiction of the respondent State continued as at the date of the hearing on 26 January 2022. As noted above ..., it may be necessary for the Grand Chamber to assess, at the merits stage, whether the jurisdiction of the respondent Government continued beyond that date.
>
> ...
>
> 697. ... It will be for the respondent Government to demonstrate at the subsequent merits phase of these proceedings, should they wish to do so, that the separatists did not, in fact, control particular pockets of land or commit the particular acts which form the basis of the allegations by the applicant States; or that the specific acts of particular separatists cannot be attributed to them.
>
> 698. A finding of spatial jurisdiction brings within the jurisdiction of the respondent State all complaints which concern events occurring wholly within the relevant area ..."

203. As regards the downing of flight MH17, the Court observed that it had been clearly established that both the firing of the Buk missile and the consequent downing of flight MH17 had occurred in territory which was in

the hands of separatists and therefore within Russian jurisdiction. It was accordingly satisfied that the applicant Dutch Government's complaints fell within the spatial jurisdiction of the respondent State (ibid., §§ 701-06).

2. Complaints in respect of which jurisdiction now falls to be determined

204. The first question to be addressed in the present case is whether the jurisdiction of the respondent Government already found to exist in respect of areas under separatist control from 11 May 2014 continued after 26 January 2022, the date of the admissibility hearing (see paragraph 5 above).

205. Second, following the adoption of its admissibility decision (*Ukraine and the Netherlands v. Russia* (dec.), cited above), the Court decided to join application no. 11055/22 to the existing case pending before the Grand Chamber (see paragraph 16 above). It is therefore necessary now for the Court to determine the extent to which the complaints made by the applicant Ukrainian Government in this application fall within the respondent State's jurisdiction.

206. Finally, in its admissibility decision (ibid.), the Court joined to the merits the objection raised by the respondent Government as to whether the applicant Ukrainian Government's complaints of administrative practices of bombing and shelling in violation of Article 2 of the Convention and Article 1 of Protocol No. 1 to the Convention, together with associated Article 14 complaints, fell within the Article 1 jurisdiction of the respondent State (see paragraph 7 above). The Court must therefore also now resolve this matter.

B. The parties' submissions

1. The applicant Ukrainian Government

207. Concerning the question of Russian jurisdiction for events in the "DPR" and the "LPR" post-dating the Court's hearing on admissibility of 26 January 2022, the applicant Ukrainian Government submitted that there was no evidence that the complete dependence of the "DPR" and the "LPR" on the respondent State had decreased following that date. Indeed, the entities' complete dependence on the respondent State had continued to increase rapidly, culminating in the illegal annexation by that State of the temporarily occupied territories of Donbas alongside other Ukrainian territories occupied since 24 February 2022. The applicant Ukrainian Government invited the Court to apply its approach in cases concerning Transnistria and update its position as to the temporal scope of jurisdiction in the three applications concerned (nos. 8019/16, 43800/14 and 28525/20) to include all events for the period from 11 May 2014 to at least 16 September 2022.

208. The applicant Ukrainian Government made extensive submissions on jurisdiction in respect of their 2022 application in their memorial. Their primary submission was that Article 1 jurisdiction should be determined by reference to the legal space of the Council of Europe. If the Court did not accept the primary submission, then there was a sufficient jurisdictional link over all matters complained of on the basis of the Court's existing case-law. The applicant Ukrainian Government provided detailed arguments as to how the Court ought to approach the application of its judgment in *Georgia v. Russia (II)* (cited above).

209. At the hearing (see paragraph 27 above), the applicant Ukrainian Government underlined that as a result of "Russia's aggression against Ukraine" since 2014, almost 26% of Ukraine's territory was "temporarily occupied". The consistent and continuing long-term policy of Russia was aimed at conquering Ukraine. Russia's ambitions were not just to unwind Ukraine's position as an independent sovereign but to destroy Ukraine as a State and Ukrainians as a nation. It wanted to eliminate and assimilate Ukrainians, and in turn destroy the public order of Europe and the global order based on the rules of international law.

210. The applicant Ukrainian Government advanced the following four key propositions to support their position concerning Article 1 jurisdiction.

211. First, they invited the Court to conclude that Article 1 jurisdiction was established where, as here, one Convention State, acting entirely within the legal space of the Council of Europe, launched a war of aggression – recognised as such by the UN, the EU and the Council of Europe – against another Convention State. As the common pleading underlined, the core object and purpose of the Convention was to promote peace and security in Europe (see paragraph 157 above). While the scope of Article 1 jurisdiction was primarily territorial, it was not exclusively so. The Court had consistently acknowledged the particular importance of the Convention's network of mutual undertakings and the concept of a Council of Europe legal space. The present context was focused entirely on the Council of Europe legal space and involved the most extraordinary and exceptional circumstances to come before the Court in its 65-year history. The Court was required to confront a large-scale inter-State conflict within the Council of Europe, of a kind that those drafting the Convention and founding the Council had been determined to prevent. The objective intent and effect of Russia's war of aggression was to displace Ukraine's ability to uphold the Convention, and its territorial control and jurisdiction. There had been open admissions as to Russia's overall intent and motivation, including by President Putin. Recognising Article 1 jurisdiction was entirely consistent with fundamental aspects of the Court's core case-law, namely that Article 1 should not be interpreted in such a way as to allow a State to perpetrate violations on the territory of another State which it could not perpetrate on its own territory; that the Convention is an instrument of European public order and collective security and should

not be interpreted so as to create a vacuum within Council of Europe legal space; and that Article 1 could not be interpreted in a way that would undermine the effectiveness of the Convention both as a guardian of human rights and as a guarantor of peace, stability and the rule of law in Europe.

212. Second, in the alternative, the concept of Convention legal space justified a generous interpretation of established concepts of State agent authority, effective control, and jurisdiction over procedural violations, such that Article 1 was satisfied on that basis. Regard was to be had to the exceptionally detailed evidence available and the complete failure of Russia to offer any argument or evidence in rebuttal. Satisfaction of the existing exceptions was particularly clear in all instances of territorial control, including all situations of complete or partial encirclement. There was, moreover, no reason not to find State agent authority to be established in all cases of attacks directed against civilians and civilian objects and indiscriminate or disproportionate attacks, given the sophistication of weaponry available to Russia and the administrative practices alleged. There was, furthermore, every reason to find that the war crimes alleged constituted a special feature sufficient to establish a jurisdictional link in respect of all procedural violations complained of.

213. Third, the *Georgia v. Russia (II)* judgment (cited above) presented no obstacle to either Ukraine's primary or its secondary case in favour of Article 1 jurisdiction. It expressly recognised the potential for cross-border use of force to establish jurisdiction. It was not to be treated as establishing any wider precedent capable of standing in the way of any part of the present case, for a number of reasons. First, it had not considered the primary argument raised in this case based on a war of aggression and Convention legal space, the destruction of statehood and territorial sovereignty and the foundational purposes of the Convention and the Council of Europe. As far as Russian intent was concerned, the Court had not previously had the same unequivocal evidence now before it. Second, the *Georgia v. Russia (II)* judgment did not refer to the concepts of Convention legal space and legal vacuum. Third, the judgment had been significantly clarified and narrowed in its application in *Ukraine and the Netherlands v. Russia* to the allegations of the Netherlands concerning the downing of flight MH17 ((dec.), cited above, §§ 576 and 703-04). The chaos that might exist in certain particularly dynamic phases in an active conflict combat zone did not automatically extend to the entire theatre of operations. Just as the Court had found in *Ukraine and the Netherlands v. Russia* (ibid., § 704) that it was possible in an active combat situation to distinguish the use of surface-to-air missiles as one defined by less "chaos", the administrative practices of deliberate shelling and bombing of civilians, civilian infrastructure and humanitarian corridors and failing to discriminate between legitimate military targets and civilians were analytically distinct, even where they had taken place in a context where military positions were also being shelled. Fourth, there was

no context of chaos in the present case: the allegations concerned targeted conduct with clear intent, an entirely sufficient legal proximity between perpetrators and victim, and an overwhelming body of detailed and uncontested evidence. The Court could easily pierce "the fog of war" (see ibid., § 705) in respect of these administrative practices because the information available was exceptionally vast, reliable and detailed. Fifth, the reasons set out in § 141 of the *Georgia v. Russia (II)* judgment were incapable of justifying any wider application of the approach taken.

214. The applicant Ukrainian Government further argued that the Court could not ignore the momentous significance of the return of inter-State conflict on such a large scale in Europe. Conditions had changed dramatically, and for the worse: the new reality in Europe involved war between the two largest State parties to the Convention – on a wider scale, and already of significantly longer duration, than the five-day conflict between Russia and Georgia – characterised by one State party's attempt to invade and subjugate the sovereign territory of the other. The applicant Ukrainian Government underlined the unique circumstances of the present case, involving a full-scale war of aggression aimed at the destruction and subjugation of the State entirely. The "context of chaos" to which the Court had referred in *Georgia v. Russia (II)* was distinct from one High Contracting Party trying to destroy another High Contracting Party. The systematic targeted attacks in the present case had nothing to do with chaos and everything to do with intent.

215. Finally, the present proceedings were distinct from *Georgia v. Russia (II)* because Ukraine had the support of twenty-six intervener States: the submissions of the intervening Governments provided strong support for Ukraine both as a matter of legal analysis and State practice. In particular, the common pleading identified the foundational purpose of the Council of Europe as being the pursuit of peace based on justice; recognised that Russia's conduct was correctly characterised as a war of aggression that had shown disregard for the very essence of the Council of Europe; committed to the protection of the international rule of law and the recognition of the Convention's fundamental role in protecting human rights, peace and justice in Europe; recognised that acts of Contracting States producing effects outside their territory may amount to the exercise of Article 1 jurisdiction; and gave weight to Convention legal space and the special character of cases addressing military action within the sovereign territory of Council of Europe member States, as well as the need for a generous approach to jurisdiction and the importance of avoiding a legal vacuum in that particular geographic context.

216. Russia's pursuit of its war against Ukraine through systematically illegal practices and methods strengthened Ukraine's case based on the acquisition of territory from another Contracting Party and removal of that Party's effective control. For example, had hostilities been conducted under

an overarching policy of compliance, Russia's control over Mariupol would have been very different: the nature of the attacks meant that Russian forces had been able to exert control over Mariupol and civilians there even before there were "boots on the ground". If these attacks were not deemed sufficient to establish effective control even prior to physical presence in the territory, they were nonetheless sufficient to engage Russia's jurisdiction under the "State agent authority and control" exception because, by their very nature, they created the proximity, power and control required for that exception to apply. The applicant Ukrainian Government underlined that they were not seeking a generalised "cause-and-effect" approach to Article 1 but rather a finding that the essential features of the administrative practices at the heart of Russia's methods of war and the alleged violations entailed sufficient proximity, power and control for the purposes of the "State agent authority and control" exception.

217. In response to questions put to them at the hearing (see paragraph 29 above), the applicant Ukrainian Government underlined that none of their complaints related to direct fighting between armed forces. All concerned civilian victims of Russian State conduct and war crimes arising from targeted acts of administrative practices involving the indiscriminate and disproportionate use of force with known and foreseeable consequences. Engagement in military activity aimed at the destruction of a victim State's sovereignty or the deprivation of its territorial control and ability to uphold the Convention was a principled basis for finding Article 1 jurisdiction. Such an approach would be entirely consistent with the Court's case-law and was a paradigm example of an exceptional circumstance. The object and purpose of the Convention provided a compelling basis for interpreting Article 1 in this way. A distinction by reference to the Council of Europe legal space was fully justified by the expectations every citizen and resident of the Council had of Convention protection, by the network of mutual obligations owed to each other by Convention States and by the underlying origins and purpose of the Convention. The pre-eminent instrument of European public order designed to preserve peace in Europe had to be able to respond to the facts of the present case. A failure to find jurisdiction in the present case would contradict the approach taken by the UN Human Rights Committee and reflected in its General Comment No. 36, by the African Commission in its General Comment 3 and by the Inter-American Commission with its focus on causal effect for jurisdictional purposes (B92-96 and 115-24).

218. Article 15 showed clearly that the Convention could apply to situations of international armed conflict, which was not surprising since it had been drafted after World War II with the object of preserving peace. The evidence did not support the existence of a practice by States of not derogating from the Convention in times of war: Ukraine had derogated from the Convention in the context of the present armed conflict and the United Kingdom had announced a "presumption to derogate" in future overseas

military operations. In any event, lack of derogations could represent political strategic positions; could relate to the law applicable in a particular situation rather than any position on jurisdiction; could reflect an assumption that the Court would apply international humanitarian law as *lex specialis*, rendering derogation unnecessary; or could be the result of a concern that by derogating under Article 15 a State might be taken to have conceded the existence of Article 1 jurisdiction. The reference in Article 15 § 2 to "lawful acts of war" indicated that the Convention continued to apply to armed conflicts, otherwise such an exclusion would not be needed. The Contracting Parties had therefore expressed their clear wish that, given the paramount value of the right to life, derogation under Article 15 should be the only mechanism allowing the Court to expand the exceptions to Article 2 in the light of international humanitarian law.

219. The applicant Ukrainian Government concluded that the Court had never held that there could be no extraterritorial jurisdiction in the absence of effective control over an area or State agent authority and control. It had held that exceptional circumstances had to be demonstrated, and those were two instances of such exceptional circumstances so far found by the Court. This case could not be more exceptional: there was no difficulty in recognising a war of aggression of this kind as justifying a finding of extraterritorial jurisdiction.

2. The respondent Government

220. The respondent Government did not take part in the present proceedings on the merits of application nos. 8019/16, 43800/14 and 28525/20 and the admissibility and merits of application no. 11055/22 (see paragraph 142 above). Their general submissions concerning jurisdiction at the separate admissibility stage of the present case (see paragraphs 4-7 above) are summarised in the Court's admissibility decision (*Ukraine and the Netherlands v. Russia* (dec.), cited above), in so far as relevant, as follows:

> " 508. The respondent Government opposed what it considered the Court's expansion of the concept of jurisdiction to cover territory outside the geographical borders of a Contracting State on the basis of 'effective control'. They argued that this development was not in line with the Vienna Convention on the Law of Treaties or the intentions of the drafters of the European Convention on Human Rights. 'Jurisdiction' ordinarily meant sovereign jurisdiction, since a State's obligations could only be met using sovereign powers. The Convention had been developed to deal with the domestic affairs of States, in tandem with the separate development of the Geneva Conventions dealing with conflict. Without making reference to Articles 15 and 56 of the Convention, the respondent Government asserted that the Convention contained a provision for derogation in the context of conflict and allowed States to decide whether it should apply in foreign dependent territories that they controlled. This latter provision was totally inconsistent with the Court's imposition of the Convention in relation to territory outside their national territory.

509. The concept of 'living instrument' should not be applied to extend the Convention's reach into areas governed by international humanitarian law. The general position of States had been averse to such a development: they had resisted attempts to extend the Convention to such areas and had not lodged derogations under Article 15 in respect of areas outside their territories that might be under their control. Moreover, manuals for forces operating abroad were based on international humanitarian law. The Court's expansion of jurisdiction beyond a State's borders was illegitimate.

510. In any case, even on a most generous reading of the Court's case-law, the suggestion that the Russian Federation had effective control over relevant parts of eastern Ukraine was unsustainable. There was no plausible prima facie evidence of any Russian invasion during the relevant period, which if proved might have been sufficient to show effective control under the Court's case-law. Although ten soldiers of the Russian 331st Guards Airborne Regiment had been captured in Ukraine, they had crossed the border by mistake. As regards alleged control via cross-border shelling by Russian Federation troops, such shelling was denied. In any case, *Banković and Others v. Belgium and Others* ((dec.) [GC], no. 52207/99, ECHR 2001-XII) had clearly established that the firing of weapons did not establish control where they landed for the purposes of making that area subject to the jurisdiction of the firing State.

...

516. In their first-stage memorial, submitted after the delivery of the Court's judgment in *Georgia v. Russia (II)* (cited above), the respondent Government argued that the findings in that judgment as regards jurisdiction during the active phase of hostilities applied to the present applications in respect of complaints about military attacks. The judgment excluded the 'complaints concerning MH17 and all allegations of Ukraine concerning shelling'.

517. They argued that this was a civil war with defined sides and front lines that were moving all the time. The fluidity of the situation was such that no maps were authoritative. This fluidity was illustrated by the maps prepared in the context of Ukraine's own ATO and a video of them over time and by BBC maps showing very considerable changes over a span of months ... The events in the active conflict – including the downing of flight MH17 – were 'shrouded in the fog of war'. Generally in these circumstances fact-finding was virtually impossible. The confusion about what side controlled what territory was reflected in Ukraine's own application: it had 'repeatedly' alleged abuses in areas that it claimed to have controlled, at the material times, in its ATO maps.

518. The respondent Government ... considered that using the personal, and not the spatial, conception of jurisdiction to say that the shooting down of flight MH17 was an exercise of physical power over the individuals onboard for the purpose of Article 1 jurisdiction was inconsistent with the Convention and ignored the result and reasoning in *Georgia v. Russia (II)* (cited above). The firing of weapons indicated an absence of control over those injured by the weapons and the space they occupied. Weapons were fired to gain control of space or to kill the enemy, not because control existed. To take any other view would be to bring all conflict within the purview of the Court if a civilian (or perhaps even a soldier) were hit. Applying the Convention to conflict would stretch it, irreconcilably, into the legal space governed by the very different rules of international humanitarian law, which were outside the substantive jurisdiction of the Court. It would compromise legal clarity in both spheres and introduce compulsory jurisdiction in relation to international humanitarian law where States had not agreed that any tribunal had compulsory jurisdiction. It would also take this Court into huge uncertainty on the facts. In any case, the applicant Ukrainian Government had

completely failed to put forward any basis for considering all members of the 'DPR' and the 'LPR' to be State agents for the purposes of control.

519. ... [T]he respondent Government also contested the authenticity and reliability of the evidence relied upon by the applicant States to show jurisdiction."

3. Third-party submissions

(a) Governments

(i) Introduction

221. The twenty-six intervening Contracting Parties coordinated their submissions in the following manner as far as Article 1 jurisdiction was concerned.

222. First, the Governments of all twenty-six States submitted a common pleading (see paragraphs 224-233 below).

223. The Governments of ten States (Belgium, the Czech Republic, France, Latvia, Lithuania, the Netherlands, Poland, Slovakia, Spain and the United Kingdom) submitted separate national pleadings. Of these:

- the Governments of Belgium, the Netherlands, Slovakia and Spain submitted identical national pleadings (see paragraphs 234-239 below). The comments in their national pleadings were also submitted by the Government of Lithuania and, in large part, by the Government of Poland, both of which made additional comments in their national pleadings.
- the comments in the national pleadings of the Government of the Czech Republic were also submitted in largely identical terms by the Government of Lithuania (see paragraphs 240-243 below). They were also submitted by the Government of Poland, which made further additional comments in their national pleadings.
- the Governments of France (see paragraphs 244-247 below), Latvia (see paragraphs 248-250 below), Poland (see paragraphs 251-261) and the United Kingdom (see paragraphs 262-274) made separate comments in their national pleadings.

(ii) Submissions

(α) Common pleading of all twenty-six Governments

224. The twenty-six Governments referred to the Court's case-law to the effect that a State's jurisdiction was primarily territorial and that acts of Contracting States outside their own territory or producing effects outside their territory "can only in exceptional circumstances amount to the exercise by them of their jurisdiction within the meaning of Article 1". The exceptional nature of extraterritorial jurisdiction had been recently confirmed by the Grand Chamber in *Duarte Agostinho and others v. Portugal and 32 others* ((dec.) [GC], no. 39371/20, 9 April 2024).

225. The Court had developed two main criteria for determining whether such exceptional circumstances existed.

226. The first criterion – effective control over an area – could be fulfilled either because of direct control by the Contracting State over an area or because of indirect control through a subordinate local administration. This assessment was fact-based. The Court would primarily have reference to the strength of the State's military presence in the area. The existence of a military occupation for the purpose of Article 42 of the Hague Regulations would be a strong indication that there was also effective control over an area for the purposes of Article 1 jurisdiction. In other situations, other indicators could also be relevant, such as the extent to which military, economic and political support for the local subordinate administration provided the extraterritorial State with influence and control over the region. They highlighted the relevant findings in *Ukraine and the Netherlands v. Russia* ((dec.), cited above, §§ 561 and 564) and observed:

> "In sum, if it is established on the basis of the factual military presence, and/or on a State's military, economic and political support for a local subordinate administration that it exercised effective control over an area, this constitutes an exercise of jurisdiction for the purposes of Article 1 of the Convention. In such a situation, all acts by a local administration can be attributed to the State exercising jurisdiction, and for the purposes of Convention obligations, the area is treated as indistinguishable from the State's own territory."

227. The intervening Governments believed that this first criterion was satisfied in relation to events that took place in all areas under effective control by Russian forces, including those areas which were subsequently recovered by Ukrainian forces, such as Bucha or Kherson.

228. Jurisdiction based on the second criterion – State agent authority and control over individuals – was also necessarily fact-based. The exercise of jurisdiction through State agent authority and control could be established on the basis of three grounds: the activities of diplomatic and consular agents when they exerted authority and control over others; exercising public powers through the consent, invitation, or acquiescence of the government of a territory; and, in certain circumstances, the use of force by a State's agents operating outside its territory. As to the third ground, the decisive criterion, as set out in *Al-Skeini and Others v. the United Kingdom* ([GC], no. 55721/07, ECHR 2011), remained the exercise of physical power and control over the person in question. Even in an international armed conflict, if an individual was taken into the custody of State agents this could give rise to Article 1 jurisdiction. Similarly, "extraterritorial jurisdiction has been recognised as a result of situations in which the officials of a State operating outside its territory, through control over buildings, aircraft or ships in which individuals were held, [officials of a State] exercised power and physical control over those persons" (citing *M.N. and others v. Belgium* [GC], no. 3599/18, § 105, 5 May 2020). It could not be excluded that some other situations described in application no. 11055/22 might also come under this heading, including where individuals were abused or summarily executed by soldiers in

circumstances of close proximity. The intervening Governments noted that jurisdiction had been found by the Court in respect of isolated and specific acts of violence involving an element of proximity. Thus, jurisdiction has been found in respect of the beating or shooting by State agents of individuals outside that State's territory and the extrajudicial targeted killing of an individual by State agents in the territory of another Contracting State, outside the context of military operations. The Court had explained that accountability in these situations stemmed from the fact that Article 1 of the Convention could not be interpreted so as to allow a State party to perpetrate violations of the Convention on the territory of another State which it could not perpetrate on its own territory. Likewise, targeted violations of the human rights of an individual by one Contracting State in the territory of another Contracting State undermined the effectiveness of the Convention. The common pleading referred to and quoted *Ukraine and the Netherlands v. Russia* ((dec.), cited above, §§ 568-72) in this respect.

229. The twenty-six Governments noted that in *Georgia v. Russia (II)* (cited above), the Court referred to "the very reality of armed confrontation and fighting between enemy military forces seeking to establish control over an area in a context of chaos" as excluding effective control over an area and State agent authority and control. However, this conclusion had been qualified by the admissibility decision in *Ukraine and the Netherlands v. Russia* ((dec.), cited above), where the Court had clarified that this did not generally exclude jurisdiction in an international armed conflict. The twenty-six Governments further noted the Court's finding in the admissibility decision that jurisdiction arose under Article 1 of the Convention in relation to the military operation of the downing of flight MH17 (ibid., §§ 695-703). This finding had been based on two reasons. First, the Court had noted that the respondent Government exercised "effective control" over the territory under separatist control, which included "effective control" over the airspace above that territory. The downing of flight MH17 within that airspace was therefore an act within the spatial jurisdiction of the respondent Government. Second, the Court had found, in respect of the particular factual circumstances of the downing of flight MH17, that, while it had taken place "in the context of active fighting between the two opposing forces, it would be wholly inaccurate to invoke any 'context of chaos' preventing jurisdiction on the basis of effective control over an area from being established". The Court had therefore concluded that jurisdiction could not be excluded on the basis that it concerned "military operations in the active phase of hostilities". The twenty-six Governments noted that finding and observed:

> "If a Government has sufficient control over territory for jurisdiction to arise under the 'effective control over an area' principle, this distinguishes the situation from the circumstances addressed by the Court in *Georgia v. Russia (II)*, namely 'fighting between enemy military forces seeking to establish control over an area'."

230. The twenty-six Governments highlighted two "further notable findings" of the Court as regards jurisdiction on the basis of "effective control over an area" in its admissibility decision in *Ukraine and the Netherlands v. Russia* ((dec.), cited above).

231. First, the Court had clarified that the *Georgia v. Russia (II)* judgment could not be seen as authority for excluding entirely from a State's Article 1 jurisdiction a specific temporal phase of an international armed conflict (*Ukraine and the Netherlands v. Russia* (dec.), cited above, § 558). The twenty-six Governments endorsed this clarification. The relevant question was whether there was spatial or personal jurisdiction having regard to the factual circumstances of the acts which were alleged to engage the jurisdiction of a Contracting State under Article 1.

232. Second, the twenty-six Governments referred to the Court's observation that it had not, to date, found there to be extraterritorial jurisdiction on account of *ratione loci* jurisdiction over an area outside the Convention legal space (ibid., § 563). The twenty-six Governments submitted that it was correct to draw attention to the special character of cases addressing military action within the sovereign territory of the member States of the Council of Europe. Moreover, they submitted, "the 'effective control over an area' principle should be applied generously within that territory'". They relied upon the Court's reasoning in *Cyprus v. Turkey* ([GC], cited above, § 78), where it had referred to the special character of the Convention as an instrument of European public order for the protection of individual human beings and the need to avoid a regrettable vacuum in the system of human rights protection which would occur if the benefit of the Convention's fundamental safeguards were removed from individuals within Convention territory.

233. Finally, as regards the application of the "State agent authority and control" principle to the facts in *Ukraine and the Netherlands v. Russia*, the Court had not said at the admissibility stage that any form of such authority and control over individuals was excluded in the context of military operations, but had held that "[t]he question whether there was State agent authority and control in respect of acts of shelling in the present case, such as to give rise to the respondent State's jurisdiction in respect of them, requires a careful examination of whether these incidents fell within the exception identified in *Georgia v. Russia (II)* by reference to the specific facts of the incidents alleged" ((dec.), cited above, § 700). The twenty-six Governments submitted that the approach of the Court in *Ukraine and the Netherlands v. Russia* ((dec.), cited above) reflected the application of the "effective control over an area" principle and the "State agent authority and control" principle to the specific factual circumstances of the international armed conflict before it. Use of force resulting in loss of life or damage to persons or property did not automatically give rise to Article 1 jurisdiction. On the other hand it would be incorrect to conclude that jurisdiction on the basis of

State agent authority and control could never arise in the context of an international armed conflict.

(β) Further submissions of Belgium, Lithuania, the Netherlands, Slovakia and Spain, partially joined by Poland

234. In their national submissions, the five interveners (Belgium, Lithuania, the Netherlands, Slovakia and Spain) distinguished two, partly overlapping categories of cases in the Court's case-law where extraterritorial jurisdiction might arise on a personal basis: the "exercise by State agents of physical power and control over the victim or the property in question" (most clearly at issue in situations where State agents had custody over an individual); and the use of force against individuals in certain circumstances, referred to by the Court as "specific acts of violence involving an element of proximity" (*Ukraine and the Netherlands v. Russia* (dec.), cited above, §§ 569-70). What this second category of cases entailed precisely had not yet been clearly circumscribed in the Court's case-law. At the admissibility stage, the Court had not excluded that artillery shelling could give rise to jurisdiction over victims of such attacks.

235. The five interveners and Poland noted that in cases relating to the procedural obligation to investigate, the Court had relied on the criterion whether a "jurisdictional link" existed between a respondent State and the victim's relatives in the circumstances of the case. The procedural obligation to carry out an effective investigation under Article 2 had evolved into a separate and autonomous obligation that could be considered to be a detachable obligation capable of binding the State even when the death occurred outside its jurisdiction (*Güzelyurtlu and Others v. Cyprus and Turkey* [GC], no. 36925/07, § 189, 29 January 2019).

236. The five interveners, joined by Poland, observed that the Court had an extensive and established case-law applying the Convention during the active phase of hostilities of an international armed conflict, and to States' use of military force during armed conflicts extraterritorially. It had found the Convention to be applicable to the extraterritorial use of force in the armed conflict between Cyprus and Turkey, even during "conduct of military operations ... accompanied by arrests and killings on a large scale" (*Cyprus v. Turkey* [GC], cited above, § 133; and *Varnava and Others v. Turkey* [GC], nos. 16064/90 and 8 others, § 186, ECHR 2009). In that context, the Court had also found that "in a zone of international conflict Contracting States are under [the] obligation to protect the lives of those not, or no longer, engaged in hostilities" (ibid., § 185). Similarly, with respect to the armed conflict in Iraq, the Court had found that the Convention applied despite the prevalence of "violent attacks" which involved high-intensity armed violence. The armed clashes had involved heavy weaponry such as anti-aircraft attacks and hundreds of grenade, mortar, and rocket-propelled grenade attacks even after the close of "major combat operations" (*Al-Skeini and Others*, cited above,

§ 23). In *Issa and Others v. Turkey* (no. 31821/96, 16 November 2004), the Court had indicated that it was prepared to accept jurisdiction on the basis of the use of weapons by agents of a Contracting State against individuals on the territory of another State. The context was:

> "45. The Turkish security forces carried out fourteen major cross-border operations ... The largest operation, called 'Çelik (steel) operation' and carried out with the participation of seventy to eighty thousand troops accompanied by tanks, armoured vehicles, aircraft and helicopters, lasted almost six weeks ... The Turkish troops penetrated 40-50 kilometres southwards into Iraq and 385 kilometres to the east."

237. It was clear that extraterritorial jurisdiction was not excluded in situations of international armed conflict and that the Court's case-law was replete with examples of States being held responsible for acts which had occurred in the context of an international armed conflict taking place outside their own sovereign borders (*Ukraine and the Netherlands v. Russia* (dec.), cited above, § 556).

238. The five interveners noted that even where the applicability of the spatial or personal concept of jurisdiction had been established, it had to be considered whether the *Georgia v. Russia (II)* exception might play a role. This meant that "military operations carried out during the active phase of hostilities", in the sense of "armed confrontation and fighting between enemy military forces seeking to establish control over an area in a context of chaos", might be excluded from jurisdiction. The five interveners, joined by Poland, considered that it followed from the Court's application of this exception in *Ukraine and the Netherlands v. Russia* ((dec.), cited above) that this was a factual test, which hinged on the circumstances of the case. There, the Court had found that the military operations carried out had not affected the spatial jurisdiction exercised by the respondent State, through separatists, over areas in eastern Ukraine as regards the downing of flight MH17. The Court had noted in particular that no "context of chaos" existed. It could therefore be concluded that the existence of an international armed conflict, and the conduct of military operations therein, did not as such give rise to a "context of chaos" which excluded the level of control required to establish jurisdiction. This flowed from the Court's well-established application of the Convention to situations of armed conflict, as well as from its more recent findings in *Ukraine and the Netherlands v. Russia* ((dec.), cited above). Any existence of a "context of chaos" depended on the facts of the case, and it was for a respondent State to show that it existed.

239. Finally, the five interveners emphasised that the *Georgia v. Russia (II)* exception did not apply to situations where a State had taken individuals into custody and to the procedural obligation to investigate.

(γ) Czech Republic, Lithuania and Poland

240. In their national pleadings, the Governments of the Czech Republic, Lithuania and Poland referred to the Court's approach to examining

jurisdiction in respect of the downing of flight MH17 and its finding that there was no "context of chaos". They submitted that the same approach should be applied to other military operations conducted with similar or analogous *modus operandi*, such as those conducted against civilian objects using missile guidance or other target-pointing technologies or in case of attacks conducted far from the frontline. The concept of "context of chaos" was to be understood as relevant primarily in the specific situation of *Georgia v. Russia (II)*. However, were the Court to decide otherwise, there were a variety of circumstances that excluded the application of the concept. This would include attacks against civilians and civilian objects which, assessed as a whole, indicated "deliberate action out of calculation conducted unilaterally". This could concern, for example, the systematic targeting of residential areas, including with weapons prohibited by international law, those with wide-area effects or those which were by their nature inaccurate; or persistent actions aimed at the complete destruction of residential areas, which could not be considered as usual collateral and unavoidable consequences of the military necessity realised in conditions of chaos. The concept of chaos was likewise not appropriate with respect to situations where clearly visible and marked civilian objects such as kindergartens were attacked or where identified civilians or civilian groups were targeted. In short, attacks against places not linked with any direct military confrontation, and especially places with no military objects, could not be covered by the exception in *Georgia v. Russia (II)* concerning armed confrontation and fighting between enemy military forces.

241. The three intervening Governments further referred to the great number of investigations being conducted into events in Ukraine. These were capable of "piercing the fog of war". The scale of evidence gathered was enormous. In the same way as the establishment of spatial jurisdiction was based on a global assessment of the criterion of "effective control", for the establishment of personal jurisdiction in the context of a war of aggression it ought to be sufficient to take into account the prevailing pattern of conduct of the aggressor State acting extraterritorially, unless it was convincingly proven that it lacked control in a particular incident. The Governments of Lithuania and Poland added that if State officials of the aggressor State acted and exerted influence on individuals to the extent that they caused their death and chose to cause the total or major destruction of civilian objects together with civilians, it was for the State to show that it did not exercise control in the particular circumstances. It would be difficult to reconcile the argument of lack of control with situations of besieged or encircled areas where support and supplies of essential goods had been cut off or destroyed in the knowledge that it would endanger the right to life of the population.

242. All three intervening Governments submitted that the "full-scale war of aggression and in particular the manner of its conduct that aims at exerting extremely wide and profound impact on the rights and freedoms of affected

inhabitants should also be treated as a very heavy argument speaking in favour of jurisdiction of the State conducting these actions, based on the criterion of control over individuals". Any other finding would result in a vacuum in the system of human-rights protection within the legal space of the Convention (citing *Güzelyurtlu and Others*, cited above, § 195). It would be paradoxical if the Court were able to find jurisdiction in respect of the actions of a State's agents on the territory of another State Party which cost the life of one person, but was prevented from attributing such jurisdiction over the actions of the entire armed forces on the territory of another State Party, which had cost the lives of thousands. In the particular circumstances of the present case, a finding of no Article 1 jurisdiction would significantly weaken the very *raison d'être* of the Convention and the Court, with its role as a guardian of human rights protection and guarantor of peace and stability in Europe. It would also lead to the creation of black holes and a legal vacuum in the system of human rights protection in the legal space of the Convention, which went against the very intention of those who had initiated and drafted it.

243. Finally, the Governments of Lithuania and Poland submitted that a war of aggression made it difficult for, or significantly impeded, the State on whose territory it took place to ensure the implementation of its obligation to secure all the rights and freedoms defined in the Convention to all persons within its territorial jurisdiction. Nevertheless, the Court required the State affected to take "diplomatic, economic, judicial and other measures" in its power and in accordance with international law in order to fulfil the positive obligations imposed on it by Article 1 (*Sandu and Others v. the Republic of Moldova and Russia*, no. 21034/05, § 34, 17 July 2018). The inter-State application was exactly one such measure. Having regard to the objectives behind the adoption of the Convention, it ought to be considered that a State affected by aggression was fully entitled to seek protection of the human rights of its citizens against the aggression, including by means of an inter-State application. Both Governments concluded that finding a lack of jurisdiction of the aggressor State in such case would have the effect of excluding the application of the main European human rights treaty in respect of particularly drastic human rights violations and would lead to the denial of rights and remedies for millions of citizens and inhabitants of the State affected by the aggression.

(δ) France

244. As regards spatial jurisdiction, the Government of France observed that in *Issa and Others* the Court had not excluded the possibility that, as a consequence of military action, a respondent State could be considered to have exercised, temporarily, effective overall control of a particular portion of territory (cited above, § 74).

245. The Government noted the Court's finding of jurisdiction in respect of the downing of flight MH17 and the reasons given. They observed that the Court had not excluded that, in other circumstances, a "context of chaos" could exist in the air as on the ground, in particular in the case of ground or aerial confrontations between enemy military forces seeking control over an area or seeking to impose a no-fly zone. It was difficult to define "active phase of hostilities" in a manner that took into account the complexities and methods of contemporary armed conflict.

246. As regards jurisdiction via State agent authority and control, the Court had not clearly defined the acts of violence that could be included in the criterion of "isolated and specific acts of violence involving an element of proximity" (*Ukraine and the Netherlands v. Russia* (dec.), cited above, § 570). However, the cases in which the criterion had been found to exist concerned situations in which people had been beaten or killed at point-blank range by State agents, outside the context of armed conflict. It had never been used by the Court in the framework of military operations in international armed conflict, which did not constitute "isolated and specific acts of violence involving an element of proximity". In such a context, extraterritorial jurisdiction could exist where State agents exercised physical power and control over the victim or the property in question, such as in the case of detention or searches of homes. This was a matter for factual assessment in the circumstances of each case. Moreover, in each situation, the impact, if any, of the exclusion from jurisdiction of "military operations carried out during the active phase of hostilities", in the sense of "armed confrontation and fighting between enemy military forces seeking to establish control over an area in a context of chaos", identified in *Georgia v. Russia (II)*, had also to be considered (*Ukraine and the Netherlands v. Russia* (dec.), cited above, § 698). This required a careful examination by reference to the specific facts. While the existence of State agent authority and control had to be assessed on a case-by-case basis, in the context of an international armed conflict, shelling and bombing were characteristic of "armed confrontation and fighting between enemy military forces seeking to establish control over an area". It was therefore not possible to find jurisdiction in such a situation, without prejudice to the findings of the Court in the very particular case of the downing of flight MH17.

247. The French Government also noted that in its case-law on jurisdiction in respect of the procedural obligation under Article 2, the Court had found a "jurisdictional link" to exist where the investigative or judicial authorities of a Contracting State had instituted their own criminal investigation or proceedings concerning a death which had occurred outside the jurisdiction of that State, by virtue of their domestic law; and where there were other "special features".

(ε) Latvia

248. The Government of Latvia emphasised that extraterritorial jurisdiction could not be presumed: it depended on the existence of case-specific exceptional circumstances capable of rebutting the presumption that the State did not exercise its jurisdiction outside its territory (*Ukraine and the Netherlands v. Russia* (dec.), cited above, § 553). The relevant principles concerning the interpretation and application of Article 1 had evolved "with a view to the effective protection of human rights in a largely regional context" (ibid., § 547). The notion of "context of chaos" in itself was not capable of preventing the rebuttal of the presumption that the State did not exercise its jurisdiction outside its territory (ibid., § 703).

249. The Government reiterated the common pleading of the intervening Governments that cases addressing military actions within the sovereign territory of the member States of the Council of Europe deserved special attention and that the concept of "effective control over an area" was to be applied generously within that territory (see paragraph 232 above).

250. In conclusion, the Latvian Government strongly reiterated their unwavering support for the sovereignty, independence, and territorial integrity of Ukraine within its internationally recognised borders, and their condemnation of the egregious violations of international law perpetrated by the Russian Federation.

(στ) Poland

251. The Government of Poland underlined that eighty years ago, Europe had been "desolated by the ravages of war", while millions of Europeans had suffered death, loss and trauma. Amid these atrocities, the conviction had emerged that human rights violations should be opposed decisively through effective State accountability and an international judicial mechanism to adjudicate thereon. From the ashes of war and the strong call from Europeans for no more war, the Council of Europe had been born together with its most important response: the Convention and its Court.

252. Today, the ravages caused by war covered parts of Europe yet again. Millions of people were suffering from the atrocities of war inflicted in the name of an "utterly inexplicable aggression". The question of effective mechanisms to counter violations of individual rights had come to the fore once more. The key question was whether Article 1 of the Convention required "an aggressor state to ensure the protection of human rights to persons affected by its military actions conducted on the territory of another [Council of Europe] member state". The answer to this question was "yes". Nothing in the text of the Convention authorised the State to be exempt from responsibility to ensure the protection of the right to life.

253. First, Article 1 of the Convention had to be interpreted in line with the values and objectives of the Council of Europe as an organisation established in response to the atrocities of war. The Convention was not "the

fruit of a long peaceful evolution of legal and philosophical thought, cultivated in the privacy of universities or government offices". It was the specific wartime context that had led to the creation of an international court to uphold human rights. Bearing in mind the regional political, historical and legal context of the Convention, Article 1 ought to be interpreted in line with the principle that no war of aggression was legally admissible in the Council of Europe space. The legal qualifications made by the Committee of Ministers under the Statute in its decisions to exclude a member State for the breach of membership obligations were pertinent here.

254. Second, the interpretation of Article 1 of the Convention had to take into account the principles and values expressed in public international law, starting with the UN Charter which prohibited wars of aggression in absolute terms. The value of peace was an integral and constitutive element of the entire concept of human rights protection. It was expressed in the preamble to the Universal Declaration of Human Rights to which the Convention referred and had to find concrete expression in the interpretation of legal norms such as Article 1, so that the Convention could serve the fundamental values of international order in a coherent and genuine manner.

255. Third, the existence of a comprehensive and consistent approach by other international courts and treaty bodies, notably the ICJ and the UN Human Rights Committee, also spoke in favour of the application of Articles 1 and 2 to hostilities conducted outside a State's territory. The International Covenant on Civil and Political Rights (ICCPR) also referred to "jurisdiction" but nothing in the case-law of the ICJ indicated the possibility of systematically excluding State accountability on account of the lack of jurisdiction during exterritorial hostilities. On the contrary, it was possible to attribute to States responsibility for violations of the right to life under the ICCPR in connection with hostilities abroad (citing *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda), Judgment, I.C.J. Reports 2005*, p. 168, summarised at B109-12). The UN Human Rights Committee also considered jurisdiction to include persons located outside any territory effectively controlled by the State but whose right to life was nonetheless affected by that State's military activities in a direct and foreseeable manner (B83). Article 1 ought also to be interpreted to cover hostilities abroad both for the sake of coherence of the entire system of international law, of which the Convention was an essential part, and – above all – in view of the leading role of the Court's case-law in defining the highest standards of respect for human rights.

256. Fourth and finally, the text of the Convention did not provide grounds to exclude State jurisdiction in respect of acts of war. The relationship between Article 2 and acts of war was addressed by Article 15 § 2, which provided for the possibility of derogation in respect of deaths resulting from lawful acts of war. If the wording of Article 1 excluded State accountability for deprivation of life as a result of acts of war, the

provision of Article 15 § 2 would be redundant. The logical conclusion was that it was the concept of derogation, not jurisdiction, that was intended to exclude the Court's competence over hostilities. Article 15 § 2 clearly suggested that the drafters of the Convention did not wish to exclude the Court's scrutiny over deaths caused by unlawful acts of war. The view that jurisdiction over military actions, such as bombing and shelling, should be excluded on the grounds that the matter was governed by international humanitarian law was untenable. No provision of international humanitarian law required that. Moreover, humanitarian law did not create any complaint mechanism that would be similar or comparable to that provided by the Convention. International humanitarian law could and should influence the Court's assessment of States' substantive obligations; however, there was no reason for international humanitarian law to determine also the Court's competence to investigate human rights violations.

257. The scarce practice of States' reliance on derogation from Article 2 in the context of war could not be treated as an argument against the clear wording of the Convention. First, the number of cases in which derogation could have applied to acts of war had, fortunately, been low. It was not possible to say that the non-reliance on derogation was a common approach of all, or even the majority, of State parties: there was simply no proof. Second, the decision not to derogate might be based on many other reasons, including a State's commitment to the right of individual application despite the risk of an adverse judgment. Third, States might fail to derogate because they forget that the possibility exists under Article 15; this was an opportunity to remind them that derogation was the legitimate way of limiting Convention obligations.

258. The lack of a judicial mechanism open to individuals would leave a serious gap in victim protection and state accountability for large-scale and most serious human rights violations. This would be against the very logic of the post-war development of international law at large, which had steered towards enhancing rather than weakening States' accountability for the unlawful use of force against the territorial integrity and sovereignty of other States. Such a gap would also be contrary to the entire axiology of the Convention, reaffirmed by the Court on many occasions, based on the effective and real protection of human rights via a system of human rights protection to which States Parties, including the respondent State, had voluntarily committed themselves.

259. Article 1 should not be interpreted in a way that would make the Convention and the objectives of the Council of Europe ineffective in the face of unlawful aggression. Now was precisely the moment for the values on which the Court had based the Convention system over the years to resonate sonorously, echoing the prevention of impunity and the victims' right to an effective remedy and just satisfaction. In the face of an aggressor State evidently manifesting a desire to take control of the territory of another State

party, contrary to all rules of international law, the Convention could not prove powerless. There was a need to further develop the Court's case-law in response to a glaring example of aggression in the Convention legal space. Important clarifications had already been made to the *Georgia v. Russia (II)* judgment in the Court's admissibility decision in *Ukraine and the Netherlands v. Russia* (dec.) (both cited above). However, further clarification would be useful.

260. The present case was of an unprecedented nature. The Court's approach developed in a different factual context did not seem fully adequate to assess the present case relating to full-scale armed aggression and invasion. A new and more in-depth test was called for, at least with regard to the personal aspect of jurisdiction. In a new test the Court might consider taking into account the scale of the military action and its impact on the civilian population, with the existence of a full-scale invasion potentially demonstrating the exercise of effective control over victims; whether hostilities were conducted within the Convention area; and whether there was an intention on the part of the belligerent State to acquire and exercise effective and ultimate control over the territory of another State. Notably, the State's intention to unlawfully conquer the territory and overthrow the legitimate authority of another nation in order to establish its own authority or install subordinate or effectively controlled entities, not recognised by international community, should be an important consideration. Such approach would usefully complement the criteria already developed by the Court with regard to the spatial aspect of jurisdiction.

261. Without accountability, there could be no lasting peace, as the Heads of State and Government had recalled at the Reykjavík Summit. The answer to the question whether the Convention could effectively protect human rights in the face of war was critical to upholding confidence in, and the relevance of, the Convention system as a living instrument capable of responding to the most significant of challenges. The point at issue before the Court was whether, in its response, Europe would be faithful to its repeated declarations that war and human rights violations had no right to exist on its territory. Uncompromised courage and faith in the ideals that characterised the founders of the Convention was needed again today. But what was needed above all was "fidelity to the anti-war legacy they left for us, and for the Court, in the European Convention on Human Rights".

(ζ) United Kingdom

262. The United Kingdom Government reiterated their unwavering support for the sovereignty and territorial integrity of Ukraine within its internationally recognised borders. They also strongly supported findings by the Court that Russia had perpetrated the most serious violations of the Convention in Ukraine. However, the analytical route to such findings was important. Contracting States might in future participate in legitimate armed

conflict, for example collective self-defence under the auspices of NATO, or peacekeeping operations under the auspices of the United Nations. There were circumstances in which moving to a conception of jurisdiction whereby everything within Convention legal space was held to be within Article 1 jurisdiction would cause, or risk causing, significant issues in relation to lawful and realistic scenarios which the Contracting States should be concerned about. Collective self-defence under NATO, for example, "might assume an invasion of the territory of a Council of Europe State and would cover that [sic] because jurisdiction might apply both to the aggressor and to the defending State itself". There were also potential difficulties in relation to State agencies more generally which might well act so as to affect people outside the territory.

263. There was no need in this case for the principled approach of the Court to be expanded in order to reach the findings of serious violation of the Convention that all the intervening States invited the Court to reach. The Court should apply its existing case-law on Article 1, as expressed in *Georgia v Russia (II)* (cited above) and set out in some detail in the written submissions of the United Kingdom Government. As regards situations of international armed conflict, the United Kingdom Government endorsed the Court's finding in its admissibility decision in *Ukraine and the Netherlands v. Russia* ((dec.), cited above) that if a Government had sufficient control over territory for spatial jurisdiction to arise, this distinguished the situation from the circumstances addressed by the Court in *Georgia v Russia (II)*, namely "fighting between enemy military forces seeking to establish control over an area" (ibid., § 137). The relevant question in cases involving international armed conflict was whether spatial or personal jurisdiction arose having regard to the factual circumstances. For example, Article 1 jurisdiction plainly arose in respect of persons detained by military forces, or in respect of territory controlled by an occupying Power, irrespective of the temporal phase of the conflict. Subject to these clarifications, the Grand Chamber had been correct to find in *Georgia v. Russia (II)* that Article 1 personal jurisdiction ordinarily did not arise during the active phase of an international armed conflict save in respect of: (i) detained combatants or civilians; (ii) persons in buildings or premises controlled by soldiers; and (iii) persons who were abused or summarily executed by soldiers in circumstances of close proximity. This was consistent with the Court's established case-law.

264. The application of these principles would lead to the conclusion that Article 1 jurisdiction arose in respect of most categories of violation committed by Russia and described in the present case, namely:

- Article 1 jurisdiction arose under the "effective control of an area" principle in respect of violations that occurred within territory occupied by Russia within the meaning of Article 42 of the Hague Regulations. The atrocities perpetrated in Kherson, Bucha and Melitopol, for example, appeared to have occurred during a period of Russian occupation. The forced

removal of Ukrainian nationals (including children) to Russia and the theft and destruction of property in occupied territory were further clear examples.

- Jurisdiction arose under the "State agent authority and control" principle in respect of: (i) detained combatants or civilians; (ii) persons in buildings or premises controlled by Russian troops; and (iii) persons who were abused or summarily executed by Russian soldiers in circumstances of close proximity. The application detailed extensive violations in these categories including murder/summary execution, torture, rape, forced labour, and arbitrary detention.

265. The Government summarised the Court's case-law on jurisdiction, observing that the Court had been careful to define limited categories of extraterritorial Article 1 jurisdiction under two headings: "effective control of an area" and "State agent authority and control". They asserted that the latter principle had been further sub-divided by the Court (notably in *Al-Skeini and Others*, cited above, §§ 134-36) into three categories: (1) the activities of diplomatic and consular agents when they exerted authority and control over others; (2) the exercise of public powers through the consent, invitation or acquiescence of the government of a territory; and (3) the use of force by State agents.

266. However, Article 1 jurisdiction ordinarily did not arise in respect of death, injury and damage to property arising from use of military force in the course of active conflict, even if an attack was directed at an unlawful target, the expected incidental civilian loss of life, injury or damage was excessive in relation to the anticipated military advantage, or the use of force was otherwise alleged to be in breach of international humanitarian law. Military action seeking to conquer territory was not the exercise of public power within the meaning of the Court's case-law on the State agent authority and control principle. Active military combat against the government of another territory was not action undertaken through the consent, invitation or acquiescence of that government. The reference in *Al-Skeini and Others* (cited above, § 135) to "public powers" was evidently (and correctly) a reference to (a) public powers consequent on the consent of the other government and (b) the public powers of that other government. It had no application to the present context or, more generally, to hostile military action. Furthermore, the fact that at the conclusion of an international armed conflict an invading State became an occupying Power and the *de facto* authority in an area of territory with Article 1 jurisdiction, including spatial jurisdiction, did not mean that Article 1 jurisdiction arose during the prior phase of active armed conflict (citing *Al-Skeini and Others*, cited above, §§ 143-49).

267. The United Kingdom Government advanced five arguments in support of their position.

268. First, Article 1 jurisdiction was a "threshold criterion", namely "a necessary condition for a Contracting State to be able to be held responsible

for acts or omissions imputable to it which give rise to an allegation of the infringement of rights and freedoms set forth in the Convention" (*Al-Skeini and Others*, cited above, § 130). An allegation of unlawful action contrary to international humanitarian law could not be conflated with the prior "threshold" question of whether Article 1 jurisdiction arose.

269. Second, Article 1 jurisdiction was circumscribed by clear criteria. Otherwise, the Court would inevitably be drawn into adjudicating on substantive complaints about the conduct of the active phase of an international armed conflict merely to answer the prior jurisdictional question. That would cause difficulty, as the Court had recognised in *Georgia v Russia (II)* (cited above, § 141), since the "context of chaos" which existed during active combat between opposing military forces in an armed conflict would make it difficult or impossible for the Court to judge whether a substantive breach of international humanitarian law had occurred. If Article 1 jurisdiction depended on establishing the existence of such a breach, the jurisdictional "threshold" would be subject to unacceptable uncertainty.

270. Third, the Grand Chamber had already made clear in *Medvedyev and Others v. France* ([GC], no. 3394/03, § 64, ECHR 2010) that Article 1 jurisdiction did not ordinarily arise from "an instantaneous extraterritorial act" because the terms of Article 1 did "not admit of a 'cause and effect' notion of 'jurisdiction'".

271. Fourth, as the Grand Chamber had explained in *Georgia v Russia (II)* (cited above, §§ 132 and 136-137), Article 1 jurisdiction was closely linked to the notion of control. The Court's previous case law had found Article 1 jurisdiction only in relation to isolated and specific acts involving an element of proximity. These cases had involved individuals being beaten to death or shot at close range, and did not concern an active international armed conflict. By contrast the reality of armed confrontation and fighting between enemy military forces generally involved a context of chaos, or actions without the necessary proximity, which meant that the required element of control over victims was not present.

272. Fifth, it was plain that the drafters of the Convention had never intended for the substantive Articles of the Convention, including its Article 2, to regulate the conduct of military hostilities in international armed conflicts. This proposition was self-evident: there was nothing in the terms of Article 2 to indicate any regulation of the conduct of military operations; the Article was entirely silent on the point, unlike international humanitarian law. Moreover, the practice of Contracting States was not to derogate under Article 15 of the Convention where they engaged in an international armed conflict outside their territory. As the Grand Chamber had found in *Banković and Others* (cited above, § 62) and in *Georgia v. Russia (II)* (cited above, § 139), this indicated that Contracting States did not consider themselves to be exercising Article 1 jurisdiction when deploying military force in an international armed conflict. This did not mean that the Convention could

never enter the sphere of war or international armed conflict; such a suggestion would be untenable in light of consistent case-law going back a number of years. However, the drafters' intention together with the State practice of non-derogation supported "careful and limited exceptions" to the usual principle that jurisdiction was territorial.

273. According to the United Kingdom Government, none of this indicated that there was a legal lacuna. On the contrary, the conduct of active military operations was regulated by international humanitarian law. Breaches of that body of law could be considered by the ICC or another international tribunal convened for such a purpose. In this context, the United Kingdom strongly supported the investigation by the ICC Prosecutor into crimes committed in Ukraine since 21 November 2013.

274. In conclusion, the Government of the United Kingdom expressed their support for the application in this case of the Court's existing principles as established in its existing case-law. There was no need to expand or to reinvent those principles for the purpose either of doing justice in this case or giving effect to the object and purpose of the Convention.

(iii) Responses to written and oral questions, received in writing after the hearing

275. Following the hearing, the Court received correspondence from eighteen intervening Governments concerning the questions posed prior to the hearing (see paragraphs 26 and 30-31 above). The Governments of Austria and France confirmed that they would not submit written responses and referred the Court to their previous written pleadings and the common oral submissions. The responses of the remaining sixteen Governments, in so far as relevant, are summarised below.

(α) Joint response of Denmark, Finland, Iceland, Norway and Sweden

276. The five Governments reiterated that *Georgia v. Russia (II)* (cited above) could not be seen as authority for excluding entirely from a State's Article 1 jurisdiction a specific temporal phase of an international armed conflict. The specific situations described in §§ 132 and 137 of *Georgia v. Russia (II)* could not, therefore be seen as excluding the possibility for other situations to fall within a State's jurisdiction. Article 1 jurisdiction was closely linked to the notion of "control". Whether "exceptional circumstances" existed requiring and justifying a finding that a State had exercised jurisdiction extraterritorially was to be determined by a concrete assessment of the facts of each case.

277. The five Governments indicated that, to their knowledge, the use of force abroad by State agents had not as such, without further qualifications, been found sufficient to give rise to jurisdiction. Use of force by State agents resulting in loss of life or damage to property did not automatically give rise to Article 1 jurisdiction (see paragraph 233 above). In considering novel

interpretations of Article 1 of the Convention in cases of armed conflict within Council of Europe territory, or military activity by one High Contracting Party to acquire territory from another, it was important to distinguish the question of jurisdiction under Article 1 from that of compatibility of State actions with international law.

278. Article 1 was to be interpreted in accordance with the general rules of interpretation of treaties. This meant that Article 1 had to be interpreted in good faith in accordance with "the ordinary meaning to be given to the terms of a treaty in their context and in the light of its object and purpose" (citing Article 31 § 1 of the Vienna Convention at B74). The Convention was, moreover, to be as far as possible interpreted in harmony with other rules of international law. These rules, including the Vienna Convention, were relevant sources of law when interpreting the Convention (B74). Whether the practice of other comparable international dispute settlement mechanisms as regards extraterritorial jurisdiction was a relevant source of law depended on whether it fell within Article 31 § 3 of the Vienna Convention. The ICJ had recently dealt with the relevance of such practice in *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates), Preliminary Objections (Judgment, I.C.J. Reports 2021, p. 71)* (see B289-92). Their relevance would also depend on the similarity of the wording of the jurisdictional provision of the comparable international instrument.

(β) Belgium and the Czech Republic

279. The Belgian and Czech Governments noted that the facts of the present case had taken place in the Convention legal space. The Court could therefore limit its consideration of extraterritorial jurisdiction to this situation.

280. In assessing the issue of extraterritorial jurisdiction in the present case, the guiding principle should be that, within the Convention legal space, the use of armed force by a High Contracting Party, including bombing and shelling with the aim of removing the effective control of another High Contracting Party over its own territory, should not result in a situation where individuals whose human rights had been violated as a direct result of such use of armed force were deprived of the protection of the Convention. Such a situation would be difficult to reconcile with the very foundations of the Council of Europe and the object and purpose of the Convention.

(γ) Croatia

281. The Government of Croatia noted that Heads of State and Government of the Council of Europe in Reykjavík had recognised the urgent need "to ensure comprehensive accountability for all violations of international law, including international humanitarian and human rights law, in the context of the Russian Federation's aggression against Ukraine". The

Court, as the ultimate guarantor of human rights guaranteed by the Convention and the "Conscience of Europe", was well placed to perform this task.

282. Regarding the question of Article 1 jurisdiction in situations of bombing and shelling, the primary obligation under the Convention was to secure to everyone within the jurisdiction of the member States the rights and freedoms defined in the Convention. In exceptional cases, the Court had accepted that acts of the Contracting States performed, or producing effects, outside their territories could constitute an exercise of jurisdiction by them for the purposes of Article 1 of the Convention. In *Pad and Others v. Turkey* ((dec.), no. 60167/00, § 54, 28 June 2007), *Issa and Others* (cited above), *Andreou v. Turkey* ((dec.), no. 45653/99, 3 June 2008) and *Solomou and Others v. Turkey* (no. 36832/97, § 51, 24 June 2008), the Court had concluded that a State may be held accountable for violations of the Convention rights of persons in the territory of another State but who are found to be under the former State's authority and control through its agents operating (lawfully or unlawfully) in the latter State. Accountability in such situations stemmed from the fact that Article 1 of the Convention could not be interpreted so as to allow a member State to perpetrate violations of the Convention on the territory of another State, which it could not perpetrate on its own territory. In addition, the responsibility of a Contracting Party might also arise when as a consequence of military action (lawful or unlawful) it exercised effective control of an area outside its national territory. The obligation to secure, in such an area, the rights and freedoms set out in the Convention derived from the fact of such control whether it be exercised directly, through its armed forces, or through a subordinate local administration.

283. Member States had a duty to respect, protect and fulfil the rights affirmed in the Convention. They were obliged to refrain from acts that would defeat the object and purpose of the Convention committed within or beyond the Convention legal space. Furthermore, the Convention did not provide grounds to exclude member States' jurisdiction in respect of acts of war. Any other finding would undermine the fight against impunity for serious human rights violations and would leave a serious gap in victim protection and State accountability for those violations.

284. In conclusion, the assessment of the issue of extraterritorial jurisdiction in the present case ought to be guided by the principle that within the Convention legal space, the use of armed force, including bombing and shelling, by a member State with the aim of removing the effective control of another member State over its own territory, could not result in a situation where individuals whose human rights had been violated as a direct result of such use of armed force were deprived of the protection of the Convention. Such a situation would be hard to reconcile with the very foundations of the Council of Europe and the object and purpose of the Convention.

(δ) Estonia

285. The Estonian Government underlined that the application of exceptions to the Article 1 principle of territorial jurisdiction was necessarily fact-based. It was thus a question of fact whether a Contracting Party exercised effective control over an area outside its own territory or whether a State agent had authority and control. Based on specific evidence and facts, there could therefore be, during an active phase of hostilities, areas over which a Contracting Party had effective control or situations in which there was personal control through "an element of proximity" different from situations that had been assessed in earlier case-law. These exceptional circumstances fell to be, and could be, examined under the existing approach that the Court had taken to Article 1.

286. The use of force (whether resulting in loss of life, injury to a person or damage to property) did not automatically give rise to jurisdiction under Article 1 of the Convention. The case-law did not support a general "cause-and-effect" approach to Article 1 jurisdiction.

287. Any expansion of the exemptions to the essentially territorial nature of jurisdiction under Article 1 had to take into account the need for Article 1 jurisdiction to remain an easily applicable threshold criterion that would among other aspects allow the Contracting Parties to ascertain the extent of their obligations under the Convention in situations of legitimate armed conflict (e.g. collective self-defence and peacekeeping operations).

(ε) Germany and Portugal

288. The German and Portuguese Governments observed that it was likely that there would be other situations involving the use of armed force which would fall into a zone between the definitions set out in §§ 132 and 137 of *Georgia v. Russia (II)* (cited above).

289. The use of armed force abroad by State agents had not, without further qualifications, been found sufficient to give rise to jurisdiction. Use of force by State agents resulting in loss of life or damage to property did not automatically give rise to Article 1 jurisdiction (see paragraph 233 above). If a new exemption to the principle that jurisdiction was territorial, based on military activity by one High Contracting Party to acquire territory from another, were to be contemplated by the Court, it was important to bear in mind that the Court should not be drawn into adjudicating the international legality of State actions in order to resolve jurisdictional questions. The criteria used to determine the existence of an exemption had to be clearly formulated and readily ascertainable in the proceedings before the Court. The paramount consideration ought to be whether the military activity aimed at permanently removing another High Contracting Party's effective control over its own territory.

290. Finding Article 1 jurisdiction solely on the basis of armed conflict on Council of Europe territory would be a very broad basis for an exemption

to the principle of territorial jurisdiction. This would make it difficult for High Contracting Parties to evaluate the extent of their obligations in cases of legitimate use of armed force abroad, which might have occurred precisely to preserve the objects and purposes of the Convention.

291. Finally, the Portuguese Government submitted that it was essential to ensure that that the use of armed force, within the Convention legal space, including bombing and shelling by a High Contracting Party with the aim of removing the effective control of another High Contracting Party over its own territory, never resulted in a situation where individuals were deprived of the protection of the Convention. Such a prospect would be incompatible with the very foundations of the Council of Europe and the object and purpose of the Convention, particularly when dealing with cases where human rights had been violated as a direct result of such use of armed force.

(στ) Latvia

292. The Latvian Government were of the "strong opinion" that the Court's findings in *Georgia v. Russia (II)* allowed the extraterritorial jurisdiction of a High Contracting Party to be established "in a zone between 'isolated and specific acts of violence involving an element of proximity' and 'armed confrontation and fighting between enemy military forces seeking to establish control over an area in a context of chaos'" where it engaged in military activities with a view to acquiring territory from the territorial High Contracting Party or removing the latter's effective control over the latter's territory. This was especially so in the light of the need to ensure the effective protection of human rights in a largely regional context and in line with the Court's finding in *Ukraine and the Netherlands v. Russia* ((dec.), cited above) that a "context of chaos" was not in itself capable of excluding the jurisdiction of a High Contracting Party in the active phase of hostilities.

293. A High Contracting Party's jurisdiction could not be established in all cases where State agents used armed force abroad and this could not be considered as a standalone ground to establish jurisdiction.

294. Similarly, a general finding that a High Contracting Party exercised extraterritorial jurisdiction in all cases where military activities were undertaken in the territory of the Council of Europe could create serious challenges for the High Contracting Parties to assess and evaluate their obligations in cases of use of armed force abroad when it was legitimate and permitted under international law, for example, in self-defence. The test for armed attacks to fall within the zone between "isolated and specific acts of violence involving an element of proximity" and "armed confrontation and fighting between enemy military forces seeking to establish control over an area in a context of chaos" was inextricably linked to the facts of each particular case and to the underlying reasons for and aims of the military activities in question. In its assessment, the Court could take into account the

conclusions reached by other international organisations and their organs when characterising the activities of the High Contracting Party in question.

295. The Council of Europe was the oldest peace organisation in Europe, established in pursuit of peace based upon justice with the rights and freedoms protected by the Convention being the foundation of peace and justice. A war of aggression leading to massive civilian casualties required special diligence from the Council of Europe organs to review compliance with the Convention and to ensure accountability for any violations thereof. It would be manifestly counter to the values of the organisation and the spirit of the Convention to rule that a violation of international law determined by the UN General Assembly to constitute an act of aggression entailed as a consequence the loss of the protection offered by the Convention in the territory prior to the act of aggression. Article 19 of the Convention should encourage the Court to prevent a vacuum in human rights protection over significant parts of the European legal space where one High Contracting Party was engaged in military activity with a view to acquiring territory from another High Contracting Party or removing the latter's effective control over its own territory.

(ζ) The Netherlands

296. The Dutch Government, in their capacity as a third-party intervener, observed that the question whether there was jurisdiction in respect of military attacks from an area under one Contracting State's effective control and directed at the territory of another Contracting State was necessarily dependent on the relevant facts and the circumstances of each case. The use of force in an armed conflict resulting in loss of life or damage to persons or property outside the own sovereign border of a Contracting State did not automatically give rise to extraterritorial jurisdiction under Article 1 of the Convention. However, it would be incorrect to conclude that jurisdiction could never arise in the context of an armed conflict (*Ukraine and the Netherlands v. Russia* (dec.), cited above, § 703).

297. The Court had established in *Pad and Others*, *Issa and Others*, *Andreou v. Turkey* and *Solomou and Others v. Turkey* (all cited above), that the exercise of physical power and control through the use of a weapon by agents of a Contracting State against individuals of another Contracting State – even where the latter exercised no control over the former's territory – could result in jurisdiction being found. The Court had held on numerous occasions that Contracting States could not profit from impunity by violating rights of individuals outside their territory, where such impunity would not exist had such acts been committed in their own territory. The Dutch Government supported the Court's approach as set out in the case-law cited, and did not support a "cause and effect" approach to Article 1 jurisdiction.

298. If a State deliberately deployed force that might cause (possibly deadly) harm, this could – depending on the circumstances and facts of the

case – lead to a finding of jurisdiction under Article 1 of the Convention and result in accountability for violations of the Convention rights and freedoms of the victims of such force. Moreover, in the event of acts of aggression by a Contracting State, as defined in Resolution 3314 (XXIX) of the UN General Assembly (B196) and confirmed as such by, as appropriate, the Security Council, the General Assembly or the ICJ, Article 1 jurisdiction could be found depending on the circumstances of the case.

299. All Contracting Parties had to abide by their Convention obligations, regardless of whether actions were exercised within or beyond Convention legal space. The preamble of the Convention referred to "universal and effective recognition and observance" of fundamental rights; there could be no discrimination with regard to the protection of Convention rights. The Court had already found jurisdiction in cases of Contracting States exercising effective control or authority outside the Convention legal space (for example, *Issa and Others*, cited above; *Öcalan v. Turkey* [GC], no. 46221/99, ECHR 2005-IV; *Pad and Others*, cited above; and *Isaak v. Turkey* (dec.), no. 44587/98, 28 September 2006). Any limitation of jurisdiction by reference to Convention legal space would therefore not be appropriate.

(η) Poland

300. The Polish Government fully agreed that apart from "isolated and specific acts of violence involving an element of proximity" there could be also other situations where jurisdiction under Article 1 of the Convention might arise in connection with States' use of force abroad, including hostilities. The Court's approach to the downing of flight MH17 in *Ukraine and the Netherlands v. Russia* ((dec.), cited above) demonstrated how this might be done, and deserved "full support". It might be difficult to define the situations strictly, bearing in mind the great variety of the possible factual situations, nor did it seem possible or necessary to delineate between all possible situations.

301. The existence of chaos should neither be presumed nor applied *ex officio* by the Court if not raised by the respondent State itself. The "burden of proof should be on the aggressor State", which was therefore required to appropriately substantiate the existence of chaos in respect of the incidents complained of and the resulting lack of control over the lives of persons affected (see paragraph 241 above). The application of the concept of the "context of chaos" in itself would be highly questionable where in the context of the war of aggression the State sought to impose its control over the territory of another State, as it would mean no responsibility for human rights violations on the basis of reasons which were themselves unlawful.

302. The Polish Government further supported the idea that Article 1 jurisdiction could arise where State agents used armed force abroad and a High Contracting Party was engaged in military activity with a view to acquiring territory from the other High Contracting Party, and thereby

removing the latter's effective control over its own territory, where the armed conflict was conducted in the Council of Europe State's territory. The aggressor State's aim to acquire and exercise effective and ultimate control over the territory of another State, and in particular to conquer that territory and overthrow the legitimate authority of another nation in order to establish its own authority or install subordinate or effectively controlled entities, not recognised internationally, ought to be important considerations. The inclusion of a criterion reflecting the reality of aggression would be in line with the spirit of Article 15 of the Draft articles on the effects of armed conflicts on treaties (B339), since it would prevent a situation in which an aggressor State could benefit from its act of aggression to evade accountability under the Convention. The main question should be whether the situation, assessed as a whole, allowed the Court to conclude that the State exercised effective control over the enjoyment of the right to life of persons located outside any territory effectively controlled by the State who were affected by that State's military or other activities in a direct and reasonably foreseeable manner (citing the UN Human Rights Committee General Comment No. 36 at B94). Other criteria could also be helpful in this regard, for instance the scale of the military action and its impact on the civilian population. The existence of a full-scale invasion might further demonstrate the exercise of effective control over victims. The fact that the present case took place in the Convention legal space also had a bearing on the scope of the State's obligations under the Convention.

303. The Polish Government were not aware of any judgments of other international courts or of positions of other relevant dispute settlement mechanisms or treaty bodies that would speak against the finding of extraterritorial jurisdiction based on the criteria outlined above (see paragraph 302 above). On the contrary, the practice of the ICJ and of the UN Human Rights Committee (B92-96 and 101-12) would seem to be in favour of finding extraterritorial jurisdiction in such situations. In contrast, the failure to find extraterritorial jurisdiction in the circumstances outlined could raise serious doubts from the point of view of coherence of international law, of which the Convention was an essential part (see paragraphs 254-255 above). Such a position could not be reconciled with the general intention and effort of the international community to preserve an international order based on respect of each other's territorial sovereignty.

304. To consider that no extraterritorial jurisdiction arose in the case of aggression within the European legal space could also not be reconciled with the Court's responsibility under Article 19 of the Convention, and would be against the Convention's object and purpose. The main objective of the codification of international humanitarian law had been precisely to strengthen the protection of human rights during armed conflicts. It would therefore be illogical to understand international humanitarian law as limiting the application of other provisions protecting human rights during hostilities

and, in effect, as lowering standards of human rights protection. The Court should not self-limit its competence on the basis of a restrictive interpretation of Article 1 of the Convention, leading to an unacceptable vacuum and a *de facto* non-applicability of the Convention in times of war, when its protection was needed most. Interpreting Article 1 of the Convention in the spirit of the values and objectives of the Convention itself and of the Council of Europe in general required recognising that the aggressor State should ensure protection of the human rights of those subjected to its military actions, and should bear responsibility for the loss of life of persons resulting from the bombing and shelling of civilians and civilian objects to the extent that it violated rules of international law.

(θ) Romania

305. The Romanian Government noted that extraterritorial jurisdiction was applicable in international armed conflicts. Thus States had been held accountable for military activities committed outside their borders (citing *Cyprus v. Turkey*, *Loizidou* and *Al-Skeini and Others*, all cited above). In *Georgia v. Russia (II)* (cited above), the Court had "found no territorial or personal jurisdiction in the middle of fighting for control which takes place in a 'context of chaos'". However, according to the Romanian Government, "the exception provided by the 'context of chaos' should not be so dominant as to automatically eliminate the investigation of the facts and circumstances in which the violations occurred". The key to solving the issue of jurisdiction lay in the comprehensive analysis of each incident on a case-by-case basis. The active hostilities had a probative, and not a normative, value and it was for the respondent State to prove that a context of chaos existed at the moment of the violation. This concept was not to be understood as a presumption for the total exclusion of State jurisdiction.

306. The Romanian Government underlined the aims of the Council of Europe and concluded that Article 1 ought to be interpreted in such a way as to bring within the scope of the Convention human rights violations that had been committed outside the territory of the State, whether within the territory of the High Contracting Parties or outside it, but committed under its effective control or by its agents. The jurisdictional link "must always be comprehensively verified"; there was no jurisdiction of the Court in the absence of such a link.

(ι) Spain

307. The Spanish Government observed that it was likely that there would be other situations involving the use of armed force which would fall into a zone between the definitions set out in §§ 132 and 137 of *Georgia v. Russia (II)*.

308. The use of force by State agents resulting in loss of life or damage to property did not automatically give rise to Article 1 jurisdiction (see paragraph 233 above). On the other hand, it would be incorrect to conclude that jurisdiction on the basis of State agent authority and control could never arise in the context of an international armed conflict. If a new exemption to the principle that jurisdiction was territorial, based on military activity by one High Contracting Party to acquire territory from another, were to be contemplated by the Court, the criteria used to determine the existence of such an exemption had to be clearly formulated. The paramount consideration ought to be whether the military activity aimed at permanently removing another High Contracting Party's effective control over its own territory.

309. Finding Article 1 jurisdiction solely on the basis of armed conflict on Council of Europe territory would be a very broad basis for an exemption to the principle of territorial jurisdiction. This would make it difficult for High Contracting Parties to evaluate the extent of their obligations in cases of legitimate use of armed force abroad, which might have occurred precisely to preserve the objects and purposes of the Convention.

(b) Geneva Academy

310. The Geneva Academy interpreted the admissibility decision in *Ukraine and the Netherlands v. Russia* ((dec.), cited above) as applying a "kind of presumption" that extraterritorial jurisdiction was excluded in the case of "military operations carried out during an active phase of hostilities", except as regards the duty to investigate deaths. The factual meaning and legal consequences (if any) of the notion "military operations carried out during an active phase of hostilities" remained to be clarified.

311. As regards the factual meaning, first, the notion was limited to "military operations" such as bombing, shelling and artillery fire. In *Georgia v. Russia (II)* (cited above) the Court had excluded extraterritorial jurisdiction, notably on the ground that the conduct was part of a large-scale campaign rather than "isolated and specific" and did not involve an element of "proximity". However, even bombing, shelling and artillery fire could be "isolated and specific" – temporally, geographically or regarding their actual target. Moreover, nothing precluded a large-scale campaign expanding over months from being broken into separate conducts capable of constituting a form of control establishing extraterritorial jurisdiction. The intensive pre-planning of such military operations also comported important elements of control that had to be taken into account. If procedural obligations under the right to life could be detached for the purpose of establishing jurisdiction, a similar approach could be adopted regarding *ex ante* obligations of planning and control of military operations. Regarding "proximity", jurisdiction was not a matter of physical distance but of exercise of control in the sense of control over the life of the victim (citing *Carter v. Russia*, no. 20914/07, 21 September 2021). Force could be discharged with equally lethal results

from near and far. In *Pad and Others* (cited above), jurisdiction had been established in respect of helicopter fire; the same ought to be true of a drone strike or targeted killing which could be described as "isolated and specific". Similarly, a situation of siege or encirclement involved State agent authority and control over the lives of those confined to an area with very limited freedom of movement or action (*Ukraine and the Netherlands*, § 569, and *Medvedyev*, § 76, both cited above). In *Jaloud v. the Netherlands* ([GC], no. 47708/08, § 152, ECHR 2014), the Court had found jurisdiction established in a checkpoint scenario, which was not materially different except for the scope of the use of kinetic force. Sieges and checkpoint scenarios could additionally be seen as involving control over an area. This did not necessarily mean that the "entire range of substantive rights set out in the Convention" had to be secured: here too, Convention rights ought to be capable of being "divided and tailored".

312. Second, the notion of "military operations carried out during an active phase of hostilities" only included the "active phase of hostilities" involving situations of "armed confrontation and fighting". What was material was that there was not simply a unilateral use of force but a proper confrontation and a "context of chaos" whereby it became factually near impossible to determine the exact set of circumstances that would allow making determinations regarding attribution and consequently jurisdiction. In other words, control over an area was at stake; the lives of enemy soldiers were at risk; and confusion reigned. The "context of chaos" was a context against which the exercise of control had to be assessed; it was not a legal exception to jurisdiction.

313. In terms of legal consequences (see paragraph 310 above), the phrases "military operations carried out during an active phase of hostilities" and "context of chaos" should not be seen as creating a legal presumption for either the attacking or territorial State. Not even a hard reading of *Georgia v. Russia (II)* (cited above) warranted such a conclusion. In *Bekoyeva and Others v. Georgia* ((dec.), no. 43733/08, §§ 32-40, 5 October 2021), the Court had complemented a careful application of *Georgia v. Russia (II)* with a detailed analysis of the factual evidence excluding territorial jurisdiction in that case.

314. In conclusion, not every kinetic use of force in an international armed conflict could be considered as falling within the jurisdiction of a belligerent State, otherwise the jurisdictional limitation on the Convention would have no *effet utile*. However, to consider all (or most) acts of hostilities to fall outside the jurisdiction of all the belligerent parties would be extremely problematic from a victim and legal/technical perspective. If applied in the Ukraine context, it would lead to thousands of civilians being deprived of Article 2 – and more broadly, Convention – protection for potentially years. Such an interpretation would, moreover, not take into account the complexity of contemporary military operations and the diversity of situations involving

kinetic use of force, which could entail a vast amount of control over areas or individuals and/or their right to life. Finally, interpretations of the notion of jurisdiction by the Court ought not to have the unintended effect of incentivising resort to large-scale combat operations by States: Article 1 could not be interpreted so as to allow a State party to perpetrate on the territory of another State Convention violations that it could not perpetrate on its own territory.

315. The preceding submissions concerned the interpretation of the Court's existing criteria. However, the Geneva Academy questioned whether these should be the governing standards. First, there had been calls for a more principled and systematic approach to extraterritorial jurisdiction, grounded in a functional understanding of jurisdiction. This was based on the position that States particularly well-situated to incur international human rights law obligations should do so. Commentators had also noted that the Court's approach to extraterritorial jurisdiction was becoming increasingly distant from that propounded by other human rights bodies. The UN Human Rights Committee's test of "direct and reasonably foreseeable impact" (B94) was reflected in different forms by a number of other international and regional bodies. Some had applied an even more expansive model based on the simple capacity to influence a situation (the UN Special Rapporteurs on Counter-Terrorism and on Extra-judicial, Summary or Arbitrary Executions and the Committee on the Rights of the Child – see B113 and 130). The requirement for effective control over an area under the Court's case-law had been diluted by the "decisive influence" test as well as indirect control through a subordinate local administration. Similarly, the test applied by the Court in *Carter* (cited above) recalled the functional reading of jurisdiction as "control over rights". Such openings could result in the establishment of extraterritorial jurisdiction for several kinds of conduct in international armed conflict. The Convention could thus apply to allegations of human rights violations committed in the context of sieges and blockades. By considering the direct and foreseeable consequences flowing from the State's conduct, irrespective of the geographical location, the context of war and peace, or the rights affected, the victim's perspective would be placed at the centre of the Court's activity. This would also ensure that legal criteria were not being interpreted and applied in ways that excluded massive killings and destructions for a long period of time in Europe from Article 1 jurisdiction and diluted to a considerable extent the protections offered by the Convention in times of armed conflict.

316. The best approach, therefore, would be to further refine the meanings of control, taking into account the practice of other human rights bodies around functionality and the need to avoid creating legal gaps. Complexities around the interplay between the Convention and international humanitarian law – which were relevant to the merits – ought not to have a bearing on jurisdiction, which was an admissibility issue. Similarly, evidential

difficulties should not have a bearing on jurisdiction. On the contrary, the Court could draw inferences based on the absence of cooperation of one of the parties.

(c) Human Rights Law Centre

317. The Human Rights Law Centre submitted that the "context of chaos" exception to establishing Article 1 jurisdiction lacked internal coherence with other principles the Court had expounded. However, when it came to spatial jurisdiction, there would be some situations in which control over a discrete area was contested to such a degree that it was impossible to determine whether any State exercised control over that particular area. This would especially be the case for areas on the front line of intense hostilities between two States engaged in an international armed conflict. It was reasonable to say that in a situation of intense hostilities and street-to-street fighting in a specific area, neither Ukraine nor Russia exercised effective overall control over that area while such hostilities lasted. But such control easily existed in the immediately adjacent areas behind the front lines, especially when such lines remained relatively stable over time. Both prior to and after the full-scale invasion of Ukraine in February 2022, Ukraine and Russia controlled discrete areas of territory. This control fluctuated over time due to the ebb and flow of military operations. There was no bar to applying the Convention fully in such areas: a "context of chaos" could not justify failing to apply the Convention to a town or village under the control of one of the parties to the conflict in which civilians or POWs were unlawfully killed or mistreated. It was for the parties to provide evidence on how control over specific areas had changed over time or was affected by intense fighting.

318. In the absence of spatial jurisdiction, allegations of violations of the right to life by kinetic means, such as artillery shelling, missile strikes or aerial bombardment, had to be considered under the personal model of jurisdiction. This included situations when kinetic uses of force emanated from Russian-controlled territory and caused death, injury and damage in Ukrainian-controlled territory, and situations that were wholly confined to a contested area.

319. In order to assess whether personal jurisdiction existed, the Court was required to establish whether these killings and destruction of property were an exercise of authority and control by the Russian Federation over the victims and their property. The Court's approach to kinetic uses of force absent territorial control had tended to be rather conservative. If the Court applied the restrictive approach taken in *Georgia v. Russia (II)* (cited above), the vast majority of individual acts of hostilities committed in Ukraine would be excluded from the purview of the Convention. This was not a normatively justifiable result. The Court should therefore take this opportunity to overrule the "arbitrary approach" adopted in *Georgia v. Russia (II),* rather than "somehow try to fit the individual acts of hostilities at issue in this case within

any supposed 'exceptions'". The restrictive approach taken in that case was unprincipled and unworkable and ought to be discarded. This would be the right thing to do for at least three reasons.

320. First, the whole notion of a "context of chaos" precluding the existence of personal jurisdiction was simply unfounded. The Court had already said in *Issa and Others* (cited above, § 71) that "Article 1 of the Convention cannot be interpreted so as to allow a State party to perpetrate violations of the Convention on the territory of another State, which it could not perpetrate on its own territory". It was true that the chaos or fog of war could hamper the Court's ability to reliably establish what had actually happened and obscure whether there had been "control" for the purposes of Article 1. However, in the present case there was a wealth of information from official intergovernmental and governmental sources, as well as open-source journalism, that could provide factual clarity. The Court had taken into account this material at the admissibility stage, had requested clarifications from the respondent State and had drawn inferences whenever appropriate. It should adopt the same approach on the merits, and no "context of chaos" could or should prevent it from doing so.

321. Second, there was no good reason of principle to distinguish between "isolated" or "proximate" incidents of lethal force and more "distant" takings of life, such as through shelling or aerial bombardment. If the former involved the exertion of authority and control over the victim, then the same had to be said of the latter. In the same way as it made no sense to argue that the Convention applied to a killing only if a person was first arrested, no principled system of human rights law could draw a distinction between killing an individual "proximately" by poisoning or stabbing them and killing them more "distantly" by a missile strike or an artillery shell. Furthermore, if killing one person was an exercise of personal jurisdiction by the State over that individual, then the same had to be true if the victims numbered in the hundreds or the thousands.

322. Third, in *Georgia v. Russia (II)*, the Court had justified its restrictive approach partly by saying that if "the Court is to be entrusted with the task of assessing acts of war and active hostilities in the context of an international armed conflict outside the territory of a respondent State, it must be for the Contracting Parties to provide the necessary legal basis for such a task". However, there was nothing in the text of the Convention indicating that it did not apply to active hostilities in an armed conflict outside the territory of a Contracting State. On the contrary, Article 15 § 2 expressly provided for the possibility of a derogation from Article 2 "in respect of deaths resulting from lawful acts of war". The Court's approach in *Georgia v. Russia (II)* rendered this express language of the Convention entirely nugatory. Moreover, it was for Contracting States to provide the Court with the resources that it needed to adequately address the indisputably difficult task of assessing the legality of deprivations of life in armed conflict. The Court

had the legal basis to do so and needed simply to apply Article 2 as interpreted in light of the relevant rules of international humanitarian law.

323. The Court should adopt a very simple approach to personal jurisdiction in the context of Article 2, namely that whenever a State party, acting through one of its agents, had deprived an individual of life, that State party had exercised authority and control and thus jurisdiction over that individual. This was equally the case within armed conflict or outside it, regardless of whether the killing was "proximate" or distant, "isolated" or part of a pattern. The same approach could also be applied *mutatis mutandis* to other Convention rights. This approach would accord with that taken by other international human rights bodies (B92-96).

324. Where Article 1 jurisdiction was found, it would be for the Court to then decide on whether any deprivation of life would give rise to responsibility under the Convention. In doing so, it would be for the Court to determine whether the context of armed conflict impacted the scope of protection of individual Convention rights, including the right to life.

325. Whether the Russian Federation was responsible for the violations alleged required the Court to find that the relevant acts or omissions were actually attributable (imputable) to the Russian Federation. In its admissibility decision (*Ukraine and the Netherlands v. Russia* (dec.), cited above), the Court had held that all acts and omissions conducted by the separatist forces were attributable to the Russian Federation by virtue of its control over these entities, but had left the door open for the Russian Federation to argue that certain alleged violations were not attributable to it. Should the Court be required to consider attribution at this stage in the proceedings, its assessment should be conducted according to the relevant tests in general international law developed by the International Law Commission, specifically in its Articles on State Responsibility (ARSIWA), and in the case-law of the ICJ (A85-87; and B283 and 285-88). The Court had regularly referred to the ARSIWA and had relied on the attribution rules contained therein.

326. Given the Court's holding that "the acts and omissions of the separatists are attributable to the Russian Federation in the same way as the acts and omissions of any subordinate administration engage the responsibility of the territorial State", it would be appropriate for the Court to clarify that it has made this decision on the basis that the separatists were *de facto* organs of the State pursuant to Article 4 ARSIWA. After the annexation of the separatist entities by the Russian Federation, organ status would exist even *de jure* because separatist authorities would be regarded as State organs under Russian law, regardless of the manifest illegality of the annexation as a matter of international law.

C. The Court's assessment

327. The Court must assess the jurisdiction of the Russian Federation under Article 1 of the Convention in three respects, namely: whether it had continuing jurisdiction in the "DPR" and the "LPR" following the date of the admissibility hearing, whether it had jurisdiction in respect of the complaints made in application no. 11055/22, and whether it had jurisdiction in respect of military attacks (see paragraphs 204-206 above).

1. Continuing jurisdiction in the "DPR" and the "LPR" on the basis of effective control

328. As noted above (see paragraph 202), in its admissibility decision the Court concluded that the areas under separatist control in eastern Ukraine were, from 11 May 2014 until at least 26 January 2022, under the effective control of the Russian Federation (see *Ukraine and the Netherlands v. Russia* (dec.), cited above, § 695).

329. On 21 February 2022 the President of the respondent State adopted decrees recognising the "independence" of the "DPR" and the "LPR" (see paragraph 62 above and B12). On 30 September 2022 he signed "treaties" with the "DPR" and the "LPR" on their "accession" to the Russian Federation and, on 4 October 2022, the respondent State purported to adopt laws providing for such "accession" (see paragraph 75 above and B4-6).

330. On 31 July 2023 the Russian authorities adopted federal law No. 395 proclaiming the retroactive extension of Russian criminal jurisdiction over the territories of the "DPR" and the "LPR" in respect of all crimes committed there before 30 September 2022 (B11). According to the law, criminal offences committed before 30 September 2022 against the interests of the "DPR" and "LPR" were to be considered as having been committed against the interests of Russia. The law also provided for the acknowledgment by the Russian Federation of the legal force of all judicial decisions delivered in the "DPR" and the "LPR" which had entered into force before 30 September 2022.

331. Given the absence of any information to suggest a decrease in the level of control exercised by the respondent State over the "DPR" and the "LPR", and the formalisation of the control already exercised by that State through the purported "accession" of the two territories to the Russian Federation and the retroactive application of Russian criminal law to the territories and assimilation of "DPR" and "LPR" interests to those of the Russian Federation itself, the Court finds that these areas continued to be under the effective control of the respondent State throughout the period falling within the temporal jurisdiction of the Court, namely up until 16 September 2022.

2. Jurisdiction in respect of the complaints in application no. 11055/22

(a) Events in the Russian Federation

332. In application no. 11055/22, the applicant Ukrainian Government also complained about actions of the Russian authorities that took place on Russian sovereign territory, in respect of filtration processes (see paragraph 1125 below) and the transfer and adoption of children (see paragraph 1498 below). Such complaints clearly fall within Russia's jurisdiction for the purposes of Article 1 of the Convention.

(b) Events in Ukraine

333. The Court has found that the areas under "DPR" and "LPR" control fell within the jurisdiction of the Russian Federation up until 16 September 2022 (see paragraph 331 above). In their application no. 11055/22, the applicant Ukrainian Government also complained about a number of alleged administrative practices by the respondent State throughout Ukrainian territory following the invasion on 24 February 2022. The Court must therefore determine, in respect of these allegations, whether the respondent State exercised jurisdiction.

334. As far as the allegations of Convention violations on account of military attacks producing effects outside territory under the effective control of the respondent State are concerned, the jurisdictional issues that arise in the context of the complaints made in application no. 11055/22 are identical to those arising in respect of the complaints of bombing and shelling in the 2014 application (no. 8019/16). The Court will therefore examine the complaints concerning military attacks in the 2014 and 2022 applications together (see paragraphs 340 et seq. below).

335. The remaining allegations concern acts which are said to have occurred in areas in the hands of the Russian armed forces. As the respondent State has not participated at all in the proceedings on the admissibility and merits of application no. 11055/22, it is not clear whether it disputes that the areas of Ukraine which were in the hands of its armed forces at the material times fell within its jurisdiction for the purposes of Article 1 of the Convention. In the absence of any arguments in this respect, the Court will determine the jurisdiction of the respondent State in respect of these areas in accordance with its usual approach (see the general principles set out in *Ukraine and the Netherlands v. Russia* (dec.), cited above, § 560). This means that, in view of the factual background to the allegations in question, it will first assess whether the respondent State enjoyed effective control over the relevant areas of Ukraine on account of its military presence in those areas.

336. As noted above, since 24 February 2022, large numbers of Russian troops have entered sovereign Ukrainian territory and have taken direct control over territory in Ukraine (see paragraph 170 above). Although none of the parties to the proceedings has provided figures as to how many Russian

soldiers were present on Ukrainian territory, it has been widely reported that some 190,000 Russian troops were stationed at the borders with Ukraine immediately prior to 24 February (see paragraph 64 above). Once the full-scale invasion began, on the northern front, Russian armed forces captured key areas to the north and west of Kyiv and surrounded Chernihiv. In north-eastern Ukraine, they advanced on the cities of Kharkiv and Sumy. In southern Ukraine, they captured several cities and localities in the Kherson, Mykolaiv and Zaporizhzhia regions. They subsequently extended the territory held by the separatists in the Donetsk and Luhansk regions. These events have been widely reported, with the consequence that the evidence of Russia's military presence in Ukraine since 24 February 2022 is plentiful and overwhelming. The acquisition by Russian armed forces of control over Ukrainian territory has, moreover, been openly acknowledged by the respondent State in the course of briefings issued by that State's Ministry of Defence as well as in comments by its President and other senior politicians and officials (for example, B1540, 1547, 1568, 1929, 1961, 1963, 1967, 1969, 1972, 1976, 1982 and 2012).

337. The Court has no difficulty concluding from the evidence and from the speed and scale of the Russian advance that the military presence of the respondent State in Ukraine was substantial. There is also no doubt that as a result of this substantial military presence, Russian armed forces took control of areas of Ukraine. This conclusion is not undermined by the fact that some of the territory in question was later recovered by Ukraine in the course of successful counter-offensives.

338. In conclusion, by virtue of the control exercised over the territory concerned by the Russian armed forces, Russia exercised effective control over such territory and thus had jurisdiction for the purposes of Article 1 of the Convention for any period during which such areas remained under the control of its armed forces, up until 16 September 2022 (see *Ukraine and the Netherlands v. Russia* (dec.), cited above, §§ 694 and 696. See also the Commission's decision in *Cyprus v. Turkey* (1975), cited above, at p. 137).

339. In the context of its examination of each alleged administrative practice below, the Court will take into accounts acts of Russian agents which took place in territory which was, at the relevant time, under Russian jurisdiction.

3. Jurisdiction in respect of military attacks

(a) Introduction

340. As noted above, in its admissibility decision the Court joined to the merits the objection raised by the respondent Government in respect of the applicant Ukrainian Government's complaints concerning an administrative practice of bombing and shelling (*Ukraine and the Netherlands v. Russia* (dec.), cited above, § 700). In doing so, it acknowledged the need for careful

consideration of how its findings in its *Georgia v. Russia (II)* judgment (cited above) might apply to the allegations then before it in the context of application no. 8019/16. With the joinder of application no. 11055/22 to the existing case, its consideration of this issue now also encompasses the military attacks to which this latter application refers (see paragraph 334 above). The question for the Court is, therefore, whether the alleged administrative practice of military attacks in breach of the Convention from 2014 to 2022 falls within the jurisdiction of the respondent State.

341. The background to the Court's examination of this complaint at the separate admissibility stage of the proceedings is important. On 21 January 2021 the Court delivered its judgment in *Georgia v. Russia (II)* in which it was required to examine whether the conditions for the exercise of extraterritorial jurisdiction by a State under the Court's case-law could be regarded as fulfilled in the context of military operations carried out during the "five-day war" in Georgia on 8-12 August 2008. It found that Russia did not have Article 1 jurisdiction in respect of the military operations which it had conducted during this five-day period. It explained:

> "126. ... [I]t can be considered from the outset that in the event of military operations – including, for example, armed attacks, bombing or shelling – carried out during an international armed conflict, one cannot generally speak of 'effective control' over an area. The very reality of armed confrontation and fighting between enemy military forces seeking to establish control over an area in a context of chaos means that there is no control over an area. This is also true in the present case, given that the majority of the fighting took place in areas which were previously under Georgian control ...
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> ...
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> 136. ... The obligation which Article 1 imposes on the Contracting States to secure to everyone within their jurisdiction the rights and freedoms guaranteed by the Convention is, as indicated above, closely linked to the notion of 'control', whether it be 'State agent authority and control' over individuals or 'effective control' by a State over a territory.
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> 137. In this connection, the Court attaches decisive weight to the fact that the very reality of armed confrontation and fighting between enemy military forces seeking to establish control over an area in a context of chaos not only means that there is no 'effective control' over an area as indicated above (see paragraph 126), but also excludes any form of 'State agent authority and control' over individuals."

342. The admissibility hearing in the present case took place on 26 January 2022. The parties' submissions to the Court during the hearing were situated within the *Georgia v. Russia (II)* paradigm.

343. However, as explained above, less than one month after the admissibility hearing in the present case, the Russian Federation invaded Ukraine (see paragraph 66 above). As a consequence, tens of thousands of civilians have been killed and injured. In its report of March 2024, the Commission of Inquiry recorded that there had been over 10,000 civilian deaths and around 20,000 injured in the context of the hostilities in Ukraine since February 2022, although it noted that the numbers were likely to be

higher. The vast majority of these deaths and injuries were the result of attacks with explosive weapons (C.VI.9 and 26).

344. The March 2023 Commission of Inquiry report noted that the armed conflict "has caused a population displacement not seen in Europe since the Second World War" (C.III.20; see also C.IV.95 and 776). The Commission of Inquiry reports refer to eight million refugees from Ukraine in other European countries, and a further five million internally displaced persons (C.III.20 and IV.95 and 776). The reports describe the extensive damage and destruction to cities and villages – including homes, hospitals and schools – caused by the widespread military attacks, which has resulted in a lack of access to basic necessities. Two of the most prominent examples identified by the Commission of Inquiry were the 9 March 2022 attack on Maternity Ward No. 3 in Mariupol and the shelling of the Mariupol drama theatre on 16 March 2022 (C.IV.127 and 142). The Commission of Inquiry referred to nearly 18 million people in Ukraine in need of humanitarian assistance (C.III.20 and IV.96).

345. The March 2024 Commission of Inquiry report examined the events surrounding the siege of Mariupol (C.VI.13-24). The report recorded that residents had seen buildings and houses collapsing under the shelling, in some instances killing and injuring loved ones, and whole areas of the city in ruins (C.VI.14). Witnesses had seen the Russian armed forces fire at a hospital, leading to civilian casualties and damage to the building, in an attack assessed by the Commission of Inquiry as "indiscriminate and constitut[ing] the war crime of excessive incidental death, injury or damage" (C.VI.17). The report explained:

> "20. As the fighting intensified, energy facilities and supply lines were damaged. Satellite imagery shows damage to 11 power stations. According to residents from Mariupol, water, power and heating went off on 2 March 2022, one day after the siege started. A few days later, gas was no longer available. Around mid-March 2022, water and food also became scarce. Shops that could open had limited products. Despite the ongoing shelling, residents had no choice but to go outdoors to look for food and to cook. Some were killed and injured as a result. Residents stated that they were forced to melt snow or to drink water from radiators and boilers. Witnesses described suffering intensely from the cold. Living conditions were particularly harsh in crowded shelters in the basements of hospitals and cultural or administrative buildings, where dozens of people sought refuge, often without basic necessities."

346. The March 2024 Commission of Inquiry report noted (C.VI.9):

> "Civilians have been forced to cope with the loss of loved ones, homes and other irreplaceable possessions, massive displacement, constant fear and critical shortages, all of which have had a deep impact on their enjoyment of basic human rights."

347. As explained above, on 5 March and 24 June 2024 a pre-trial chamber of the ICC issued warrants of arrest for four individuals (then Defence Minister Mr Shoigu and three other senior figures in the Russian armed forces) suspected of bearing responsibility for the war crime of directing attacks at civilian objects, the war crime of causing excessive

incidental harm to civilians or damage to civilian objects, and the crime against humanity of inhumane acts caused by missile strikes carried out by the Russian armed forces against the Ukrainian electric infrastructure from at least 10 October 2022 until at least 9 March 2023 (see paragraphs 113-114 above). The pre-trial chamber also determined that the alleged campaign of strikes constituted a course of conduct involving the multiple commission of acts against a civilian population carried out pursuant to a State policy. There were, therefore, reasonable grounds to believe that the suspects had intentionally caused great suffering or serious injury to body or to mental or physical health, thus bearing criminal responsibility for the crime against humanity of other inhumane acts (see paragraph 114 above).

348. The Court is ever mindful of its responsibility, pursuant to Article 19 of the Convention, to ensure the observance of the engagements undertaken by the High Contracting Parties in the Convention and its Protocols. The Convention is not merely a declaration of rights. It establishes a European system for the collective enforcement of the rights it contains with the aim, as attested to by both the Preamble to the Convention and the *travaux préparatoires*, of securing justice and peace on a continent twice ravaged by war in the twentieth century. It is clear from the evidence available that the military attacks by Russia on Ukrainian territory resulted in some of the most egregious and extensive alleged human rights violations arising in this armed conflict. In its preliminary observations, the Court has drawn attention to the threat posed to peaceful co-existence within Europe by the acts and intentions of the Russian Federation (see paragraph 177 above). It emphasised the critical importance of the underlying objectives of the Convention to the Court's interpretation of its provisions (see paragraph 179 above).

349. The full-scale invasion of Ukraine, a High Contracting Party, by Russia, another High Contracting Party, which commenced on 24 February 2022 therefore marked a clear watershed moment in the history of the Council of Europe and the Convention. The Parliamentary Assembly and the Committee of Ministers reacted decisively to these events, swiftly excluding the Russian Federation from the Council of Europe as a consequence of its serious violation of its obligations under Article 3 of the Statute of the Council of Europe through its aggression against Ukraine (see paragraphs 80-89 above). In the face of such an unprecedented and flagrant attack on the fundamental values of the Council of Europe and the object and purpose of the Convention, the Court must reflect anew on the exercise of its own jurisdiction under Article 32 to interpret and apply the Convention and its Protocols with a view to contributing to the preservation of peace and security in Europe through the effective protection and enforcement of the human rights of those whom the Convention is intended to protect. It is significant in this respect that the majority of High Contracting Parties have referred expressly, in their submissions as third parties in this case, to their support for accountability for all violations of international law by the Russian Federation

and for efforts to hold the Russian Federation accountable under applicable international legal frameworks (see paragraph 157 above). They also acknowledged that the Court's careful examination of the facts surrounding the downing of flight MH17 in order to determine whether extraterritorial jurisdiction arose (see *Ukraine and the Netherlands v. Russia* (dec.), cited above, §§ 701-06) reflected the application of the principles in its case-law to the specific facts of that incident (see paragraph 233 above).

(b) The principles governing extraterritorial jurisdiction in the case of armed conflict and the Court's recent approach

350. The general principles concerning extraterritorial jurisdiction were set out at some length in the Court's admissibility decision in *Ukraine and the Netherlands v. Russia* ((dec.), cited above, §§ 552-75). These principles were formulated and subsequently developed over a number of years in the context of the examination of specific cases by the former Commission and, later, the Court. It is important to note that these cases frequently arose against a backdrop of armed conflict. Indeed, some of the earliest developments in the case-law in this area occurred in cases concerning alleged violations arising from the Turkish invasion of 1974 and its subsequent occupation of northern Cyprus; and further refinement of the principles in later years also took place in this context (see the case-law cited in paragraph 167 above).

351. It can be seen from an analysis of that line of cases that the spatial model of jurisdiction emerged where, by the actions of its armed forces or the armed forces of a local administration subordinate to it, a High Contracting Party exercised effective control over an area outside its national territory. The nature of the controlling State's jurisdiction in such cases is territorial, in the sense that it has power and authority over the territory as a whole. This spatial approach to jurisdiction has been applied by the Court in a number of cases where an area within the sovereign territory of one High Contracting Party has been removed from its effective control by the direct or indirect (via a local subordinate administration) military action of another High Contracting Party, which has thus acquired effective control over the territory in the place of the sovereign State (see notably *Ilaşcu and Others*; *Catan and Others*; *Mozer and Others*; *Chiragov and Others*; *Georgia v. Russia (II)*; and *Ukraine v. Russia (re Crimea)*; all cited above). As a consequence of the controlling State's domination over the territory as a whole, that State has the responsibility under Article 1 to secure, within the area under its control, the entire range of substantive rights set out in the Convention and those additional Protocols which it has ratified (see *Al-Skeini and Others*, cited above, § 138).

352. However, the Court has not only considered jurisdictional issues in the context of acquisition by one High Contracting Party of control over the territory of another High Contracting Party. It has also examined cases concerning military action by High Contracting Parties, outside any such

context. In its decision in *Banković and Others v. Belgium and Others* ((dec.) [GC], no. 52207/99, §§ 59-61, ECHR 2001-XII), involving an alleged violation of Article 2 on account of a single NATO airstrike in the Federal Republic of Yugoslavia, the Court underlined that "the jurisdictional competence of a State is primarily territorial" and that extraterritorial jurisdiction was exceptional. It concluded that no such jurisdiction arose in that case. The Court later explained that *Banković and Others* had excluded jurisdiction in respect of "an instantaneous extraterritorial act, as the provisions of Article 1 did not admit of a 'cause and effect' notion of 'jurisdiction'" (see *Medvedyev and Others*, cited above, § 64).

353. The Court has subsequently clarified that the use of force by State agents operating abroad, including in situations of armed conflict, might bring the individual thereby brought under the control of the State's authorities within the jurisdiction of that State in certain circumstances (see *Al-Skeini and Others*, cited above, § 136). This is the case where State agents have taken the victim into their custody (see, for example, *Al-Saadoon and Mufdhi v. the United Kingdom* (dec.), no. 61498/08, §§ 86-89, 30 June 2009; *Al-Jedda v. the United Kingdom* [GC], no. 27021/08, § 86, ECHR 2011; and *Hassan v. the United Kingdom* [GC], no. 29750/09, §§ 76-80, ECHR 2014). There may also be Article 1 jurisdiction even in the absence of detention in cases concerning isolated and specific acts involving an element of proximity (see the cases cited in *Georgia v. Russia (II)*, cited above, §§ 120-23 and 131-32) or the exercise of physical power and control over the victim's life in a situation of proximate targeting (see *Carter*, cited above, §§ 150 and 158-161). The nature of the State's jurisdiction in these cases is personal, in that it involves power and authority over the individual victims themselves. Reflecting the nature of its jurisdiction in such cases, the respondent State is under an obligation pursuant to Article 1 to secure to the individual the Convention rights and freedoms that are relevant to the situation of that individual (see *Al-Skeini and Others*, cited above, § 137).

354. The Court has also recognised extraterritorial jurisdiction to exist on a personal basis in cases involving the use of force by State agents in a context where the High Contracting Party to which the actions of those agents are attributable has assumed responsibility for security in an area outside its own sovereign territory (see *Al-Skeini and Others*, cited above, §§ 143-50, and *Jaloud*, cited above, §§ 149-52). In *Al-Skeini and Others*, the Court noted that the United Kingdom, which held the status of occupying Power in Iraq, had assumed there the exercise of some of the public powers normally to be exercised by a sovereign government and had, in particular, assumed authority and responsibility for the maintenance of security in south-east Iraq (cited above, § 149). In these exceptional circumstances, the Court considered that, through its soldiers engaged in security operations in Basra during the period in question, the United Kingdom had exercised authority and control over individuals killed in the course of such security operations, giving rise

to Article 1 jurisdiction (ibid.). In *Jaloud*, the Court found on the facts of the case that the Netherlands, which unlike the United Kingdom did not have the status of occupying Power in Iraq, had nonetheless assumed responsibility for providing security in a particular area in south-eastern Iraq in the context of its role in the multinational force established to restore stability and security (cited above, § 149). In these circumstances, it had exercised its jurisdiction within the limits of its mission and for the purpose of asserting authority and control over persons passing through a checkpoint manned by personnel under its command and direct supervision (ibid., § 152). In these cases, the authority and control over the victim necessary to establish Article 1 jurisdiction resulted from the use of force within the broader context of an assumption of authority and responsibility across territory falling short of the "effective control" necessary to give rise to Article 1 jurisdiction on a spatial basis.

355. Applying these principles to the facts in *Georgia v. Russia (II)*, the Court attached decisive weight to the reality of the armed confrontation and fighting between enemy military forces seeking to establish control in a context of chaos over the areas concerned in that case, and found that Russia did not have jurisdiction in respect of the military operations in Georgia during the five-day active phase of hostilities (cited above, §§ 137-38).

(c) Jurisdiction in respect of military attacks in 2014-2022 in the present case

356. The Court has already found that by 11 May 2014, the separatist operation as a whole was being managed and coordinated by the Russian Federation (*Ukraine and the Netherlands v. Russia* (dec.), cited above, § 693). It broadly accepted the allegations of the applicant Ukrainian Government as to the high number of Russian troops deployed in the border regions of the Russian Federation in the spring of 2014, in preparation for further deployment to eastern Ukraine (ibid., § 662). It found that the Russian Federation had provided training in camps near the border to Russian soldiers prior to their deployment in eastern Ukraine (ibid., § 644). It further found it established that senior members of the Russian military had been present in command positions in the separatist armed groups and entities from the outset (ibid., § 611). Mr Girkin, in particular, had played a central role in planning military strategy and coordinating the separatist armed forces, including between the "DPR" and the "LPR" (ibid., § 618). The Court was further persuaded that the political hierarchy within the Russian Federation had exercised "significant influence over the separatists' military strategy" (ibid., § 619). The evidence before the Court enabled it to conclude that orders and instructions had been received from the Russian Federation on a range of strategic issues (ibid., § 621). The evidence also supported the Court's conclusion that from the earliest days of the separatist administrations in eastern Ukraine, the Russian Federation had provided weapons and other

military equipment on a significant scale, including the Buk-TELAR used to shoot down flight MH17 (ibid., §§ 632 and 639).

357. The evidence summarised above, to which the Court referred in detail at the separate admissibility stage of the present proceedings, clearly demonstrates the coordination of the different aspects of the Russian operations which started in spring 2014 in eastern Ukraine by the Russian authorities. None of the evidence subsequently provided to the Court or obtained of its own motion provides any basis on which this conclusion could be questioned. No explanation or account of its military decisions and actions during this period has been provided by the respondent State. The Court concludes that the Russian operations in eastern Ukraine which began in spring 2014 were carefully planned and orchestrated from Russia and were executed under Russian instructions by Russian troops in border regions and by armed separatists in the "DPR" and "LPR" acting under Russian authority and control.

358. The immediate purpose of the military attacks was to enable the respondent State to acquire and to retain effective control over Ukrainian territory and to remove the power and authority of the Ukrainian Government over the areas concerned. As the Court observed in its admissibility decision, the separatists had acquired control over vast swathes of land in the Donetsk and Luhansk regions in April and early May 2014. However, that control was gradually being lost over the course of the summer of 2014 in the face of an increasingly professional and organised Ukrainian military response (ibid., § 605). The provision of artillery equipment to the separatists was in direct response to requests from them to avoid defeat or the substantial reduction of separatist strongholds in eastern Ukraine (ibid., § 632). It can be inferred from their timing and the critical situation on the ground that the direct artillery support provided by Russian troops was aimed at securing this same objective (see in particular § 651 of the Court's admissibility decision and the evidence to which it refers).

359. Throughout the ensuing years, while the contact lines were largely stable, military attacks continued. Aside from regular exchanges of fire across the line of hostilities, there were also periods of intense fighting in which military attacks were launched in support of the separatists' attempts to retain or acquire control over Ukrainian territory. For example, in early 2015 increased hostilities began around Debaltseve, in the course of which the separatists acquired control of the city (ibid., § 78). In January and February 2017 there was an increase in the intensity of hostilities around Avdiivka and Makiivka (ibid., § 83). This remained the state of affairs until 2021, when the Russian Federation began deploying significant numbers of troops and military equipment near the border with Ukraine, ostensibly for the purpose of conducting large-scale military exercises (see paragraphs 59-60 above).

360. The start of the Russian invasion of Ukraine on 24 February 2022 represented the continuation and escalation of the strategy pursued by Russia

since 2014. The lengthy preparation phase, involving the prior deployment of troops and military material, and the scale of the invasion are clearly indicative of the degree of planning on the part of the Russian Federation. The move from covert to overt operations brought transparency and clarity as to the views and intentions of the Russian leadership and, in consequence, the underlying, long-term objectives of the Russian operations in Ukraine. These objectives were no less than the destruction of Ukraine as an independent sovereign State through the annexation of Ukrainian territory and the subjugation of the rest of Ukraine to Russian influence and control (see paragraph 174 above). These objectives, as already explained above, are wholly at odds with the Council of Europe peace project based on democracy, human rights and the rule of law (see paragraph 177 above).

361. The reality of the extensive, strategically planned military attacks perpetrated by Russian forces across Ukrainian sovereign territory between 2014 and 2022, carried out with the deliberate intention and indisputable effect of assuming authority and control, falling short of effective control, over areas, infrastructure and people in Ukraine, is wholly at odds with any notion of chaos (compare *Georgia v. Russia (II)*, cited above, §§ 137-38, summarised at paragraph 355 above). The Court concludes that in planning and in executing, directly or via the armed forces of the "DPR" and "LPR", its military attacks across Ukrainian territory with a view to acquiring and retaining effective control over areas of sovereign Ukrainian territory and thereby removing those areas from the effective control of Ukraine, the Russian Federation assumed a degree of responsibility over those individuals affected by its attacks (see paragraph 354 above). In these circumstances, the Russian Federation exercised, through its *de jure* and *de facto* armed forces, authority and control over individuals affected by its military attacks up until 16 September 2022. Such individuals therefore fell within the jurisdiction of the Russian Federation for the purposes of Article 1 of the Convention. It follows that the Russian Federation was under an obligation pursuant to Article 1 to secure to individuals affected by its military attacks the Convention rights and freedoms relevant to their situation (see, *mutatis mutandis*, *Al-Skeini and Others*, cited above, § 137).

4. Attribution

362. Acts and omissions of the Russian military are acts of Russian State organs and are plainly attributable to the respondent State.

363. In its admissibility decision, the Court has already explained that the acts and omissions of separatists in the areas under the effective control of the Russian Federation were attributable to that State (*Ukraine and the Netherlands v. Russia* (dec.), cited above, § 697). In this respect, the Court underlines that, having regard to the wealth of evidence before it, it is satisfied that all the armed hostilities undertaken by the separatists reflected an overall strategy and tactics wholly devised by the Russian Federation. There can,

moreover, be no doubt that direct and critical combat support was provided by the respondent State from the very earliest stages of the armed conflict (see paragraphs 356 and 358 above). The reality of the relationship between the separatists on the one hand and the respondent State on the other was such that, whatever their legal status, the separatists were completely dependent on military, political and economic support from the respondent State to carry out their activities and were, ultimately, a mere instrument of that State. It is for these reasons that the Court was persuaded that, from 11 May 2014, the relationship of the separatists to the Russian Federation was so much one of dependence on the one side and control on the other that it would be right to equate the separatists in the "DPR" and the "LPR" with *de facto* organs of the Russian Federation, within the meaning of Article 4 ARSIWA. Any other solution would allow States to avoid their Convention obligations by choosing to act through entities whose supposed independence is purely fictitious.

364. The applicant Ukrainian Government have alleged that the overall command of Russia's "hybrid forces" in eastern Ukraine was under the direct control of the General Staff of the Russian armed forces (*Ukraine and the Netherlands v. Russia* (dec.), cited above, § 586). The Court observes that once the armed separatists were formally integrated into the military hierarchy of the Russian armed forces, they had the legal status of State organs and were, accordingly, from that date *de jure* organs of the respondent State within the meaning of Article 4 ARSIWA. In view of its finding that prior to that date the separatists were *de facto* organs of the Russian Federation, it is not necessary for the Court to make any finding as to the date on which this transition occurred.

5. Conclusion

365. The Court already found in its admissibility decision that the respondent State exercised Article 1 jurisdiction over areas under separatist control in eastern Ukraine from 11 May 2014 until at least 26 January 2022 (*Ukraine and the Netherlands v. Russia* (dec.), cited above, §§ 695-96).

366. The Court now further concludes that the Article 1 jurisdiction of the respondent State has also been established in the present case, up until 16 September 2022, in respect of the complaints of administrative practices in areas under separatist control after 26 January 2022, the complaints of administrative practices in the Russian Federation and in areas in the hands of the Russian armed forces from 24 February 2022, and the complaints of an administrative practice of military attacks in violation of the Convention from 2014 to 2022. It accordingly dismisses the preliminary objection raised by the respondent Government in this regard (see paragraph 340 above). All acts and omissions of the Russian armed forces and the armed separatists of the "DPR" and the "LPR" are attributable to the Russian Federation.

VIII. RELATIONSHIP BETWEEN THE CONVENTION AND INTERNATIONAL HUMANITARIAN LAW

A. Introduction

367. At the separate admissibility stage of the present proceedings, the Court was asked to consider the relationship between the Convention and international humanitarian law in the context of an objection by the respondent Government that it lacked jurisdiction *ratione materiae* to deal with the complaints made. The objection was based on the contention that some of the complaints in particular were governed by international humanitarian law to the exclusion of the Convention (*Ukraine and the Netherlands v. Russia* (dec.), cited above, §§ 707-11). The arguments focussed on the incompatibility of the Convention with international humanitarian law in respect of the relevant complaints. It is for this reason that the Court, when dismissing the objection, commented on the existence or otherwise of any apparent conflict between the relevant provisions of international humanitarian law and the Convention provisions (ibid., § 720).

368. In their written submissions to the Grand Chamber at the present stage of the proceedings, the applicant Governments and third-party interveners invited the Court to clarify its approach to the interpretation of the provisions of the Convention in situations of armed conflict and the relevance in this respect of provisions of international humanitarian law, particularly in circumstances like those arising in the present case where no derogation under Article 15 of the Convention has been lodged.

B. The parties' submissions

1. The applicant Ukrainian Government

369. The applicant Ukrainian Government underlined that the Court had consistently applied the Convention to alleged violations which had occurred in the context of armed conflict. The only limited exception to this rule arose when a State exercised the specific power under Article 15 of the Convention to derogate from obligations to the extent strictly required by the exigencies of "war or other public emergency threatening the life of the nation". Russia had not purported to derogate under Article 15 in the present case.

370. Where the alleged violations of the Convention occurred in the context of an armed conflict, the Court could draw on international humanitarian law as authoritative guidance for both contextualising and interpreting the obligations under the Convention. The Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field ("GC I"), the Geneva Convention relative to the Treatment of Prisoners of War ("GC III") and the Geneva Convention relative to the Protection of Civilian Persons in Time of War ("GC IV"), of 12 August 1949,

as well as the Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I), of 8 June 1977 ("AP I"), all of which reflected or codified customary international law and to which both Ukraine and Russia were parties, were applicable in this case.

371. Referring to the Court's case-law, the applicant Ukrainian Government submitted that the starting point was the Court's consistent practice of interpreting the Convention in the light of the rules set out in the Vienna Convention, notably its Article 31 § 3 (B74). Second, where there was no subsequent agreement between the parties (Article 31 § 3 (a) of the Vienna Convention), the Court would look to subsequent practice (Article 31 § 3 (b) of the Vienna Convention). Consistent practice subsequent to the parties' ratification of the Convention could be taken as establishing their agreement not only as regards its interpretation but even to modify the text of the Convention. Third, in line with Article 31 § 3 (c) of the Vienna Convention, the Convention had to be interpreted, so far as possible, in harmony with international humanitarian law. This exercise had to be undertaken separately for each aspect of the case and each Convention Article alleged to have been breached. Fourth, the ICJ had consistently held that the protection afforded by human rights conventions and that offered by international humanitarian law co-existed in situations of armed conflict (citing the case-law summarised at B101, 104 and 111 and General Comment nos. 31 and 36 of the UN Human Rights Committee at B83-84 and 92-96).

372. The applicant Ukrainian Government invited the Court to use the rules and standards of international humanitarian law as a tool for interpreting the alleged violations of the Convention that they invoked. They underlined that this position was supported by the twenty-six intervening Governments (see paragraphs 376-381 below). The common pleading of the intervening Governments had also emphasised that if certain conduct which was incompatible with the Convention was also in breach of international humanitarian law, such conduct obviously fell beyond the scope of what was allowed by international humanitarian law. It logically followed that no norm of international humanitarian law would prevent a finding of a violation of the Convention in such a case. As regards the submissions of the United Kingdom concerning the correct analysis in cases of conflict between international humanitarian law and international human rights law (see paragraph 397 below), the applicant Ukrainian Government underlined that the Court was not required to address this scenario in the present case. They drew attention to the United Kingdom's position that it was plain that Russia had conducted its military operations in Ukraine in flagrant breach of the basic standards imposed by international humanitarian law (see paragraph 394 below).

2. The applicant Dutch Government

373. The applicant Dutch Government referred to the methodology developed by the Court for deciding cases involving the simultaneous applicability of international humanitarian law and the Convention. Pursuant to this methodology, the Court was required to examine the interrelation between the two regimes with regard to each aspect of the case and each Convention Article alleged to have been breached.

374. The question here was whether Article 2 came into conflict with the relevant rules of international humanitarian law. The applicant Dutch Government argued that in the present case, the rules of international humanitarian law and the Convention pointed in the same direction: the attack on flight MH17 was unequivocally unlawful as it was prohibited by both the Convention and international humanitarian law. Both the Convention and international humanitarian law required that precautionary or preventive measures be taken. International humanitarian law required that States comply with rules regarding distinction, precaution and proportionality when engaging in military action. The downing of flight MH17 had clearly violated these rules. There was therefore no conflict between the two bodies of law in respect of this complaint.

3. The respondent Government

375. The respondent Government did not take part in the present proceedings on the merits of application nos. 8019/16, 43800/14 and 28525/20 and the admissibility and merits of application no. 11055/22 (see paragraph 142 above). Although they argued at the separate admissibility stage that some of the complaints in particular were governed by international humanitarian law to the exclusion of the Convention (see paragraph 367 above), they made no submissions as to how the Court should approach its interpretative task in the event that the complaints identified fell within the scope of the Court's review.

4. Third-party submissions

(a) Governments

(i) Common pleading of all twenty-six Governments

376. In their common pleading and common oral submission, the twenty-six intervening Governments submitted that in cases that took place in the context of an armed conflict, the Court had to consider international humanitarian law in the interpretation and application of the Convention. They referred to the case-law of the ICJ (B101-08) concerning the relationship between international human rights law and international humanitarian law. The ICJ had described international humanitarian law as the *lex specialis* in armed conflict.

377. The Court's task, however, was to rule whether States had violated the Convention. It had previously explained that "the Convention cannot be interpreted in a vacuum and should so far as possible be interpreted in harmony with other rules of international law of which it forms part", including international humanitarian law. This was consistent with the principle of systemic integration codified by Article 31 § 3 (c) of the Vienna Convention (B74). In cases that took place in the context of an international armed conflict, international humanitarian law had to be taken into account. This followed from the very nature of international humanitarian law as the common and widely shared understanding as to the rules and principles that governed the conduct of parties to an armed conflict.

378. The twenty-six interveners referred to the Court's approach in *Georgia v. Russia (II)* (cited above, § 95), where it had examined "the interrelation between the two legal regimes with regard to each aspect of the case and each Convention Article alleged to have been breached" and ascertained whether there was a conflict between the provisions of the Convention and the rules of international humanitarian law. This approach had been confirmed in *Hanan v. Germany* ([GC], no. 4871/16, §§ 211-29 and in particular at § 224, 16 February 2021) where the Court had assessed whether the obligation to investigate under Article 2 of the Convention came into conflict with international humanitarian law. In cases where no conflict existed between the Convention and international humanitarian law, the Convention standards had to be interpreted in the light of the relevant applicable rules of international humanitarian law. Thus, international humanitarian law was central in determining what the Convention required in a situation of armed conflict, to which international humanitarian law applied. In cases in which there might be considered to be a real difference between the Convention and the rules of international humanitarian law, the Court had provided guidance in *Hassan* (cited above, notably at § 104).

379. The intervening Governments submitted that the approach described in the above paragraphs was consistent with international law. The principle *lex specialis derogat legi generali* could assist in resolving a normative conflict between two sources of international law and, according to the ICJ case-law, regulated the relationship between rules of international humanitarian law and of international human rights law. The International Law Commission had explained that in the case of a normative conflict between two primary rules of international law – *in casu*, the rules of international humanitarian law and the Convention – the principle *lex specialis derogat legi generali* provided that the more specific rule *(lex specialis*) took precedence over the more general rule (*lex generalis*) (B332-34). Such analysis was to be conducted on a case-by-case basis.

380. In any event, if certain conduct which was incompatible with the Convention also amounted to a breach of international humanitarian law, including war crimes, such conduct obviously fell beyond the scope of what

was allowed by international humanitarian law. Consequently, no norm of international humanitarian law prevented a finding of a Convention violation in such a case.

381. Finally, the common pleading emphasised that the respondent State could not merely assert compliance with international humanitarian law to resist a finding of breach of the Convention in respect of conduct that was incompatible with the Convention. It would need to be established that its conduct in the specific situation had complied with the relevant rules of international humanitarian law applicable in the case at hand, in particular the principles of distinction and proportionality, that the necessary precautions had been taken in relation to the use of force, and that protected persons had been treated in accordance with international humanitarian law standards.

(ii) Further submissions of Belgium, Lithuania, the Netherlands, Poland, Slovakia and Spain

382. The Governments of Belgium, Lithuania, the Netherlands, Poland, Slovakia and Spain underlined that even in situations of international armed conflict, the safeguards under the Convention continued to apply. The Court had developed a methodology for deciding cases involving the simultaneous applicability of international humanitarian law and the Convention. This methodology hinged on the question whether a provision of the Convention, in the circumstances of a specific case, came into conflict with a rule of international humanitarian law.

383. The six Governments further urged the Court, when applying the maxim *lex specialis derogat legi generali*, to take account of the different functions of this generally accepted technique: as a norm for conflict resolution; and as an interpretative tool (i.e. as a supplementary means of interpretation in accordance with Article 32 of the Vienna Convention – see B75). As a norm for conflict resolution, *lex specialis* provided for the precedence of one norm over another. As an interpretative tool, it applied on a norm-by-norm basis, meaning it did not displace a legal regime as such: it had to be applied contextually, so that even during armed conflict, the precise factual and legal context determined whether international humanitarian law or the Convention was *lex specialis*; and it had to be applied in a nuanced manner, meaning that one regime did not displace the other, nor did a norm fully displace another if it was found to be *specialis*. It merely provided for the precedence of one norm over the other in that specific situation and for that specific incident. In order to decide which norm functioned as *lex specialis*, regard had to be had to a contextual element (the relevance or appropriateness of a rule to regulate the specific situation) and a purely legal element (the wording of the norm itself, particularly how explicit, direct and precise the provision was). The contextual element of the *specialis* determination indicated whether rules were designed to govern a situation. This depended on: (1) whether the situation concerned one of international

armed conflict, non-international armed conflict or occupation; (2) whether there was active fighting ongoing; (3) the status of individuals concerned and their activities; and (4) the level of control the State had over the situation. Once it had been decided, based on these factors, whether international humanitarian law or international human rights law provided the more specific norm, the *lex specialis* then took precedence over the conflicting *lex generalis*.

384. Five Governments (Belgium, Lithuania, the Netherlands, Slovakia and Spain) gave the following examples to illustrate when a normative conflict between a rule of international humanitarian law and a Convention provision could emerge. First, this could occur in the context of the strict rules under Article 2 of the Convention, safeguarding the right to life, and the more permissive rules of international humanitarian law (killing of combatants and fighters, incidental loss of civilian life resulting from attacks directed against lawful military objectives, and the international humanitarian law obligation to investigate alleged violations). Second, it could arise in the context of Article 3 of the Convention, as the Third Geneva Convention required the repatriation of POWs after hostilities ended, where such individuals when repatriated would run a risk of treatment contrary to Article 3. Third, it could occur in the context of detention, as the Court had recognised in *Hassan* (cited above). Fourth, it could arise in the context of occupation, where international humanitarian law required occupying States to respect, "unless absolutely prevented", the laws in force in the country, and to leave in place "penal laws ... with the exception that they may be repealed or suspended by the Occupying Power in cases where they constitute a threat to its security or an obstacle to the application of [Geneva Convention IV]". A conflict could arise if such local legislation was in conflict with the Convention.

(iii) Further separate submissions

(α) Croatia

385. The Government of Croatia provided extensive details of case-law of the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) relevant to the application of international humanitarian law (see B143-44, 146 and 159-60). They submitted that the judgments of the ICTY and ICTR illustrated the need for full respect by those engaged in armed conflict for the fundamental norms of international humanitarian law. Foremost among those norms was that which required the protection of people not taking an active part in hostilities. The norms were based on values that were fundamental for every human being, namely the integrity of the individual, the right to life and the right to be protected from fear, pain and violence. As such, they were applicable without distinction on any ground including ethnicity, nationality and religion.

(β) France

386. The Government of France underlined that international humanitarian law and international human rights law were not mutually exclusive collections of law. They referred to the content of the common pleading as regards the interpretation of the Convention in times of conflict in the absence of a conflict of norms with international humanitarian law (see paragraph 378 above). Where such a conflict arose, the Court applied the rule *lex specialis derogat legi generali*, in accordance with the principles outlined in the common pleading (see paragraph 379 above). Priority had therefore to be given to the law more specific to the situation concerned.

387. The identification of the *lex specialis* depended on the situation in question and the general context. In *Hassan* (cited above, §§ 103-04) the Court had confirmed the role of international humanitarian law as *lex specialis* in respect of facts arising in armed conflicts. This was the correct approach, and was consistent with the Court's approach of interpreting Convention provisions in times of armed conflict taking into account the practical reality of military deployments (citing *Georgia v. Russia (II)*, cited above, §§ 326-27).

388. The Court had accepted that, in accordance with State practice, the absence of a formal derogation under Article 15 did not prevent it from taking into account the context and the rules of international humanitarian law (citing *Hassan*, § 103 and *Varnava and Others*, § 185, both cited above). This coherent relationship between the Convention and international humanitarian law guaranteed a certain judicial security to States when conducting military operations and strengthened the application of international humanitarian law and the principles that it had in common with the Convention in the very difficult situation of armed conflict. Article 31 § 3 (c) of the Vienna Convention (B74) was also relevant in this respect. In this way, a relationship of mutual enlightenment could exist between international humanitarian law and human rights.

389. The French Government further referred to the "Martens clause", which was to the effect that military operations linked to an armed conflict which did not fall under one of the conventional provisions of international humanitarian law remained subject to customary rules and fundamental principles of international humanitarian law.

390. A detailed analysis was necessary to determine the existence of any conflict of norms between international humanitarian law and the Convention provisions. The question of a conflict of norms was susceptible to be raised in respect of several rights and freedoms guaranteed by the Convention. As regards Article 2, the taking into account of international humanitarian law even in the absence of a formal derogation under Article 15 implied that a violation of the right to life could not be found if the death resulted from a lawful act of war. However, deliberate targeting of those protected by international humanitarian law or attacks expected to cause excessive damage

compared to the concrete and direct military advantage constituted unlawful acts of war which could lead to a finding of a violation of Article 2.

391. The French Government concluded that having regard to the seriousness of the facts complained of by Ukraine and the application of the principles outlined above, a large number of the provisions invoked were likely to have been violated. They reaffirmed their attachment to the rights and freedom guaranteed by the Convention as well as the fight against any impunity.

(γ) Poland

392. The Government of Poland submitted that despite being separate legal regimes, international humanitarian law and the Convention could apply to the same persons, on the same territory and at the same time, as confirmed by the ICJ. International humanitarian law could and should influence the Court's assessment of States' substantive obligations. This Court was fully qualified to adjudicate in complex factual circumstances in the context of the relationship between international humanitarian law and the Convention.

393. A detailed analysis was necessary when determining whether there was a normative conflict between a rule of international humanitarian law and a Convention provision. The Government of Poland provided extensive descriptions of and references to the applicable international humanitarian law provisions, which have been summarised in Annex B (B131-85).

(δ) United Kingdom

394. The Government of the United Kingdom emphasised, and invited the Court to find, that Russia had conducted its military operation in Ukraine in flagrant breach of the basic standards imposed by international humanitarian law. Interpreting the Convention with reference to international humanitarian law would not, therefore, lead to the conclusion that the respondent State had acted compatibly with the Convention. It was, however, important to follow the correct legal analysis as a matter of practice because Contracting States might in future participate in legitimate armed conflict such as humanitarian interventions or peacekeeping operations under the auspices of the UN or NATO. It was also important as a matter of principle because it properly located the analysis squarely within the international body of law specifically designed and agreed by a wide range of States (including the Contracting States) to regulate this context.

395. The United Kingdom Government's first and foundational submission was that, insofar as Article 1 jurisdiction arose in an international armed conflict, the Convention should be interpreted and applied in accordance with international humanitarian law, which was the *lex specialis*. They referred to the approach of the ICJ in its *Legality of the Threat or Use of Nuclear Weapons* advisory opinion (B101-02), where the court had had

recourse to international humanitarian law in determining whether a deprivation of life was "arbitrary", within the meaning of Article 6 of the ICCPR. They further referred to the approach of the UN Human Rights Committee, as reflected in their General Comment nos. 31, 35 and 36 (B83-84, 92-96 and 98-100). The recognition of international humanitarian law as the *lex specialis* was soundly based. Moreover, the key rules and principles of international humanitarian law represented a common and widely shared understanding among nations.

396. The Court had also recognised international humanitarian law as the *lex specialis* in international armed conflicts. It had explained that the Convention was to be interpreted in harmony with other rules of international law of which it formed part, pursuant to Article 31 § 3 (c) of the Vienna Convention (B74). This included the Geneva Conventions of 1949 and the Hague Regulations. The United Kingdom Government further pointed to the practice of Contracting States not to make derogations under Article 15 of the Convention in respect of extraterritorial military missions. This was mirrored by State practice in respect of the ICCPR. The Court was entitled to take this into account, pursuant to Article 31 § 3 (b) of the Vienna Convention (B74). Accordingly, the lack of a formal derogation did not prevent the Court from taking account of the context and provisions of international law when interpreting and applying the Convention to an international armed conflict (citing *Hassan*, cited above, § 103).

397. The interrelationship between international humanitarian law and the Convention had to be examined in respect of each aspect of any application and each Convention Article alleged to have been breached (citing *Georgia v. Russia (II)*, cited above, § 95). When conducting that examination, it had to be clearly recognised that international humanitarian law was the primary source of rights and obligations in an international armed conflict. The idea of primacy, and indeed the concept of *lex specialis*, had important practical, analytical effects. They meant that international humanitarian law was the first, and in many instances the only appropriate, port of call in seeking to identify the nature of the substantive Convention right in question. Where there was a direct conflict between international humanitarian law and the principles under the Convention, then the former had to take precedence.

398. Approaching the analysis in this way shaped the Convention right. Thus, for example, the actual terms of Article 2 were designed and formulated to regulate the taking of life by the State outside the context of military operations. In order to apply Article 2 in an international armed conflict, there had to be standards implied into Article 2. International humanitarian law provided those standards. Likewise Article 5 had to accommodate the inevitable situations of detention that arose in an international armed conflict (referring to *Hassan*, cited above, §§ 104-06). The strength of the interpretive obligation to apply international humanitarian law as the *lex specialis* meant that the express wording of Article 5 § 1 was to be interpreted to include a

new ground of detention pursuant to the Geneva Conventions. *Hassan* had not been wrongly decided, and was in line with the approach of the Inter-American Commission on Human Rights in its ruling in *Coard et al. v. United States* (Report No. 109/99 Case 10.951 September 29, 1999, at B120-21). Indeed, if Article 1 jurisdiction covered extraterritorial military action, it was vital that armed forces could detain opposing combatants, consistently with the Geneva Conventions. It was plainly more humane, and consistent with the purposes of the Convention, for a State to be able to detain combatants where operationally possible, rather than kill them.

399. The United Kingdom Government urged very considerable caution before importing approaches and principles from the Convention jurisprudence into an area covered by international humanitarian law. It would rarely be appropriate to add to the rules or principles of international humanitarian law by using the Convention to layer additional rights and obligations on the States party to an armed conflict. First, the Geneva Conventions of 1949 enjoyed – as recognised by the Court in *Hassan* (cited above, § 102) – "universal ratification". They reflected the common and widely-shared understanding of States as to the rules and principles that governed the conduct of parties to an international armed conflict. Second, the importation of obligations derived from the Convention would undercut the *lex specialis* approach, which was founded on international humanitarian law representing the bespoke set of rules to which States operated in an international armed conflict. Third, Convention obligations might well have been developed in the very different context of the "domestic" application of the Convention. They might be inherently unsuitable for the different context of an international armed conflict. The correct approach was not simply to apply Convention principles in an international armed conflict provided only that there was no obvious conflict with international humanitarian law; such an approach was wrong in principle. Fourth, there was no proper basis for importing Convention rules or principles that would materially and directly alter the rules or principles of international humanitarian law. Fifth, adding to the rules or principles of international humanitarian law in such a context was or might well be tantamount to an alteration of those rules and principles. It was therefore inappropriate for that reason. Convention rights were most likely to be relevant in relation to issues where international humanitarian law was silent and regarding the administration of civilian life in occupied territory.

400. The United Kingdom Government went on to identify what they considered to be the relevant provisions of international humanitarian law in the present case. They explained that in respect of most of the violations alleged in application no. 11055/22, these international humanitarian law rules provided more than was sufficient, without the transposition of any other Convention principles, to conclude that there had been serious violations of the Convention. In particular, each of the methods of the war

adopted by the respondent State – targeting civilians, targeting civilian infrastructure and violating humanitarian corridors – would constitute on any view the most flagrant violation of the core principles of international humanitarian law. The Court was invited therefore, "not simply to jump to an analysis based on the principles in the Convention Articles; but rather to work through the applicable and relevant IHL provisions to that end".

(b) Geneva Academy

401. The Geneva Academy addressed first the interaction between the *jus ad bellum* and international human rights law. They argued that an act of aggression could have a bearing on the determination of compliance with substantive Convention rights. While it would be open to the Court to derive Convention violations from non-compliance with the *jus ad bellum*, two issues would arise. First, the Court would have to determine whether it was competent to decide on issues of compliance with *jus ad bellum*. This was debatable, given the terms of Article 32 of the Convention, but could be argued to fall within the scope of its interpretation of Article 15. Second, the Court would have to weigh the feasibility and longer-term implications of this approach, since relying on the *jus ad bellum* determinations by political organs might not always be an option and could in any case result in double standards that would ultimately weaken the value of judicial determinations. The risk of politicisation was high, and clear-cut aggressions like the one committed by Russia on Ukraine remained the exception rather than the rule.

402. As regards the Court's existing approach, the Geneva Academy considered that the approach outlined by the Court in *Georgia v. Russia (II)* (cited above, §§ 236-37) and *Ukraine and the Netherlands v. Russia* ((dec.), cited above, § 720) did not reflect the full implications of harmonisation to which the Court had earlier subscribed. They argued that the Court should revert to its previous case-law on the interplay between the Convention and international humanitarian law as outlined in *Varnava and Others* (cited above, § 185) and *Hassan* (cited above, §§ 102-104) and "embrace a more nuanced approach to the complementarity of the two regimes". The ICJ had moved away from reliance on the terminology of *lex specialis*, stressing instead the need to take into consideration both international humanitarian law and international human rights law. The Court's case-law also showed that international humanitarian law had a bearing on the interpretation and application of Convention rights beyond cases of conflict of law (referring to *Loizidou* (merits), § 43, *Varnava and Others*, § 185, and *Hassan*, §§ 102 and 104, all cited above; and Article 31 § 3 (c) of the Vienna Convention – B74). International humanitarian law had to intervene in the interpretation of Convention rules not only when a conflict of norms arose but much more pervasively as a background against which Convention safeguards had to be construed.

403. For several substantive rights protected by the Convention, interplay with international humanitarian law offered a necessary tool of interpretation even in the absence of conflict *stricto sensu*. This was the case, for example, in respect of allegations of forcible transfers and deportation from occupied territory under Article 8, of pillage and destruction of real or personal property under Article 1 of Protocol No. 1, and of allegations made under Article 3. Cross-fertilisation could also be useful in the area of procedural rights, including the obligation to investigate. In the vast majority of cases international humanitarian law would not conflict with the Convention but would nevertheless serve as an essential tool of interpretation that would enrich the reasoning of the Court and ensure the relevance, coherence and acceptability of the Court's decisions.

404. The lack of a formal derogation under Article 15 of the Convention did not prevent the Court from taking account of the context and the provisions of international humanitarian law when applying and interpreting Convention safeguards. However, the dawning practice of making derogations (for example, Ukraine's derogations in 2015 and 2022) should not be overlooked. The Geneva Academy proposed that a State that had *de facto* derogated from the Convention should be held responsible under Article 15 § 3 for failing to comply with its obligation to give notice of the derogation.

405. As regards the use of potentially lethal force, the legitimate aims listed in Article 2 § 2 of the Convention were devised for peacetime policing situations. They therefore did not fit when analysing conduct of hostilities scenarios. The Court would therefore be required to "harmonise" Article 2 with international humanitarian law in the context of an international armed conflict. The crucial question was to define what was a "lawful act of war" from an international humanitarian law perspective. International humanitarian law underlay the "conduct of hostilities paradigm", which was based on the assumption that the use of force was inherent to waging war because the ultimate aim of military operations was to prevail over the enemy's armed forces. International human rights law, for its part, contributed to shaping the "law enforcement paradigm", whereby lethal force could only be used as a last resort in order to protect life, when other available means remained ineffective or without any promise of achieving the intended result. The principles governing the two paradigms – necessity, proportionality and precaution – were essentially the same but had distinct meanings and operated differently.

406. As regards the complaints before the Court, three situations involving the interplay between international humanitarian law and Article 2 of the Convention were of particular relevance.

407. The first situation was intentional, disproportionate or indiscriminate attacks on civilians or attacks on persons *hors de combat* that would violate international humanitarian law. This was governed by the conduct of

hostilities rules under international humanitarian law and would also entail a violation of Article 2 of the Convention. As regards this conduct, the protections and safeguards offered by international humanitarian law and international human rights law not only co-existed but overlapped. Defining a disproportionate attack in the context of the conduct of hostilities required interpreting Article 2 in the light of international humanitarian law. In the same vein, the definition of persons *hors de combat* had to be found in international humanitarian law and had to inform interpretation of Article 2. The legality of weapons used also had to be considered to determine whether Article 2 had been violated in this context.

408. The second situation concerned incidental killings of civilians that did not violate international humanitarian law. Such attacks were also to be governed by the conduct of hostilities paradigm, which tolerated more incidental loss of life than the law enforcement paradigm. In such a case, the Court was required to "accommodate" the substantive limb of Article 2 with the relevant principles on proportionality and distinction under international humanitarian law, as it had done in *Hassan* (cited above) concerning detention. An attack that respected the international humanitarian law principles on the conduct of hostilities had to be deemed lawful *prima facie* under Article 2 of the Convention when applied in the context of an acknowledged armed conflict situation, especially an international one like the conflict in Ukraine. Moreover, the principle of precautions in international humanitarian law provided for *ex ante* obligations in a comparable way to the planning and control obligations identified by the Court in *McCann and Others v. the United Kingdom* (27 September 1995, §§ 202-214, Series A no. 324), *Ergi v. Turkey* (28 July 1998, §§ 79-81, *Reports* 1998-IV) and *Isayeva and Others v. Russia* (nos. 57947/00 and 2 others, §§ 188-201, 24 February 2005).

409. More generally, the interpretation and application of Article 2 of the Convention could evolve in such a way as to provide better and more adequate protections than those foreseen under international humanitarian law. A relevant example concerned sieges: these were not explicitly prohibited by international humanitarian law, but allowing the incidental starvation of civilians together with the purposeful starvation of encircled combatants was at odds with the core value of protecting the right to life. Practice showed that this method of warfare was often accompanied by an overly broad understanding of what constituted a military objective, which led in reality to indiscriminate attacks. Human rights law could outlaw this method of warfare.

410. The third situation (see paragraph 406 above) concerned cases arising in armed conflict governed by the law enforcement paradigm, for example the use of force in detention settings or situations where there was doubt as to the status, function or conduct of the person against whom force

was to be used. Here, specific international humanitarian law rules were integral to the law enforcement paradigm.

411. In conclusion, the interplay between international humanitarian law and the Convention regarding the use of force had to be approached in a granular fashion. When the use of force pertained to the conduct of hostilities, Article 2 had to be interpreted in light of international humanitarian law and its principles of distinction, proportionality and precautions. Where it pertained to law enforcement, use of force had to be the last resort and the applicable standards were those prevailing in peacetime law enforcement, albeit interpreted against a different context.

(c) The Human Rights Law Centre

412. The Human Rights Law Centre submitted that when assessing whether there had been violations of the right to life – either by the downing of flight MH17 or with regard to some of the other uses of kinetic force at issue in this case – the Court would need to take into account relevant rules of international law, including international humanitarian law.

413. The Court's justification analysis under Article 2 normally required an assessment of whether force was "absolutely necessary" for one of the purposes set out in Article 2 § 2. That approach could not work as such in the context of deprivations of life in international armed conflict: none of the purposes in Article 2 § 2 could accommodate status-based targeting rules of international humanitarian law in international armed conflict. Moreover, the international humanitarian law principle of proportionality, which was solely about incidental harm to civilians and civilian objects, was different from a human rights approach to proportionality. Furthermore, the targeting rules of international humanitarian law did not employ the "absolute necessity" standard for the taking of human life. Interpreting Article 2 in light of applicable international humanitarian law therefore required "a significant departure" from the text of Article 2.

414. Any such interpretation had to take into account the text of Article 15 § 2 of the Convention. This possibility of wartime derogation from Article 2 had been put in place by the drafters of the Convention precisely because the rules of international humanitarian law governing the conduct of hostilities could not easily be accommodated by the categorical framing of the text of Article 2. This was in contrast to the much more flexible text of Article 6 ICCPR, which simply prohibited arbitrary deprivations of life, thus providing an interpretive window through which international humanitarian law could enter, while not allowing for any derogations whatsoever from the right to life.

415. This raised three preliminary issues. First, whether the Article 15 § 2 "lawful acts of war" derogation from the right to life could operate automatically, or whether, as was generally the case with derogations, it required a formal statement by the derogating State. Second, whether

derogations could operate extraterritorially. Third, whether the reference to "lawful" acts of war encompassed not just international humanitarian law but also the UN Charter-based law on the use of force (*jus ad bellum*).

416. The first point was of the greatest relevance in this case. It could be argued that the text of Article 15 was clear and did not allow for automatic derogation. But it was also undeniable that no State had ever derogated from Article 2 by relying on the lawful acts of war exception. It could therefore be argued that the Court should, in line with State practice, read into Article 2 a "lawful acts of war" exception or justification, in the same way as it had, in *Hassan* (cited above), already read into the (equally categorical) language of Article 5 a further exception for international humanitarian law-authorised deprivation of liberty. On this approach, the application of Article 2 during armed conflict would be essentially the same as that of Article 6 ICCPR, despite their different wording. If the Court were to adopt this approach, both Russia and Ukraine would in principle be able to argue that deprivations of life committed by their armed forces during hostilities did not violate Article 2 of the Convention so long as they were compliant with all relevant rules of international humanitarian law.

417. The second question was whether derogations could be made with regard to emergencies that arose extraterritorially. No State had ever derogated on such grounds, but this did not entail that such derogations could not be made. Were the Court to adopt the automaticity approach advocated above (see paragraph 416 above), this point would be moot.

418. The third point concerned whether, to be "lawful", an act of war had to comply with the *jus ad bellum*. On this view, a State waging a war of aggression was committing only "unlawful" acts of war, even if its forces were fighting in accordance with the rules of international humanitarian law. Every deprivation of life by an aggressor would be arbitrary and a violation of the right to life, even the deaths of the defending State's combatants killed in combat. The Human Rights Law Centre argued against such an approach on pragmatic grounds, since it would require the Court to make determinations on whether a State had committed aggression. This might be straightforward in some cases but not in others, and might therefore open the door to political controversy.

419. The Human Rights Law Centre identified two basic types of situation in which individuals were deprived of their life during armed conflict. First, individuals could be killed while in captivity. Such cases might be numerous and hard to document, but were legally straightforward. Second, individuals might be killed in the course of hostilities. In these cases, Article 2 would be violated whenever the death resulted from an attack that was unlawful under international humanitarian law.

420. There were four basic sets of international humanitarian law rules governing the conduct of hostilities: the principle of distinction, the principle of proportionality, the rules governing precautions in attacks, and the rules

governing means and methods of warfare. In summary, the Human Rights Law Centre suggested that in the context of armed conflict there would be a violation of Article 2 where death resulted from:

(1) attacks directed against combatants who were *hors de combat*;

(2) attacks directed against combatants or civilians directly participating in hostilities (both otherwise lawful military objectives) by using unlawful means or methods of warfare;

(3) attacks directed against civilians;

(4) indiscriminate attacks that resulted in any civilian deaths;

(5) attacks directed against civilian objects that resulted in any civilian deaths;

(6) attacks directed against military objectives that caused disproportionate loss of civilian life;

(7) attacks compliant with the principles of distinction and proportionality that nonetheless resulted in the loss of civilian life, if the party concerned used unlawful means or methods of warfare; and

(8) attacks compliant with the principles of distinction and proportionality that nonetheless resulted in the loss of civilian life, so long as that loss of life could have been avoided through feasible precautions that the attacking party failed to take.

421. There would, in principle, be no violation of Article 2 where death was the result of:

(1) killings of combatants;

(2) killings of civilians directly participating in hostilities, if they were attacked whilst they participated in hostilities; and

(3) incidental killings of civilians compliant with the principle of proportionality, if the party concerned used only lawful means and methods of warfare and if all feasible precautions had been taken.

422. The Human Rights Law Centre acknowledged the difficult issues of proof that arose when determining why particular objects or people had been targeted and what precautions had been taken. These difficulties were not insurmountable. The Court could rely on evidence from the parties and from the work of independent fact-finding institutions like the UN Commission of Inquiry (see paragraphs 97 and 195 above). It could also request the respondent State to provide evidence that the principles of international humanitarian law had been adhered to. This could be done through the provision of information on targeting decisions and instructions, strategic and tactical decisions regarding the use of particular weapons, any decisions regarding precautions and any documentary evidence concerning investigations and obtaining of evidence about specific incidents. Appropriate adverse inferences could be drawn from any refusal to cooperate adequately.

423. Mistake of fact scenarios, in which civilians were not harmed intentionally but because of a material error in the targeting process, were

very common in armed conflict. Such errors related to the international humanitarian law rule on distinction. *McCann and Others* (cited above) concerned such a mistake of fact outside the context of armed conflict. The Court accepted that the use of force based on an honest belief which turned out later to be mistaken could be justified (ibid., § 200). However, even where there was an honest, but mistaken, belief, a violation of Article 2 could arise as a result of errors in planning and conduct of the operation that resulted in the use of force (ibid., § 211, and *Ergi*, cited above, § 79). In the international humanitarian law context, Article 2 could be read as imposing a duty on States to take all feasible precautions to avoid basing operational decisions on unverified – and possibly incorrect – information as to the identity or nature of any targets.

424. The rules of treaty and customary international humanitarian law were not explicit as to how a mistake of fact regarding distinction was to be treated. The majority view in international humanitarian law scholarship was that the concept of directing attacks implied some level of intent, and that an honest and reasonable mistake of fact could negate that element of intent. Thus if the armed forces of a party to a conflict did take all feasible precautions in attack and all feasible measures to verify that a target was a military objective, but it later transpired that the target was in fact a civilian object, there would be no violation of international humanitarian law. In such circumstances there should be no violation of Article 2 either, even if civilians died as a result of such a mistake. The question for the Court was therefore whether the persons in charge of the targeting process took all objectively feasible measures to verify the identity of the target and any other relevant measures that could minimise the risk of loss of life.

C. The Court's assessment

1. General principles

425. Within the structure of the Convention, only Article 15 explicitly addresses armed conflict. It provides:

> "1. In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under [the] Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.
>
> 2. No derogation from Article 2, except in respect of deaths resulting from lawful acts of war, or from Articles 3, 4 (paragraph 1) and 7 shall be made under this provision.
>
> 3. Any High Contracting Party availing itself of this right of derogation shall keep the Secretary General of the Council of Europe fully informed of the measures which it has taken and the reasons therefore. It shall also inform the Secretary General of the Council of Europe when such measures have ceased to operate and the provisions of the Convention are again being fully executed."

426. The respondent Government have not availed themselves of their right to derogate under Article 15. However, even where the Court is not required to assess the validity of a purported derogation from provisions of the Convention, it must still approach its general interpretative task under Article 32 of the Convention in accordance with the principles clearly laid out in its previous case-law.

427. The starting point for the Court's examination must be its constant practice of interpreting the Convention in the light of the rules set out in the Vienna Convention (see B74-75, and *Golder v. the United Kingdom*, judgment of 21 February 1975, Series A no. 18, §§ 29-35; *Hassan*, cited above, § 100; and the judgment in *Ukraine v. Russia (re Crimea)*, cited above, § 913). The "general rule of interpretation" set out in Article 31 of the Vienna Convention provides in paragraph 3 that there shall be taken into account, together with the context, (a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions; (b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation; and (c) any relevant rules of international law applicable in the relations between the parties (B75). It follows from Article 31 § 3 (c) in particular that the Convention cannot be interpreted and applied in a vacuum: it should so far as possible be interpreted in harmony with other rules of international law of which it forms part (see, notably, *Al-Adsani v. the United Kingdom* [GC], no. 35763/97, § 55, ECHR 2001-XI; and *Hassan*, cited above, § 77). This includes international humanitarian law (see *Varnava and Others*, § 185; *Hassan*, §§ 77 and 102; *Georgia v. Russia (II)*, § 94; and *Ukraine and the Netherlands v. Russia* (dec.), § 719; all cited above).

428. The ICJ has clarified that the protection offered by human rights conventions does not cease in case of armed conflict. It has explained that as regards the relationship between international humanitarian law and human rights law, there are three possible situations: some rights may be exclusively matters of international humanitarian law; others may be exclusively matters of human rights law; yet others may be matters of both these branches of international law. It has in the past referred to international humanitarian law as being *lex specialis* in this context (B101 and 103-08). However, in its more recent 2005 judgment in *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, it did not invoke the concept of *lex specialis* and instead explained that in its previous case-law it had concluded that "both branches of international law, namely international human rights law and international humanitarian law, would have to be taken into consideration" (B109-12). The Court, for its part, has not described the relationship between the Convention and international humanitarian law as one of *lex generalis* and *lex specialis*. In particular, the Court's case-law demonstrates that the specific provisions of international humanitarian law do not displace Convention guarantees in situations of armed conflict. Rather,

they are used as an interpretative tool when determining the scope of human rights guarantees in such situations. In the context of the Convention, there is no circumstance in which international humanitarian law will apply to the complete exclusion of the Convention's human rights guarantees. This follows logically from the Court's consistent position that even in situations of international armed conflict, the safeguards under the Convention continue to apply (see, recently, *Ukraine and the Netherlands v. Russia* (dec.), cited above, § 718).

2. Application of the general principles to the facts of the case

429. As it has already underlined, in the present case the Court is asked to interpret and apply the Convention against the backdrop of international armed conflict. The Court will take into account relevant provisions of international humanitarian law where relevant when determining the scope of human rights guarantees under the Convention Articles invoked by the applicant Governments. This is not only rendered necessary by its general interpretative obligation as described above, or by the arguments from the applicant, respondent and third-party Governments concerning the relevance of international humanitarian law in this case (see paragraphs 369-400 above). It also follows as a consequence of the special character of the Convention as an instrument of European public order for the protection of individual human beings and its mission, as set out in Article 19 of the Convention, to "ensure the observance of the engagements undertaken by the High Contracting Parties" (see paragraphs 159 and 161 above). In these circumstances, the Court cannot avoid interpreting international humanitarian law and, where necessary for it to carry out its role, will assess compliance with international humanitarian law provisions (see, notably, *Hassan*, cited above, § 109-10. See also *Kononov v. Latvia* [GC], no. 36376/04, §§ 200-27, ECHR 2010, and, similarly, the Court's analysis of State immunity rules in *Jones and Others v. the United Kingdom*, nos. 34356/06 and 40528/06, §§ 201-15, ECHR 2014).

430. The Court observes that its duty is to interpret the Convention in harmony with international law "so far as possible" (see paragraph 427 above). There may be situations where a harmonious interpretation of provisions of the Convention with relevant provisions of international humanitarian law is not possible in the absence of a derogation under Article 15 of the Convention (see paragraph 425 above), since the provisions are in conflict with one another. In its admissibility decision, the Court acknowledged that this might be the case as regards the Article 2 complaints advanced by the applicant Governments (*Ukraine and the Netherlands v. Russia* (dec.), cited above, § 720). Whether such conflict does, in fact, arise on the facts of the present case will be addressed in the context of the Court's examination of the respective Article 2 complaints of the applicant Governments, below.

431. Neither applicant Government invited the Court to take account of *jus ad bellum* when determining the compliance of the respondent State with substantive Convention rights. In the absence of submissions from them on this question, the Court does not consider it appropriate to address it.

IX. ALLEGED VIOLATION OF ARTICLES 2 AND 13 OF THE CONVENTION IN RESPECT OF THE DOWNING OF FLIGHT MH17

A. Alleged substantive violation of Article 2 of the Convention

432. The applicant Dutch Government complained that the respondent State had violated the right to life within the meaning of Article 2 of the Convention through its role in the downing of flight MH17. Article 2 provides:

> "1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.
>
> 2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:
>
> (a) in defence of any person from unlawful violence;
>
> (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
>
> (c) in action lawfully taken for the purpose of quelling a riot or insurrection."

1. The parties' submissions

(a) The applicant Dutch Government

(i) The obligation to protect life

433. The applicant Dutch Government argued that the use of force that had led to the deprivation of life of all persons on board flight MH17 was in breach of the respondent State's obligation under Article 2 § 1 of the Convention to protect the right to life of persons within its jurisdiction. In particular, the respondent State had failed to take appropriate steps to safeguard the passengers' lives in light of the real and immediate threat posed by the Buk-TELAR and it had failed to take adequate preventive measures to protect the right to life.

434. The deployment and use of the Buk-TELAR without taking any additional preventive measures, in an area over which civilian aircraft continued to fly, had presented a real and immediate threat to the lives of those on board flight MH17 and other civilian aircraft which the respondent State had, or ought to have, known to be flying over the east of Ukraine on 17 July 2014. In *Tagayeva and Others v. Russia* (nos. 26562/07 and 6 others, § 482, 13 April 2017), the Court had underlined that the positive obligation

to protect life "may apply not only to situations concerning the requirement of personal protection of one or more individuals identifiable in advance as the potential target of a lethal act, but also in cases raising the obligation to afford general protection to society". The real and immediate risk to civilian aircraft arising from the deployment and use of a Buk-TELAR, in the circumstances of this case, was undeniable. This knowledge engaged the Russian Federation's obligation to protect life under Article 2 of the Convention.

435. In the weeks prior to the downing of flight MH17, the conflict in eastern Ukraine had extended into the airspace. The separatists had had access to and had deployed MANPADS that could reach targets of up to six kilometres. In light of this, the airspace above the conflict area had been closed below flight level 320, which corresponded to approximately ten kilometres. Above that level, commercial flights had continued to fly, on the basis that the weapons being used in eastern Ukraine did not represent a danger to these flights. However, this had changed dramatically with the supply by the Russian Federation of a Buk-TELAR, which could reach targets up to an altitude of twenty-four kilometres.

436. The applicant Dutch Government explained that an anti-aircraft weapon such as a Buk-TELAR was an advanced military system in many respects, but it was heavily limited when it came to the identification of aircraft. Normally, a Buk-TELAR operated within a Buk system, comprising eleven vehicles: a command post, a target acquisition radar (known as a Buk-TAR), three transporter erector launcher and loaders (Buk-TEL) and six transporter erector launcher and radars (Buk-TELAR). Since a Buk-TELAR had its own radar, it could operate on its own without the rest of the Buk system. However, used in this manner, there were severe limitations. Notably, the radar of a Buk-TELAR could only positively identify one of its own military aircraft as a "friend". All other aircraft – whether enemy aircraft or civilian aircraft – would necessarily be identified as a "foe". Flight MH17 was therefore identified as a "foe".

437. Despite this known risk to civilian aircraft, the respondent State had not taken any preventive measures. Measures which could have been taken included, first, closing its own airspace near the border with Ukraine. This would, together with the closed airspace over Crimea, have resulted in a situation in which civilian aircraft bound for Russian airspace would no longer have flown in the area where flight MH17 was downed. Second, the respondent State could have ensured the involvement of the civil air traffic controllers ("CATC") and/or military air traffic controllers ("MATC") in the operation of the Buk-TELAR. The CATC and MATC are, through the use of radars, aware of the presence and specific location of civil aircraft in certain areas of the airspace. Based upon this information, the precise location of the Buk-TELAR and information regarding the range of the Buk-TELAR, the CATC or MATC could have informed the crew of the Buk-TELAR whether

there were, at a specific moment in time, civilian aircraft in the vicinity. Third, the respondent State could have notified the Ukrainian authorities about the presence of a Buk-TELAR in the east of Ukraine, thereby allowing the Ukrainian authorities to take preventive measures. Finally, it could have issued a Notice to Airmen (NOTAM) so that all airlines planning to fly over the conflict zone would have been warned of threats to the safety of civil aviation in the part of the airspace that had not been closed by Ukraine.

438. Had the Russian Federation not supplied the Buk-TELAR, or had it taken the preventive measures outlined, 298 civilians would not have lost their lives. Russia had therefore violated their right to life.

(ii) The prohibition of intentional deprivation of life

439. The applicant Dutch Government contended that the use of force also constituted an unlawful deprivation of life, in breach of Article 2 §§ 1 and 2 of the Convention.

440. The applicant Dutch Government referred to the Court's findings in its admissibility decision in *Ukraine and the Netherlands v. Russia* ((dec.), cited above) that the firing of the missile and the downing of flight MH17 had occurred in territory in the hands of the separatists; that Russia had supplied and transported the Buk-TELAR; and that the acts and omissions of local administrations in areas under Russian spatial jurisdiction were attributable to Russia. On this basis alone, the downing of the flight was to be attributed to Russia. However, the applicant Dutch Government submitted that the Buk-TELAR had in fact been manned by members of the Russian armed forces and that the missile itself had been fired by members of the Russian armed forces, or at the very least, with their assistance. They underlined that the separatists did not have trained specialists able to operate a Buk-TELAR, and that the training would take several years. The only logical conclusion was that members of the Russian armed forces had operated the Buk-TELAR that launched the missile.

441. It was therefore clear that the respondent State's obligations under Article 2 of the Convention in respect of the prohibition of the intentional deprivation of life were engaged. The use of force exercised through the launch of the Buk missile was not justified under Article 2 § 2 of the Convention. The deployment of the weapon and the launch of the missile that resulted in the downing of flight MH17 had not been carried out for one of the three purposes referred to in Article 2 § 2 of the Convention (see paragraph 432 above). For that reason alone, the deprivation of life as a consequence of the use of force had been inflicted in contravention of Article 2 § 2 of the Convention. It was irrelevant whether the downing of flight MH17 had been intentional or not.

(iii) International humanitarian law

442. The above submissions also held if Article 2 of the Convention were to be interpreted in light of the relevant and applicable rules of international humanitarian law. There was no conflict between Article 2 and international humanitarian law: both unequivocally prohibited a deprivation of civilian life such as the one that occurred with the downing of flight MH17. The applicant Dutch Government underlined that the launch of a Buk missile by a Buk-TELAR was regulated by international humanitarian law rules relating to attacks. The main international humanitarian law rules regulating the conduct of hostilities of which this attack formed part were those regarding distinction, precautions and proportionality. These rules applied to all attacks, no matter the territory in which they were conducted, and were considered customary international law.

443. Before an attack was launched, a military objective had to be identified and selected in accordance with the rules concerning distinction. The ICJ had stated clearly in its Advisory Opinion on the *Legality of the Threat or Use of Nuclear Weapons* that States were never permitted to use weapons incapable of distinguishing between civilian and military targets (B102). A Buk-TELAR used on its own was a weapon that was incapable of distinguishing between civilian objects and military targets. Thus even in so far as international humanitarian law provided more permissive rules for the use of force than international human rights law, the launch of a missile at a civilian target was clearly a violation of the rules with respect to distinction.

444. Once a military objective had been identified, "constant care" had to be taken to protect the civilian population and civilian objects through precautions. These included the duty to do everything feasible to verify that objectives to be attacked were neither civilians nor civilian objects, and were not subject to special protection. Where there was doubt as to whether an object normally dedicated to civilian purposes was being used to make an effective contribution to military action, it was to be presumed that the object was not being so used. Russia had manifestly failed to take any precautions when it had provided and deployed a Buk-TELAR (see paragraph 437 above). Since it had failed to take any measures to ensure that it did not target and shoot down a civilian aircraft, it had also manifestly violated the international humanitarian law rule regarding precautions.

445. By failing to comply with the rules of distinction and precautions Russia had carried out an indiscriminate attack prohibited by international humanitarian law.

(b) The respondent Government

446. As indicated above, the respondent Government did not participate in the present proceedings on the merits of this complaint (see paragraph 142 above). Their arguments concerning the alleged violation of Article 2 in its

substantive aspect made at the separate admissibility stage of the proceedings are summarised in the Court's decision (*Ukraine and the Netherlands v. Russia* (dec.), cited above) as follows:

> "901. As explained above, the respondent Government denied any involvement by the Russian Federation in the downing of flight MH17. They contested the allegation that the missile had been supplied by Russia and launched from separatist-held territory ... They did not provide specific submissions as to whether, if the findings of the DSB and the JIT were accepted, there had been a violation of the substantive limb of Article 2 or as to the extent of any positive obligations that may have arisen in these circumstances."

447. At the separate admissibility stage, they did not make any submissions as to the relevance of international humanitarian law in the interpretation of Article 2 in this context, maintaining that the complaint in respect of the downing of flight MH17 was outside the jurisdiction *ratione materiae* of the Court (ibid., §§ 707-11).

(c) The third-party interveners

448. The MH17 applicants (see paragraphs 18 and 153 above) argued that the respondent State had violated its substantive obligations under Article 2 of the Convention because it had failed to take appropriate steps to safeguard the lives of those within its jurisdiction. Although the Buk-TELAR had presented a real and immediate risk to the lives of those on board flight MH17 and other civilian aircraft, of which Russia had or ought to have known, it had failed to take operational measures to protect their lives.

449. The MH17 applicants referred to the findings of the first instance court of The Hague in November 2022 that flight MH17 had been downed by a Buk missile fired from a Buk-TELAR in separatist-held area, and that the Buk-TELAR had originated in the Russian Federation (A1969 and 1971). It had rejected all other alternative scenarios presented. This established, in the MH17 applicants' submission, that the respondent State had substantive Article 2 obligations towards the 298 people on board flight MH17. No satisfactory and convincing explanation for the downing could be, or had been, provided by the Russian Federation and there had accordingly been a substantive violation of Article 2 of the Convention.

2. The Court's assessment

(a) General principles

450. Article 2 ranks as one of the most fundamental provisions in the Convention and also enshrines one of the basic values of the democratic societies making up the Council of Europe (see, among many other authorities, *McCann and Others*, cited above, § 147). According to Article 2 § 2, as interpreted by the Court, the use of lethal force may be justified where it is no more than absolutely necessary for, and strictly proportionate to, the

achievement of one or more of the purposes set out in sub-paragraphs (a) to (c) of that Article (see *McCann and Others*, cited above, §§ 148-49; *Ramsahai and Others v. the Netherlands* [GC], no. 52391/99, §§ 286-87, ECHR 2007-II; and *Tagayeva and Others*, cited above, § 601). Where deliberate lethal force is used, all the surrounding circumstances, including such matters as the planning and control of the actions under examination, must be taken into consideration, and not only the actions of the agents of the State who actually administered the force (see *McCann and Others*, cited above, § 150; and *Makaratzis v. Greece* [GC], no.50385/99, § 59, ECHR 2004-XI).

451. The first sentence of Article 2 § 1 enjoins the State not only to refrain from the intentional and unlawful taking of life, but also to take appropriate steps to safeguard the lives of those within its jurisdiction (see *L.C.B. v. the United Kingdom*, 9 June 1998, § 36, *Reports* 1998-III; *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 130, ECHR 2014; and *Kurt v. Austria* [GC], no. 62903/15, § 157, 15 June 2021). This implies, in certain circumstances, a positive obligation on the authorities to take preventive operational measures to protect an individual whose life is at risk from the criminal acts of another individual (see *Osman v. the United Kingdom*, 28 October 1998, § 115, *Reports* 1998-VIII, and *Finogenov and Others v. Russia*, nos. 18299/03 and 27311/03, § 209, ECHR 2011 (extracts)). For the Court to find a violation of the positive obligation to protect life, it must be established that the authorities knew, or ought to have known at the time, of the existence of a real and immediate risk to the life of an identified individual from the criminal acts of a third party and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk (see *Osman*, cited above, § 116). In the law enforcement context, the Court has clarified that Article 2 had to be interpreted in a way which did not impose an impossible or disproportionate burden on the authorities (see *Osman*, § 116; *Makaratzis*, § 69; and *Finogenov and Others*, § 209; all cited above).

(b) Application of the general principles to the facts of the case

452. The Court has already found that the downing of flight MH17, resulting in the deaths of all 298 civilians on board, was the consequence of the firing from separatist-controlled territory of a Buk missile supplied and transported to eastern Ukraine, along with a Buk-TELAR, by the Russian Federation (see *Ukraine and the Netherlands v. Russia* (dec.), cited above, §§ 701 and 705). The Court further found that the evidence demonstrated beyond reasonable doubt that the Buk-TELAR used to shoot down flight MH17 had been provided by the Russian Federation in direct response to the separatists' call for anti-aircraft weaponry (ibid., § 632). The Court reiterates that the respondent State had effective control over the launch site at the time of the launch (ibid. §§ 702 and 706). These findings were based on the

material uncovered in the context of the comprehensive JIT investigation and are consistent with the findings of the first instance court of The Hague (A1965 and 1969-70). The respondent State has provided no information as to the identity of those responsible for launching the missile which downed flight MH17. On the basis of the evidence outlined above, and in the absence of any information from the Russian Federation, the only reasonable conclusion is that the missile was fired by a member of the Russian military crew of the Buk-TELAR or by a member of the "DPR". It is not necessary for the Court to determine exactly who fired the missile since, as explained above, acts of the Russian armed forces and of the armed separatists were attributable to the Russian Federation (see paragraphs 362-363 above).

453. As indicated above, the Court has acknowledged the possibility for a conflict to arise between Article 2 and the provisions of international humanitarian law in circumstances where force is used in the context of armed conflict (see paragraph 430 above). As regards the present complaint, such a conflict would potentially arise if the downing of flight MH17 were compatible with international humanitarian law. The Court therefore considers it appropriate to consider, first, whether this was the case. In order to assess the compliance of the attack with international humanitarian law, the Court must first seek to ascertain the facts surrounding the launching of the missile.

454. It follows from the circumstances in which the Buk-TELAR was provided and the missile was launched (see paragraph 452 above) that the information concerning the actual deployment of the Buk-TELAR, including the identification of the target, any verification steps undertaken, any precautions taken and the identities of those responsible for firing the weapon, is wholly within the exclusive knowledge of the authorities of the respondent State. However, the respondent Government did not provide any operational information concerning the downing of flight MH17 in the context of their submissions on admissibility in the present case. As noted above, they have failed to submit a memorial or to participate in the hearing at the present merits stage (see paragraph 446 above). The failure of the Russian Federation to furnish any information in this respect justifies the drawing of inferences by the Court to the extent that it considers it appropriate and necessary to do so (*Ukraine and the Netherlands v. Russia* (dec.), cited above, § 436).

455. The first instance court in The Hague commented on the "enormous destructive power" of a Buk missile, noting that the chances that the occupants of an aircraft would survive an attack were nil. The court further observed that anyone deploying a specialised, expensive weapon such as a Buk-TELAR would have been aware of this. It noted that operating a Buk-TELAR required a well-trained crew and that its firing did not take place accidentally or on a whim. Instead, it was deliberate and well-considered, according to a set method of operation prescribed by technical requirements. The court therefore concluded that the firing of the missile at flight MH17

was intentional and that the consequences of the firing of the missile, namely the crash of the aircraft and, in all probability, the death of all those on board, were clear. The first instance court considered it implausible that a civilian aircraft had been deliberately downed. It found that the evidence showed, rather, that the missile had been launched in the belief that the target was a military aircraft (A1973). The Court accepts the findings of the first instance court that the missile was intentionally fired at flight MH17, most likely in the mistaken belief that it was a military aircraft but in the full knowledge that the deaths of all those on board would be the inevitable outcome.

456. International humanitarian law provides for the rules governing attacks in situations of armed conflict. Article 48 AP I sets out the principle of distinction. This principle requires parties to an armed conflict at all times to distinguish between civilians and combatants and between civilian objects and military objectives, and to direct their attacks only against combatants and military objectives, never against civilians and civilian objects (B140).

457. Article 57 AP I sets out rules governing precautions in attack. It provides that parties to an armed conflict must take constant care to spare the civilian population, civilians and civilian objects and to take all feasible precautions to avoid loss of civilian life. This requires, among other obligations, doing everything feasible to verify that targets are military objectives (B140).

458. The question arises whether a mistake of fact in targeting which results in the targeting of civilians or civilian objects will always violate the principle of distinction, or whether an honest and reasonable mistake would negate the element of intent necessary for such a breach to occur (see paragraph 424 above). To the extent that ambiguity exists in this respect, it would only be necessary for the Court to attempt to resolve it if it could be shown that an honest and reasonable mistake of targeting had occurred in the present context. An important consideration in this respect is whether the persons in charge of the targeting process did everything feasible to verify the identity of the target and took all feasible precautions to minimise the risk of loss of life.

459. The applicant Dutch Government have explained that, although a Buk-TELAR is equipped with a radar and can therefore identify potential targets, its radar is only capable of positively identifying one of its own military aircraft as a "friend". Any aircraft not identified as a "friend" is identified as a "foe", regardless of whether the aircraft is a military or civilian aircraft (see paragraph 436 above). The evidence of the applicant Dutch Government as to the inability of a Buk-TELAR acting alone to distinguish between military and civilian aircraft was uncontested by the respondent Government at the admissibility stage and remains uncontested. The Court accordingly accepts the evidence before it in this respect. In consequence, the deployment of a Buk-TELAR in isolation, without the remaining units of the Buk missile system and in particular without a Buk-TAR, and in the absence

of other measures capable of accurately identifying military targets, would constitute a violation of the principle of distinction. In circumstances where a Buk-TELAR is being deployed alone, the principle of precautions would also require the taking of further measures to enable the accurate identification of the potential target (see paragraph 457 above).

460. It is accordingly pertinent to examine what other measures were taken to ensure the accurate identification of target objects. As already noted, no evidence has been provided by the Russian Federation as to any preparatory steps taken prior to the launching of the missile to confirm the nature of the intended target. Requests by the JIT and the examining magistrate in the proceedings in The Hague for information as to the crew of the Buk-TELAR and to interview the commander of the 53rd AAMB, which would have enabled the taking of any such steps to be explored and elucidated, were refused by the Russian authorities (A1849 and 1852). The reason given for the refusals was that there was insufficient evidence of Russian involvement (A1967; and B450, 465, 467 and 469). This reason cannot be considered plausible in the face of the extensive evidence collected by the JIT. The Court infers from the evidence and from the absence of any information from the Russian Federation that no other measures were taken to ensure the accurate verification of the target of the Buk-TELAR.

461. In these circumstances, the launching of the missile from the Buk-TELAR in eastern Ukraine was in breach of the international humanitarian law principles of distinction and precautions. Pursuant to Article 52 AP I (B140), the attack was accordingly an indiscriminate attack prohibited under international humanitarian law (see also B102). In view of this conclusion, the downing of flight MH17 cannot constitute a lawful act of war and there is accordingly, in the context of the present complaint, no potential conflict arising from the absence in Article 2 § 2 itself of any accommodation of deaths which are compatible with international humanitarian law.

462. It has not been suggested by the Russian Federation that the launching of the missile could be justified by reference to any of the purposes set out in Article 2 § 2. It is clear that none of these purposes is relevant. The intentional use of force leading to the deprivation of the lives of the 298 civilians on board flight MH17 cannot, therefore, be justified under any of the grounds listed in Article 2 § 2 and as such constituted a violation of the right to life guaranteed by Article 2 § 1 of the Convention.

463. Although the Court has already established a violation of Article 2 on account of a breach of the State's negative obligation, the circumstances of the downing of flight MH17 require the Court to examine also the applicant Dutch Government's submission that the Russian Federation has also violated the positive obligation inherent in Article 2 by failing to take appropriate steps to safeguard the lives of those on board flight MH17.

464. The Court reiterates that the Russian Federation deployed a Buk-TELAR incapable of accurately distinguishing between civilian and military aircraft in an area of eastern Ukraine where civilian flights were still operating. As already explained, a Buk missile has significant destructive power and the chances that the occupants of an aircraft struck by such a missile would survive an attack were nil (see paragraph 455 above). The Court is satisfied that in these exceptional circumstances, the Russian authorities knew or ought to have known of the existence of a real and immediate risk to the lives of all civilians present in civilian aircraft flying over the area. An obligation to take measures to avoid that risk accordingly arose. Such an obligation is consistent with the principle of precautions under international humanitarian law, which requires the taking of all feasible precautions to avoid loss of civilian life (see paragraph 457 above).

465. The applicant Dutch Government have pointed to a number of administrative measures which could have significantly reduced or even eliminated the risk posed by the Buk-TELAR to civilians travelling in civilian aircraft over eastern Ukraine (see paragraph 437 above). The respondent State has provided no explanation for why none of these measures were taken. It has not contended that taking such measures would have imposed an impossible or disproportionate burden on its authorities, and there is no evidence that this would, in fact, have been the case. Indeed, the Court considers that the measures proposed by the applicant Dutch Government represent the very minimum steps to be expected of a State deploying such a destructive weapon in these circumstances. The failure of the respondent State to take any steps was representative of a cavalier attitude to the lives of civilians at risk from its hostile activities in eastern Ukraine. Its failure to take any preventive measures violated the positive obligation inherent in Article 2 § 1 of the Convention.

466. For these reasons, there has been a violation of the substantive limb of Article 2 in respect of the downing of flight MH17 and the deaths of the 298 people on board.

B. Alleged procedural violation of Article 2 of the Convention

1. The parties' submissions

(a) The applicant Dutch Government

467. The applicant Dutch Government submitted that by failing to conduct an effective official investigation, the respondent State had violated its procedural obligation under Article 2 of the Convention. The respondent State had moreover failed to fully cooperate with the criminal investigation led by the Dutch Prosecution Service ("OM") by not responding adequately to requests for legal assistance.

(i) The absence of an effective official investigation

468. The applicant Dutch Government contended that there was no indication that the respondent State had conducted an effective investigation into the downing of flight MH17. On the contrary, in so far as any alleged investigative actions had been alluded to in press conferences held by the Russian authorities, those clearly fell short of the requirements set by the Convention. None of the essential parameters of the investigation, being adequacy, promptness, involvement of next of kin and independence, had been complied with.

469. First, any alleged investigation had not been adequate. It had been incapable of determining whether the use of force was justified and had not managed to identify, prosecute and punish those responsible. This was illustrated by the sparse and contradictory findings presented on several occasions, and the absence of any thorough investigation into the role of the Russian armed forces.

470. Second, investigative steps had not been taken promptly or with reasonable expedition. A decade on from the downing of flight MH17, the next of kin and Dutch society as a whole were still waiting for answers. The Russian Federation had yet to give a comprehensive and genuine account of its role.

471. Third, the next of kin of those on board flight MH17 had not had access to any investigation carried out by the Russian Federation. They had not received any information, nor had they been informed of significant developments which would have allowed them to safeguard their interests in the investigation. No public scrutiny of the investigation had been possible.

472. Fourth, any alleged investigation did not appear to have been sufficiently independent. There was no indication that an independent research team had conducted the investigation; this was clearly called for given that the missile responsible had been launched from an area under the effective control of the Russian Federation by or with the assistance of the Russian armed forces. On the contrary, what information had been shared with the public had been presented by the Ministry of Defence of the Russian Federation. This was the Ministry to which the Buk-TELAR used for the downing of flight MH17 belonged. Furthermore, members of the Russian armed forces fell under the authority of this Ministry.

473. Relying on *Carter* (cited above, § 143), the applicant Dutch Government argued that the refusal by the Russian Federation to conduct an effective investigation should have consequences for the assessment of proof in the present case.

474. The applicant Dutch Government further submitted that the above position was not affected by the circumstances of the case and the context of armed conflict. Since the respondent State had enjoyed effective control over the area in question, it had been responsible for securing Convention rights in exactly the same way as it would have been in a territorial context (see

Ukraine and the Netherlands v. Russia (dec.), cited above, § 702). As a result, any potential flexibility in how an investigation was conducted which the Court has accorded to States when operating extraterritorially in situations of armed confrontation was not applicable in this case. However, even if flexibility were accorded on account of the circumstances of the case, the respondent State had blatantly fallen short of its obligations and any investigations allegedly carried out by it should be considered ineffective and inadequate.

475. The applicable rules of international humanitarian law reinforced these conclusions. The downing of flight MH17 had resulted from an indiscriminate attack and therefore amounted to a "grave breach" of international humanitarian law (B142). Customary international law as well as the grave breaches provisions in the 1949 Geneva Conventions and AP I required States to search for and bring before the courts those suspected of grave breaches. Other violations of international humanitarian law also had to be investigated (B133). International humanitarian law therefore equally required the Russian Federation to investigate the downing of flight MH17.

(ii) The failure to cooperate effectively

476. Article 2 also required Russia to cooperate with the investigation into the downing carried out by other authorities, such as the OM. However, Russia had failed to provide information to the OM, without legitimate reasons, and had provided incomplete information in response to numerous requests for legal assistance. For example, in a press conference four days after the downing of the flight, the Russian authorities had presented satellite images of Ukrainian Buk-TELARs they claimed had been present in the vicinity of the launch site on the day of the attack. However, they had refused to provide these images to the JIT in a format allowing for verification of their authenticity. Subsequent cross-comparison with other sources – including weather data and satellite imagery – had clearly shown that the Russian press conference had been used to provide misinformation.

477. The respondent State had also been under an obligation pursuant international humanitarian law to cooperate in the investigation conducted by the OM. Article 88(1) AP I required States to afford one another "the greatest measure of assistance" in connection with criminal proceedings brought in respect of "grave breaches". Article 88(2) stipulated that States were required to cooperate in matters of extradition (B142). These international humanitarian law rules reinforced the obligation to cooperate under Article 2 of the Convention.

(b) The respondent Government

478. As indicated above, the respondent Government did not participate in the present proceedings on the merits of this complaint (see paragraph 142

above). Their arguments concerning the alleged violation of Article 2 in its procedural aspect made at the separate admissibility stage of the proceedings are summarised in the Court's admissibility decision (*Ukraine and the Netherlands v. Russia* (dec.), cited above) as follows:

> "908. The respondent Government reiterated their position that responsibility to investigate lay with Ukraine because the aircraft had been destroyed in Ukraine, and that responsibility had been voluntarily undertaken by the Netherlands. They claimed that they had tried to investigate the downing of flight MH17 and referred to their 'assisting in what were presented as bona fide investigations by the DSB and the JIT'. They had done their utmost to assist the DSB and JIT investigations, but it was now clear that the DSB and JIT investigations had not been 'proper investigations'. None of the legal assistance requests from the Netherlands had been left without a response: at the time of the hearing, of 29 requests made, 28 had been executed and 1 was pending.
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> 909. In response to a question at the hearing on admissibility as to any investigations and inquiries carried out in Russia, the Representative of the Russian Federation explained that pursuant to mutual legal assistance requests received from the Netherlands, the Russian authorities had 'done a good number of inquiries and investigative measures' on Russian territory and within Russian bodies. The materials gathered had been transferred to the Ministry of Justice of the Netherlands. They explained that some pieces of evidence, including a report by the missile manufacturer Almaz-Antey, had been classified by the Dutch authorities and had therefore not been transmitted to JIT but had been revealed only in 2021 before the first instance court of The Hague. The Russian authorities had taken no investigative steps in Donbass as this was Ukrainian sovereign territory.
>
> 910. The respondent Government argued that in so far as they had any obligations under the procedural limb of Article 2 of the Convention, they had complied with them, emphasising that the procedural limb of Article 2 set up an obligation of means, not of result."

(c) The third-party interveners

479. The MH17 applicants advanced three submissions in respect of the alleged failure of the respondent State to comply with its procedural obligation under Article 2. First, it had failed to carry out an effective investigation into the downing of the flight. Second, it had actively hindered the JIT investigation by failing to respond to legal assistance requests and failing to provide radar data in compliance with the Chicago Convention. Third, it had influenced, hindered and attempted to undermine the MH17 investigation.

480. As regards Russia's failure to carry out an effective investigation, there was no indication that a thorough investigation had been initiated into the role of the Russian armed forces, and in particular of the 53rd AAMB. The independence and impartiality of any investigative actions had been compromised by the involvement of the Ministry of Defence. The Russian authorities had also denied the next of kin access to the investigation.

481. In respect of Russia's lack of cooperation, the MH17 applicants referred to Resolution 2452 (2022) of the Parliamentary Assembly of the

Council of Europe (B363). In the explanatory memorandum, the rapporteur had noted the unwillingness of Russia to comply with the requests for legal assistance, its failure to provide raw radar data, its provision of misleading satellite data and the spreading of different versions of the events and the crash by Russian authorities and media (B364).

482. Finally, Russia had hindered and undermined the investigation, as most recently demonstrated by the JIT's last report on "Findings of the JIT MH17 investigation into the crew members of the Buk-TELAR and those responsible in the chain of command" (B465). Moreover, Russia, which had exercised effective control over the area concerned, had had sufficient power and influence to cease the armed conflict at least for the duration of the recovery of evidence. As it had failed or had chosen not to do so, relevant evidence may have been lost, undermining the criminal investigation.

2. The Court's assessment

(a) General principles

483. The Court refers to the general principles regarding the procedural obligation to carry out an effective investigation under Article 2 summarised in *Georgia v. Russia (II)* (cited above, § 326).

484. The Court has further held that in certain circumstances, the Convention's special character as a collective enforcement treaty may entail an obligation on the part of the States concerned to cooperate effectively with each other in order to elucidate the circumstances of a killing and to bring the perpetrators to justice. This implies both an obligation to seek assistance and an obligation to afford assistance. The nature and scope of these obligations will inevitably depend on the circumstances of each particular case, for instance whether the main items of evidence are located on the territory of the Contracting State concerned or whether the suspects have fled there (see *Güzelyurtlu and Others*, cited above, §§ 232-33). What is required from the States concerned is that they take whatever reasonable steps they can to cooperate with each other, exhausting in good faith the possibilities available to them under the applicable international instruments on mutual legal assistance and cooperation in criminal matters. In line with its obligation of harmonious interpretation of the Convention with international law (see paragraphs 429-430 above), the Court will have regard to the possibilities for cooperation offered by treaties to which the States subscribe and whether the latter have availed themselves of these possibilities and complied with their obligations under these treaties. The procedural obligation to cooperate will only be breached in respect of the requested State if it has failed to respond properly or has not invoked a legitimate ground for refusing the cooperation requested (ibid., §§ 235-36).

(b) Application of the general principles to the facts of the case

(i) Obligation to conduct an effective investigation

485. In view of the Court's finding that there has been a violation of the substantive limb of Article 2 of the Convention by the respondent State (see paragraph 466 above), there was clearly an obligation on that State, under Article 2 of the Convention, to investigate the downing of flight MH17. The Court has previously explained that the obligation to carry out an effective investigation under Article 2 of the Convention is broader than the corresponding obligation in international humanitarian law (see *Georgia v. Russia (II)*, cited above, § 325). However, there is no doubt that given the circumstances in which flight MH17 was downed, which prompted immediate calls for a full investigation amid concerns that a serious breach of international humanitarian law might have occurred (see, for example, A47), an obligation to investigate also arose under international humanitarian law (see B133 and 142).

486. The respondent Government's position, in the proceedings before the Court, does not appear to be that they conducted a full Article 2-complaint investigation into the downing of flight MH17 (see *Ukraine and the Netherlands v. Russia* (dec.), cited above, §§ 908-10). At the separate proceedings on admissibility, they argued that the responsibility for carrying out an investigation lay with Ukraine, which had in turn transferred that responsibility to the Netherlands. They nonetheless submitted that they had tried to investigate the downing of flight MH17 and had assisted the DSB and JIT investigations. In this context they had done "a good number of inquiries and investigative measures". It may be inferred from the press conferences held by the Russian Federation (A2029-2037) that some inquiry was made into certain specific aspects of the circumstances of the downing of flight MH17. There is evidence, in the witness statements and "expert reports" provided by the Russian Federation at the admissibility stage (A1990-2028, 2040-43, 2050 and 2054-59) and the OM's 2020 official report on mutual legal assistance (A1839-56), of the steps taken by the Russian Federation to investigate the downing of flight MH17.

487. It emerges from this material that what inquiries were made by the Russian Federation were piecemeal, focusing on certain aspects of the incident ostensibly with a view to showing the lack of any Russian involvement and deflecting responsibility onto Ukraine. This was the case, for example, in respect of the inquiries divulged during the 21 July 2014 press conference in which the Russian authorities claimed to have evidence of Ukrainian Buk-TELARs in eastern Ukraine and of the presence of a Ukrainian jet in the vicinity of the crash site shortly prior to the crash (A2030). It was also the case in respect of the investigations which underpinned the September 2016 press conference and aimed to demonstrate that the JIT had wrongly determined the launch site of the

missile (A2031-32); and the 2018 press conference designed to show that the missile used had been in Ukrainian hands since 1987 (A2033-34).

488. Moreover, these inquiries regularly resulted in the disclosure of information which was later shown to be at best inaccurate and at worst a complete fabrication. This was the case, for example, with the claim made in the July 2014 press conference that the Russian authorities were in possession of satellite images and radar data to support their conclusions as to the presence of Ukrainian Buk-TELARs and a Ukrainian jet (A1839-A45). More generally, the conclusions of the JIT, after an extensive and thorough investigation, and the findings of the first instance court of The Hague, after a lengthy and careful trial process, clearly show that the Russian Federation was responsible for the downing of the aircraft. These conclusions and findings have been accepted by this Court (see paragraphs 452 and 455 above). This is, in itself, sufficient to completely undermine the findings of the Russian internal inquiries.

489. The Court further observes that the press conferences in which the results of the internal inquiries were revealed were held by the Russian Ministry of Defence. There is no evidence that any other State organs had carried out the underlying investigations and nothing to suggest that the overall responsibility for the investigation rested with the civilian prosecution authorities (compare *Hanan*, cited above § 226). In these circumstances, the involvement of the Ministry of Defence leads to the conclusion that the inquiries did not satisfy the requirement of independence inherent in Article 2, in particular given that members of the 53rd AAMB transported the Buk-TELAR to Ukraine and were present when the missile was fired. It is also noteworthy that the next of kin of those killed when flight MH17 was downed were not involved in any inquiries undertaken by the Russian authorities and were not directly informed of the outcome of any of those inquiries.

490. There is accordingly no doubt that the inquiries conducted by the Russian Federation were not capable of leading to the establishment of the facts or the identification and punishment of those responsible.

491. It would appear that in June 2015 the Russian Federation requested to be admitted to the JIT and that this request was refused (A1857). There is also evidence of a request made by the Russian authorities in October 2019 for the transfer of the criminal investigation led by the OM in the context of the JIT to the Russian Federation (A1830-31). The obligation on the Russian Federation to conduct an effective investigation was independent of any investigation being undertaken by the JIT or prosecution pursued by the OM. It was therefore unnecessary for the Russian Federation to be admitted to the JIT or for the OM to accept the transfer of the criminal proceedings in order for the respondent Government to conduct an effective investigation into the downing of flight MH17. Indeed, had the Russian Federation conducted its own investigation it would have been in a position to have provided material

assistance to the JIT and the OM, both of its own motion and in response to requests for legal assistance.

(ii) Obligation to cooperate effectively with the JIT

492. The Court has indicated that in certain circumstances an Article 2 obligation may arise requiring States to cooperate effectively with each other to investigate killings and bring perpetrators to justice (see paragraph 484 above).

493. Flight MH17 departed from the Netherlands, a High Contracting Party, and was carrying 196 Dutch nationals as well as nationals of a number of other States. It was shot down over Ukraine, another High Contracting Party. Allegations of the involvement of Russia, also at the time a High Contracting Party, quickly emerged. On 21 July 2014, four days after the downing of the aircraft, the UN Security Council – which included the Russian Federation – unanimously adopted Resolution 2166 (2014) stressing the need for a full, thorough and independent international investigation into the incident and calling on all States to provide any requested assistance to the investigations (A47). The establishment of the JIT in August 2014 supported the UN Security Council's resolution (A1643). Having regard to the obligation of High Contracting Parties to the Convention to take whatever reasonable steps they can to cooperate with each other, notably under applicable international instruments on mutual legal assistance and cooperation in criminal matters (see paragraph 484 above), and the role of the Netherlands in leading the JIT, the Court is satisfied that the Russian Federation was under an Article 2 obligation to cooperate effectively with the JIT in its criminal investigation into the downing of flight MH17 and, in particular, to respond to requests for mutual legal assistance made by the prosecuting authorities of the Netherlands.

494. There is no evidence of any real, and even less any effective, cooperation with the JIT investigation by the Russian authorities in the present case. Indeed, the evidence overwhelmingly points in the opposite direction. The OM's 2020 report on mutual legal assistance sets out in detail the history of the legal assistance requests made to the Russian Federation and the responses received (A1838-56). It illustrates the obstructive approach of the Russian Federation to attempts to elucidate the cause and circumstances of the crash. For example, a request was made on 15 October 2014 for raw radar data and original satellite images to which the Russian Ministry of Defence had referred in its press conference of 21 July 2014. The radar data were only finally provided in a readable format, and even then only in part, on 18 August 2017 (A1839-42). The original satellite images were never provided (A1845). Analysis of the low resolution copies of the satellite images that were provided by the Russian Federation revealed that the images were not taken on the dates claimed by the Russian Ministry of Defence (A1844).

495. A mutual legal assistance request was made to the Russian authorities on 7 March 2018 for information on the whereabouts of four Russian nationals linked in the media to the downing of flight MH17 (including Mr Dubinsky, who was later convicted of murder by the first instance court of The Hague in respect of the incident). The request also sought information on the work that these individuals had done for the Russian government from 16 to 18 July 2014, any payments made to them by the Russian government, the telephone numbers they had used and any statements given to the Russian authorities in respect of their involvement in the downing of flight MH17. The Russian Federation replied in December 2018 that the individuals concerned were "not involved in the MH17 disaster" and that as a result "[p]roviding detailed information about these individuals would ... be a breach of public policy and Russian law" (A1848-49). The reasons for refusing to execute the request for legal assistance were plainly unsatisfactory in view of the extensive supporting evidence gathered and disclosed by the JIT, both in correspondence to the Russian authorities and, by the later stages, publicly.

496. Requests for information about the origin and crew of the Buk-TELAR visible in JIT-authenticated images recorded in the Russian Federation on 23 and 24 June 2014 and for a response to a series of specific questions were met with the response that the images in question had been manipulated and that there was no evidence of the presence of a Russian Buk-TELAR in the Donetsk or Luhansk regions in July 2014 and so no grounds for responding to the questions asked (A1850-52. See also B465, 467 and 469). The Court reiterates that it has been shown beyond any doubt that the Buk-TELAR responsible for downing flight MH17 was supplied by the Russian Federation. In light of the overwhelming evidence, which was available at the time that the request was made, the reason invoked by the Russian authorities cannot justify their failure to provide the information sought by the JIT. During the pre-trial proceedings in The Hague, the examining magistrate made a request to the Russian authorities for the commander of the 53rd AAMB to be interviewed as a witness in the context of the criminal trial in The Hague. This was refused on the basis that the question to be put to the witness concerned "military matters, to which a duty of confidentiality applies in accordance with Russian law" and that an interview could "compromise the state secrets of the Russian Federation" (B467). In view of the clear importance of the evidence that the witness could have provided, this response was wholly inadequate.

497. The press conferences of the Russian Ministry of Defence also illustrate the obstructive approach of the Russian authorities to the criminal investigation into the downing of flight MH17. From the earliest days after the downing of the flight, the respondent Government circulated misinformation as to the cause and circumstances of the crash. Their claim on 21 July 2014 that they had detected a Ukrainian Sukhoi Su-25 jet aircraft

in the vicinity of flight MH17 and that they were in possession of raw radar data to support this claim was demonstrably untrue (see paragraph 494 above). Satellite images they relied upon to corroborate their claim that Ukrainian Buk-TELARs were in eastern Ukraine at the time were later shown by the JIT to correspond to different dates from those alleged (ibid.).

498. The first instance court of The Hague, referring to evidence repeatedly presented by the Russian authorities seeking to show that Ukraine was responsible for the downing of flight MH17, noted that "[o]n several occasions ... this so-called evidence was found to have been falsified or there were evident traces of manipulation" (B450). In its February 2023 report published with the suspension of the criminal investigation, the JIT noted the findings of the first instance court and explained that "[t]his stance by the Russian authorities has also had an adverse effect on the investigation into the crew, their superior officers and those responsible for supplying the Buk-TELAR to the DPR". The report noted that it had not been possible to conduct "any investigative activities" in the Russian Federation, and that questions about Russian involvement posed in the context of a request for legal assistance remained unanswered (B465). The JIT summarised the options with regard to any further investigation as follows (B469):

> "All the available telecom data of relevant individuals has now been analysed. The JIT has investigated this case as thoroughly as it reasonably can without the cooperation of the Russian authorities. In this connection, the investigation team has had to take account of the major security risks facing its sources.
>
> Any new evidence in the investigation must be sought in the Russian Federation. In order to obtain new evidence the JIT would have to rely on the cooperation of the Russian authorities or Russian (insider) witnesses. Under the current Russian regime the latter are not able to speak freely, and would expose themselves to major security risks if they were to talk to the JIT. To this day, the Russian authorities continue to deny – contrary to the established facts – any involvement in the conflict in eastern Ukraine on and around 17 July 2014. Since that date, the Russian Federation has on multiple occasions presented – and provided to the JIT – falsified evidence exonerating itself. At other times, the Russian authorities have refused to provide information. For example, they refused to answer questions posed by the Public Prosecution Service in 2018 about the whereabouts of the Buk TELAR '3X2' in the period from 23 June to 23 July 2014 and the identity of its crew members. They also refused to allow the 2021 request of the examining magistrate to examine the commander of the 53rd AAMB. Since the start of the JIT investigation the Russian authorities have publicly cast doubt on its findings. They did the same with the district court's judgment of 17 November 2022. Relations with the Russian Federation have deteriorated further since the Russian invasion of Ukraine on 24 February 2022. There is now no prospect of receiving the kind of open-minded cooperation necessary to continue the investigation."

499. The evidence establishes beyond doubt that rather than cooperating with the JIT investigation, the inaccurate revelations and disclosures of the Russian Ministry of Defence in its various press conferences were directed at contradicting and undermining what that investigation had revealed and deliberately setting false trails, wasting the time and resources of the JIT. The

failure of the Russian authorities to cooperate had a material impact on the ability of the JIT to conclude its investigation into the involvement of the Russian armed forces and senior Russian politicians in the downing of flight MH17.

(iii) Conclusion

500. It follows from the failure of the Russian Federation to conduct an effective investigation into the downing of flight MH17 and to cooperate effectively with the investigation of the JIT that there has been a violation of the procedural limb of Article 2 in respect of the deaths of the 298 people on board.

C. Alleged violation of Article 13 of the Convention, taken together with Article 2

501. Article 13 of the Convention provides:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

1. The parties' submissions

(a) The applicant Dutch Government

502. The applicant Dutch Government argued that the respondent State had violated Article 13 of the Convention in respect of the substantive and procedural obligations of Article 2 of the Convention.

503. In cases involving suspicious deaths, Contracting States were under an Article 13 obligation to provide for an effective remedy. With respect to violations of Articles 2 and 3 of the Convention, this required, in addition to the payment of compensation where appropriate, a thorough and effective investigation capable of leading to the identification and punishment of those responsible and including effective access for the relatives to the investigatory procedure. The applicant Dutch Government referred in particular to *Kaya v. Turkey* (19 February 1998, § 107, *Reports* 1998-I) where the Court had explained what Article 13 required in this context.

504. The Court had acknowledged in its admissibility decision in *Ukraine and the Netherlands v. Russia* ((dec.), cited above) that the Russian Federation was under the obligation to investigate under the procedural limb of Article 2 of the Convention. Furthermore, the Court had concluded that the Russian Federation had not carried out an investigation into the downing of flight MH17, even after the disclosure of the identities of three Russian nationals to be prosecuted in the Netherlands. The Court had further found evidence for the allegations that the Russian authorities had deliberately

sought to mislead investigators and to disseminate inaccurate information about the downing of flight MH17.

505. The applicant Dutch Government submitted that in the absence of an effective criminal investigation, it was impossible for the respondent State to provide an effective criminal remedy which sought to hold the perpetrators accountable. Moreover, the practice of the respondent State of constantly denying any involvement in the downing of flight MH17 meant that any attempt by the relatives to have recourse to national remedies in the Russian Federation would have been "bound to fail". Even if the possibility existed for the relatives to start civil proceedings in Russia, this would not be an effective remedy. The applicant Dutch Government pointed to the Court's findings in its admissibility decision regarding the prospects of success of a criminal investigation in the Russian Federation (*Ukraine and the Netherlands v. Russia* (dec.), cited above, §§ 800-07).

506. The "blanket denial of any involvement whatsoever in the events leading to the incident" and the inexistence of an effective remedy for the next of kin to pursue a civil procedure in the Russian Federation constituted a violation of Article 13 of the Convention.

(b) The respondent Government

507. As indicated above, the respondent Government did not participate in the present proceedings on the merits of this complaint (see paragraph 142 above). Their arguments at the separate admissibility stage are summarised in the Court's decision (*Ukraine and the Netherlands v. Russia* (dec.), cited above) as follows:

> "945. The respondent Government submitted that Russian law provided effective remedies in respect of the alleged violations of the Convention. As explained above, they objected to the admissibility of the complaints concerning the downing of flight MH17 on account of an alleged failure to exhaust effective domestic remedies ... In that context, they argued that the victims' relatives or the authorities of the Netherlands could have requested the initiation of a criminal investigation by the Russian authorities. Any refusal could have been appealed to the courts pursuant to Article 125 of the Russian Code of Criminal Procedure. They further pointed to the possibility for the Dutch authorities to transfer the criminal prosecution of the three Russian nationals to the Russian Federation. In the absence of such steps, the Russian Federation had carried out investigations in Russia pursuant to the mutual legal assistance requests from the Dutch authorities."

2. The Court's assessment

(a) General principles

508. Article 13 of the Convention guarantees the availability at the national level of a remedy allowing the competent national authority to deal effectively with the substance of complaints of a breach of the Convention and to grant appropriate relief (*Nicolae Virgiliu Tănase v. Romania* [GC], no. 41720/13, § 217, 25 June 2019). The scope of the obligation under Article

13 varies depending on the nature of the applicant's complaint under the Convention and Contracting States are afforded some discretion as to the manner in which they conform to their obligations under this provision. Nevertheless, the remedy required by Article 13 must be "effective" in practice and in law, in particular in the sense that its exercise must not be unjustifiably hindered by the acts or omissions of the authorities of the respondent State (see *Tagayeva and Others*, cited above, § 618).

509. In view of the fundamental importance of the right to life, in cases where it is alleged that the State was involved in the death of individuals Article 13 requires a thorough and effective investigation capable of leading to the identification and – if appropriate – punishment of those responsible and the payment of compensation (see *Centre for Legal Resources on behalf of Valentin Câmpeanu*, cited above, § 149; and *Tagayeva and Others*, cited above, § 618). These requirements are interlinked, since as at the heart of a complaint under Article 13 lies the applicant's inability to use any remedy available to him for obtaining relief, given that the knowledge necessary to elucidate facts is often in the sole hands of State officials or authorities (see *Tagayeva and Others*, cited above, § 627).

(b) Application of the general principles to the facts of the case

510. The applicant Dutch Government's complaint is that the authorities of the Russian Federation continue to deny involvement in the downing of flight MH17 and that there is no possibility for the victims' relatives to pursue proceedings in respect of the downing of the flight in the Russian Federation. As the Court has explained, the obligation under Article 13 has an investigative and a compensatory requirement. While there is a degree of overlap between this complaint and the procedural complaint made under Article 2 of the Convention, the focus on the present complaint is on availability of and access to effective civil remedies. The question that the Court must examine, under Article 13, is whether the violation by the respondent State of its procedural obligation under Article 2 frustrated access to or exercise of available and effective remedies for establishing liability on the part of State officials and obtaining compensation in civil proceedings.

511. The comprehensive and thorough investigation by the JIT has allowed the essential facts surrounding the downing of flight MH17 to be ascertained. As a result of this investigation, successful prosecutions were brought in the Netherlands against three individuals accused of being involved in the deployment of the Buk-TELAR. However, the JIT itself acknowledged the limitations of what its investigation could achieve, in the absence of the cooperation of the Russian Federation, in respect of certain fundamental facts concerning the provisions and deployment of the Buk-TELAR (B469 and 471). In particular, the JIT has been unable to ascertain the identities of the crew of the Buk-TELAR, the exact sequence of events leading to the firing of the weapon or the responsibility of those in the

hierarchy (B469). For these reasons, the Court has found that the failure of the respondent State to cooperate effectively with the criminal investigation had a material impact on the ability of the JIT to conclude its investigation into the involvement of the Russian armed forces and senior Russian politicians in the downing of flight MH17 (see paragraph 499 above).

512. There has been no other fact-finding forum that has allowed these critical details to be explored and elucidated. Indeed, given that the information required is in the sole hands of the authorities of the Russian Federation, that State's continued blanket denial of involvement in the downing of flight MH17 and refusal to provide information for scrutiny makes it impossible for the full truth about this incident to be established by any independent fact-finding body. As a consequence thereof, any suggestion that the elucidation of the facts might be achieved and the liability of Russian State officials established in civil proceedings in Russia can only be described as fanciful.

513. In these circumstances, there is no evidence before the Court to support the view that the victims' relatives would have access to effective remedies in the Russian Federation capable of establishing the liability of State officials and awarding compensation (see also *Ukraine and the Netherlands v. Russia* (dec.), cited above, § 802-07). Indeed, the Court has already found that there was no effective remedy, within the meaning of Article 35 § 1 of the Convention, which offered reasonable prospects of success to the relatives of the victims of the downing of flight MH17 in respect of their complaints under Article 2 of the Convention (ibid.).

514. There has accordingly been a violation of Article 13 of the Convention, taken together with Article 2.

X. ALLEGED VIOLATION OF ARTICLES 3 AND 13 OF THE CONVENTION IN RESPECT OF THE DOWNING OF FLIGHT MH17

A. Alleged violation of Article 3 of the Convention

515. The applicant Dutch Government complained that the attitude and conduct of the Russian Federation towards the next of kin of the victims of flight MH17 had caused and continued to cause them serious suffering in breach of Article 3 of the Convention. Article 3 of the Convention provides:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

1. The parties' submissions

(a) The applicant Dutch Government

516. The applicant Dutch Government argued that the suffering of the next of kin of the victims of the downing of flight MH17, which had been

knowingly and deliberately inflicted on them through the actions and omissions of the respondent Government, attained the minimum level severity to fall within the scope of Article 3 of the Convention.

517. The individual suffering of the next of kin had been documented in various reports prepared by eminent Dutch psychologists and psychiatrists which had concluded that the nature of the deaths of the victims of flight MH17 had caused profound grief of a traumatic nature which went beyond what was inevitably experienced in the case of the loss of a loved one (A2902-18 and B502-04). Those conclusions had been confirmed by Victim Support Netherlands (*Stichting Slachtofferhulp Nederland*) in its comprehensive and multidisciplinary analysis of the way in which assistance and rehabilitation had been provided to the next of kin in the period from 2014 to 2019 (B505-514). The expert analyses had shown that several factors had played a role in compounding the suffering of the next of kin, often resulting in significant (long-term) trauma, including post-traumatic stress syndrome (PTSS), persistent complex bereavement disorder (PCBD) and cases of severe depression (A2902, 2905, 2914-15 and 2918; and B508-10).

518. These factors included the fact that the deaths had been completely unexpected and unforeseen, caused by a deliberate act of human-inflicted violence randomly targeting innocent civilians. The prolonged uncertainty over the way in which the victims had died and who had been responsible, and whether the victims had been conscious for some time after the impact and thus aware of their impending death, had caused additional distress. The process of recovering the bodies of many of the victims which had been severely damaged and lay scattered over an area of over fifty square miles had also caused intense suffering. It had taken several years to collect, identify and return the remains of the victims. In some cases the next of kin, who had already conducted the funerals or cremations of their relatives, had continued to receive human remains on several occasions in subsequent years. In one such case, next of kin had been notified by police on sixteen occasions that additional body parts of their family member had been found. Next of kin who had watched a news report from a journalist holding up a bone in front of television cameras had subsequently been informed that the bone in question belonged to their daughter-in-law. The remains of two of the victims of flight MH17 had never been found, preventing the next of kin from paying their last respects and therefore hampering their grieving process. The impossibility of visiting the crash site had aggravated the relatives' suffering. In support of their submissions, the applicant Dutch Government referred to the personal statements and medical files provided by a large number of the next of kin (B476-88).

519. The applicant Dutch Government referred to a number of cases in which the Court had found it justified to find separate violations of Article 3 in situations of confirmed death in specific circumstances. Referring to the judgment in the case of *Janowiec and Others v. Russia* ([GC], nos. 55508/07

and 29520/09, § 178, ECHR 2013), they identified the relevant special factors in the present case which, they contended, gave the next of kin's suffering a dimension and character distinct from the emotional distress that inevitably stemmed from the killing of their relatives and which therefore amounted to a separate violation of Article 3 of the Convention.

520. First, as regards the proximity of the family ties and particular circumstances of the relationships, the next of kin had lost their partners, children, parents, brothers, sisters, uncles, aunts, grandparents or other close family members. In some cases they had lost close family members of several generations, such as children and their grandparents who had been travelling together.

521. Second, concerning the extent to which the next of kin had witnessed the events in question, although the family members had not directly witnessed the crash, they had nevertheless been exposed to a period of uncertainty and confusion about whether their next of kin had actually been on board the aircraft. Meanwhile, they had been confronted with graphic images of the aftermath of the crash and the handling of the human remains along with reports of looting. In the months and years following the downing, they had on several occasions been confronted with reports – both accurate and false – of discoveries of additional human remains and personal belongings.

522. Third, in respect of the involvement of next of kin in the attempts to obtain information about their deceased relatives, the relatives had been very active in trying to obtain adequate information from the respondent Government as to the cause of the crash and the identities of those responsible for the downing. Many were active members of the MH17 Air Disaster Foundation. On numerous occasions the next of kin had requested more information and appealed to the authorities of the respondent Government for their full cooperation in the investigation. They had also – unsuccessfully – addressed the authorities of the Russian Federation, including at the highest level, and had engaged with international bodies and legal processes, including those before the Court.

523. The way in which the authorities had responded to the next of kin's enquiries was a relevant and important factor in support of their complaint. The applicant Dutch Government referred to the Court's judgment in *Janowiec and Others*, where it had held that "[t]he essence of the issue under Article 3 in this type of case lies not so much in a serious violation of the missing person's human rights but rather in the authorities' dismissive reactions and attitudes in respect of that situation when it was brought to their attention" (cited above, § 178).

524. The conduct of the authorities of the respondent Government had consistently been aimed at preventing the establishment of the truth and preventing the respondent Government and its officials from being held accountable. The respondent Government had deliberately chosen not to

share relevant information which was within their exclusive knowledge or possession with the next of kin. Their responses to requests for information from the next of kin had been inadequate and lacking in transparency. The attitude of the respondent Government had often consisted of denials, deflections and attempts to shift blame onto other parties rather than engaging in a genuine effort to assist and support the families. It could therefore only be characterised as uncooperative and evasive. Indeed, the respondent Government's blanket denials amounted to an "attitude of official indifference", as described by the Court in its case-law. That attitude had not only touched upon the essence of the prohibition of inhuman and degrading treatment but had also added to the next of kin's anguish and frustration. In the absence of an adequate investigation by Russia and without any adequate information, the next of kin had been condemned "to live in a prolonged state of acute anxiety" which had not been erased with the passage of time (citing *Cyprus v. Turkey* [GC], cited above, § 157). Ten years had elapsed since the downing of MH17 and the next of kin were facing their loss daily and struggling with the many questions still unanswered. During this period, the next of kin had lived in uncertainty and anguish and some of them had passed away without learning the truth.

525. On account of these relevant special factors and specific circumstances, the applicant Dutch Government invited the Court to find that the serious and continuing suffering of the next of kin reached the minimum level of severity to amount to inhuman or degrading treatment contrary to Article 3 of the Convention.

(b) The respondent Government

526. The respondent Government did not participate in the present proceedings on the merits of this complaint (see paragraph 142 above). Their arguments at the separate admissibility stage were summarised in the Court's admissibility decision (*Ukraine and the Netherlands v. Russia* (dec.), cited above) as follows:

> "922. The respondent Government acknowledged that the greatest sympathy was due to the relatives of victims aboard flight MH17. They accepted that the trauma of family members who lost their loved ones in an air disaster and the anxiety caused by lack of knowledge of what had happened must be very great. However, suggesting that such trauma had been increased by Russia's denial of the allegations made by Ukraine and the Netherlands went too far. Controversy in legal proceedings could not possibly entail a breach of Article 3 of the Convention. On the contrary, truth was important for the relatives and the best way of exploring truth was via legal proceedings which were effective, open and accessible, with public evidence and argument and a full opportunity for each party to present its case and to challenge any opposing case. This was a cardinal principle of the Convention which accounted for the very foundation of the Court. At the hearing on admissibility, the Representative of the Russian Federation said:

'We understand that the victims, they clearly want the truth. And we are willing to assist them. And on behalf of the Russian Federation, I would like to declare that we will make available every piece of document transferred to the Dutch authorities on their MLA [mutual legal assistance] requests. And we are well prepared to go further: we will make them publicly available. And everybody can see what is true and what is not.'

923. To the extent that it had been argued that the family members' suffering had been caused by a failure on the part of the respondent Government adequately to investigate the downing of flight MH17, the respondent Government had tried to assist in what were presented as *bona fide* investigations by the DSB and JIT. Unfortunately, it was now clear that the DSB and JIT investigations were not proper investigations. Thus, if a 'right to truth' indeed existed in international law and bound all States, Ukraine and the Netherlands were the culprits in relation to flight MH17.

924. The respondent Government were fully entitled to challenge the evidence relied upon by the applicant States and the sham nature of their purported investigations. To the extent that uncertainty persisted, it was because Ukraine and the Netherlands had not discharged their obligations to investigate properly in the first place, and because, even now, they would not provide original digital evidence."

2. The third-party interveners

527. The MH17 applicants reiterated the submissions made at the separate admissibility stage of the present proceedings (summarised in *Ukraine and the Netherlands v. Russia* (dec.), cited above, §§ 932-38). They maintained that the continuing suffering of the family members of victims of flight MH17 had attained the minimum level of severity within the meaning of Article 3 of the Convention.

528. The continuing nature of their suffering had been recognised in the judgment of 17 November 2022 handed down by the first instance court of The Hague, which had found that the relatives' suffering had not been solely rooted in the past but was still continuing.

529. The relatives' suffering had originated from the circumstances of the victims' deaths and their aftermath. It had been compounded by the respondent Government's attitude of withholding information about the truth of what had happened and spreading false information. Moreover, the respondent Government's shameful response to the verdict handed down by the first instance court of The Hague fitted in with the pattern of their consistent indifference to the next of kin's right to the truth and the denial of the enormous suffering inflicted on them. That enormous and continuing lack of recognition continued to rip open the wounds that were difficult to heal. The life sentences handed down by the first instance court had had a major emotional impact on them on account of Russia's refusal to force the convicted persons to serve their sentences thereby protecting and rewarding those perpetrators. The perpetrators could ignore their life sentences, but the next of kin had received life sentences of their own.

530. The role that the attitude of the respondent Government had played in exacerbating the relatives' suffering had been recognised and confirmed

on a number of occasions and by a number of different bodies. The first instance court of The Hague had explicitly recognised it in its judgment, in which it had made awards to the relatives for the non-pecuniary damage on the ground that they had suffered serious psychological symptoms (B452-54). The court had noted (B455):

> "On the one hand, these symptoms are the result of the death of their loved one(s), and on the other they are caused by the other circumstances described above which have, among other things, exacerbated the distress and (psychological) disorders already inflicted."

531. The circumstances referred to here by the first instance court included the facts that the relatives had been left in the dark as to whether their loved ones had indeed died; that the relatives had not been certain about how the bodies could be recovered; that it had been – and it still was – impossible for the relatives to travel to the crash site; that the bodies of some of their loved ones had not been found at all and that the bodies of many others had been recovered incomplete and severely disfigured; that the relatives had had to live with the question of whether their loved ones had been aware of their fate in the moment after the impact of the missile; and that for the relatives the media coverage had meant a continuous exposure to and confrontation with the disaster. In sentencing some of the defendants the first instance court had also highlighted, as an additional factor which increased the distress of the relatives and their sense of injustice, the attitude those defendants had displayed and the statements they had made during the trial. These comments were an implicit recognition by the first instance court of the existence of the causal link between the relatives' continued suffering and the attitude of the respondent Government displayed via the individual defendants who were agents of the Russian Federation.

532. Second, the role of the authorities of the respondent Government in exacerbating the suffering of the next of kin had also been highlighted in Resolution 2452 (2022) of the Parliamentary Assembly of the Council of Europe "Ensuring accountability for the downing of flight MH17". There, the Parliamentary Assembly had stated that the spreading of misinformation had aggravated and prolonged the relatives' suffering (B363).

533. Third, the MH17 applicants referred to the undertaking of the representative of the respondent Government to make publicly available "every piece of document" that the Russian authorities had transferred to the Dutch authorities in response to their requests for mutual assistance (see paragraph 526 above) and the subsequent failure to do so. That failure was not only indicative of the respondent Government's blatant disregard towards the suffering of the victims, but also illustrated their obstructiveness to the right to truth.

534. The MH17 applicants provided the Court with the victim impact statements delivered by the relatives in the criminal proceedings before the first instance court (B476-84), as well as a report of research conducted by

the Department of Psychology of the Faculty of Behavioural and Social Science of the University of Groningen into those victim impact statements (B490-501). The report had noted, in particular, that the most frequently mentioned source of secondary victimisation by the relatives in their victim impact statements had been the attitude of the Russian authorities. It had concluded:

> "... [I]t was and still is excruciating for these relatives to be confronted with lack of information, with contradictory information, with casual denials of responsibility, with lack of cooperation and with obstruction of investigations. Not knowing what happened severely hampers them to find closure. As one [relative] put it, 'if only they took responsibility and admitted it was all a horrible accident'."

535. The MH17 applicants submitted that the report underscored their contention that the aggravated grief had not ceased and would likely only come to some form of closure, if at all, with the delivery of the judgment by the Court.

536. The MH17 applicants added that the crash site had been occupied by Russia since 2022 and, before then, by armed separatists. Many of the next of kin would like to visit the place in Ukraine where their loved ones had perished. However, that had been and still was impossible.

537. Finally, the MH17 applicants submitted that many of them were still struggling with important questions such as who had launched the Buk missile, why and on whose orders, and who had been ultimately responsible for making the Buk system and the crew available and for the order to bring the aircraft down. These questions had remained unanswered because of Russia's lack of cooperation. The OM had recently had to take the decision to suspend the investigation into other suspects because the information needed for further investigation and prosecution had to come from Russia but had not been forthcoming and was not expected to for the time being. This was another example of how Russia continued to aggravate the MH17 applicants' grief. The respondent Government's lack of cooperation in handing over evidence to the JIT and continuing denials of any involvement in the shooting down of flight MH17 were offensive and conveyed a callous disregard and lack of respect for those killed and for their families. It also meant that the families were denied an important source of information about what had happened and why it had happened. That information would not bring back their loved ones but the next of kin nevertheless wanted to understand what had happened and to try make some sense of what seemed so senseless.

3. The Court's assessment

(a) Relevant general principles and the Court's approach in previous comparable cases

538. Article 3 prohibits in absolute terms torture or inhuman or degrading treatment or punishment (see *O'Keeffe v. Ireland* [GC], no. 35810/09, § 144, ECHR 2014 (extracts)). The Court has always been sensitive to the profound psychological impact of a serious human rights violation on the victim's family members (see *Janowiec and Others*, cited above, § 177). It has explained that the phenomenon of disappearances imposes a particular burden on the relatives of missing persons who are kept in ignorance of the fate of their loved ones and suffer the anguish of uncertainty. In such circumstances, the situation of the relatives may disclose inhuman and degrading treatment contrary to Article 3. The essence of the Article 3 violation in such cases is not that there has been a serious human rights violation concerning the missing person; it lies in the authorities' reactions and attitudes to the situation when it has been brought to their attention. Other relevant factors include the proximity of the family tie, the particular circumstances of the relationship, the extent to which the family member witnessed the events in question and the involvement of the family member in the attempts to obtain information about the disappeared person (see *Varnava and Others*, § 200, and *Janowiec and Others*, §§ 177-78, both cited above).

539. A review of the Court's case-law reveals that the special factors giving the suffering of a relative a dimension and character engaging Article 3 have usually been found to exist in cases concerning enforced disappearances. However, the finding of a violation of Article 3 on account of relatives' suffering is not limited to cases where the respondent State has been held responsible for the disappearance. A violation may also arise where the failure of the authorities to respond to the quest for information by the relatives or the obstacles placed in their way, leaving them to bear the brunt of the efforts to uncover any facts, may be regarded as disclosing a flagrant, continuous and callous disregard of an obligation to account for the whereabouts and fate of a missing person (see *Varnava and Others*, cited above, § 200, and *Janowiec and Others*, cited above, § 178, with further references). By contrast, in cases where relatives were taken into custody but later found dead following a relatively short period of uncertainty as to their fate and in cases where relatives were killed by the authorities, the Court has generally adopted a more restrictive approach and has declined to find Article 3 of the Convention engaged in respect of the relatives (*Janowiec and Others*, cited above. §§ 179-80).

540. In some of the relevant cases the witnessing by the applicant of the events in question played a decisive role. In *Esmukhambetov and Others v. Russia*, a violation of Article 3 was found in respect of an applicant who had witnessed the killing of his entire family; the Court found no violation in

respect of applicants who had not personally witnessed the events in question (no. 23445/03, §§ 189-90, 29 March 2011). In *Musayev and Others v. Russia*, the violation of Article 3 was grounded on the applicant having witnessed the extrajudicial execution of several of his relatives and neighbours (nos. 57941/00, 58699/00 and 60403/00, § 169, 26 July 2007). In *Salakhov and Islyamova v. Ukraine*, the Court also took into account "the cynical, indifferent and cruel attitude towards [the second applicant's] appeals demonstrated by the authorities both before the first applicant's death and during its subsequent investigation" (no. 28005/08, §§ 195-206, 14 March 2013).

541. The case of *Benzer and Others v. Turkey* (no. 23502/06, 12 November 2013) concerned the bombing of the applicants' villages by fighter jets belonging to the air force of the respondent Government, which resulted in the deaths of dozens of relatives of the applicants. The Court noted that the applicants had seen the bodies of their close relatives who had been bombed by military aircraft, and had had to collect what was left of their bodies and bury them in mass graves. It further referred to the lack of the slightest concern for human life on the part of the pilots who had bombed the villages and their superiors who had ordered the bombings and then tried to cover up their act by refusing to hand over the flight logs. Finally, it noted that the national authorities had failed to offer even the minimum humanitarian assistance to the applicants in the aftermath of the bombing. These considerations led the Court to conclude that the applicants had suffered inhuman treatment (ibid., §§ 199-213).

542. In *Cangöz and Others v. Turkey* (no. 7469/06, 26 April 2016) the bodies of the applicants' seventeen relatives, who had been killed by members of the Turkish security forces in breach of Article 2 of the Convention had been placed outdoors, stripped of their clothes and examined by the prosecutor and two doctors. The applicants complained that they had felt degraded on account of the undignified fashion in which the bodies of their relatives had been displayed, without any respect for their privacy or memory and in front of a large number of military personnel. Regardless of whether the applicants had personally witnessed the bodies of their relatives, in view of their knowledge of the conditions in which these bodies had been examined in the military base, the Court had little doubt that the applicants had endured mental suffering. However, the Court observed that the applicants' suffering stemmed from a "lawful action carried out by the prosecutor who was performing his duties to investigate". Having particular regard to the purpose of the treatment, the Court did not consider the applicants' suffering to have had a dimension capable of bringing it within the scope of Article 3 of the Convention in the circumstances of the case (ibid., §§ 157 and 163-168).

543. Factors such as the mutilation of bodies and the inability of the applicants to give their relatives a proper burial have also played decisive

roles in the Court's finding of a violation of Article 3 in cases concerning relatives' suffering. For example, in *Akkum and Others v. Turkey* (no. 21894/93, ECHR 2005-II) the Court noted that the applicant's son had been killed and his ears had been severed *post mortem* in an area where the respondent Government's security forces had conducted a security operation. The Court held that the anguish caused to the applicant as a result of the mutilation of the body of his son amounted to degrading treatment contrary to Article 3 of the Convention (ibid., §§ 258-59; see also *Akpınar and Altun v. Turkey*, no. 56760/00, §§ 84-87, 27 February 2007). In *Khadzhialiyev and Others v. Russia* (no. 3013/04, 6 November 2008), the dismembered and decapitated bodies of the applicants' close relatives had been found four days after their abduction. Only some of their fragments had been discovered while the missing parts had not been found by the date of the Court's judgment. As a result, the applicants had been unable for a period of almost six years to bury the bodies of their relatives in a proper manner. The Court found that that in itself must have caused them profound and continuous anguish and distress and that the moral suffering they had endured had reached a dimension and character distinct from the emotional distress which could be regarded as inevitably caused to relatives of a victim of a serious human-rights violation (ibid., § 121).

544. *Petrosyan v. Azerbaijan* concerned an applicant whose son had lost his life in detention after his capture by Azerbaijani armed forces, in violation of Articles 2 and 3 of the Convention. The applicant's son's body had not been repatriated for a period of two months. When the body had finally been returned, it was in a severely decomposed state with internal organs and a bone missing. In the light of those particular circumstances, coupled with the failure to investigate the circumstances of the applicant's son's death, the Court concluded that the moral suffering endured by the applicant had been in breach of Article 3 (no. 32427/16, 4 November 2021, §§ 9 and 74-75).

(b) Application of the above principles to the facts of the present case

545. As a consequence of the downing of flight MH17 on 17 July 2014, which resulted in the deaths of all 298 passengers and crew members on board, the next of kin lost their partners, children, parents, brothers, sisters, uncles, aunts, grandparents and other close family members. Some relatives lost close family members of several generations. In its admissibility decision, the Court joined to the merits the question whether the alleged suffering of the relatives of victims of the downing of flight MH17 attained the minimum level of severity to fall within the scope of Article 3 (see *Ukraine and the Netherlands v. Russia* (dec.), cited above, §§ 941-42). It must therefore now determine whether there are special factors in the circumstances of the case that give the suffering of the next of kin a dimension and character distinct from the emotional distress which may be regarded as

inevitably caused to relatives of a victim of a serious human-rights violation so as to bring their suffering within the scope of Article 3.

546. The Court has no doubt that the next of kin have experienced, and continue to experience, profound grief and distress on account of the killing of their loved ones and its aftermath. The nature and extent of the next of kin's suffering was described in, *inter alia*, the reports prepared by psychiatrists and psychologists (see paragraph 517 above; and A2902-11 and B490-514), the victim impact statements submitted by them to the first instance court of The Hague (B476-84); personal statements of relatives (B485-89); the written third-party submissions provided by the MH17 applicants to the Court (see paragraphs 527-537 above and *Ukraine and the Netherlands v. Russia* (dec.), cited above, §§ 932-38); and the addresses made at the hearings of 26 January 2022 and 12 June 2024 by Mr Ploeg, Chair of the MH17 Air Disaster Foundation, on behalf of the next of kin (ibid., § 34 and paragraph 29 above. According to the reports of the psychologists and psychiatrists, the nature of the deaths of the victims of flight MH17 caused the next of kin profound grief of a traumatic nature which went beyond that inevitably experienced in the case of the loss of a relative.

547. The Court observes that although the next of kin did not witness the downing of the aircraft or the crash site directly, they were not able to avoid seeing the footage of the crash site and the bodies of their relatives shown very widely in the media (B514). They were forced to witness the gruesome images of the bodies of their relatives being treated with little respect by members of the "DPR" at the crash site (A107, 1068, 2711 and 2733; and B454 and 489). The next of kin were not able to escape the widespread news reports and images portraying the lack of dignity shown to the bodies of their relatives.

548. Moreover, the respondent Government did not respond positively to the international community's requests to ensure that the fighting cease so that adequate measures could be taken to secure the crash site in order to recover the bodies in a timely and appropriate manner (A47, 1070, 1076, 1639, 2710, 2722 and 2736). As a result, the OSCE team and the Dutch authorities only had limited access to the crash site, and it took eight months to complete the recovery of the bodies (A1062, 1064, 1070 and 2710; and B454, 489 and 549). Because of the refusal of the respondent Government to arrange for the crash site to be secured, during those eight months bodies remained out in the open (A2733 and B454). These circumstances, together with the general lawlessness prevailing in the area of the crash site, no doubt created a strong sense of powerlessness and anxiety as to the ability of the investigators to organise the return of the bodies and to uncover the reasons behind the crash.

549. The Court also notes that the next of kin had to bury the incomplete bodies of their relatives, in some cases on more than one occasion (see paragraph 518 above and A2902 and 2908; and B453 and 489). Some of them

were required to identify what remained of the bodies of their relatives in circumstances where the condition of the body rendered the task even more distressing (ibid.). In some cases, further body parts of the victims were returned to the relatives after the burial had taken place, forcing relatives to bury their relatives more than once (ibid.). In two cases, the bodies have still not been recovered (B498).

550. The Court further highlights the involvement of the next of kin in the JIT investigation into the downing of flight MH17. They have followed closely the work of the JIT throughout the criminal investigation, attending the criminal trial in The Hague. Many have intervened as third parties in the present proceedings and have also lodged individual applications with the Court. The relatives have, moreover, reached out personally to the Russian authorities and to President Putin himself in a bid to obtain crucial information concerning the downing of the flight (see paragraph 522 above and *Ukraine and the Netherlands v. Russia* (dec.), cited above, § 934). All their requests remain unanswered or were inadequately and untruthfully answered by the Russian authorities. As already noted, rather than engaging in a genuine effort to assist and support the families, the respondent Government circulated misinformation as to the cause and circumstances of the crash and their reaction to the allegations of Russian involvement was limited to denials and attempts to shift blame onto other parties (see paragraphs 487-488 and 494-499 above). The Court draws attention in this regard to the finding in the report prepared by the University of Groningen that the attitude of the Russian authorities was the most frequently mentioned source of secondary victimisation by the relatives in their victim impact statements (see paragraph 534 above; and B480, 488-89 and 496-97). It further notes that in its Resolution 2452 (2022) "Ensuring accountability for the downing of flight MH17", the Parliamentary Assembly of the Council of Europe expressed the view that the spreading of misinformation by the Russian authorities had strongly aggravated the suffering of the crash victims' relatives and friends and that they desperately needed to know the truth of what had happened to their loved ones, and how and why, and they needed a measure of accountability of the perpetrators in order to find closure (A9).

551. The Court has found a violation of the procedural aspect of Article 2 on account of the failure of the Russian authorities to carry out an effective investigation into the downing of flight MH17 and their failure to cooperate effectively with the JIT investigation (see paragraph 500 above). It considers that these failings have significantly aggravated the suffering of the next of kin by prolonging the agonising wait for answers. Although the work of the JIT has enabled the broad circumstances of the crash to be elucidated, the failure of the Russian authorities to engage with the investigation has left the relatives in a state of uncertainty as to the exact circumstances of the downing of the flight and the responsibility of senior figures in the Russian government.

552. For these reasons, the Court concludes that the continuing profound suffering of the next of kin of the victims of the downing of flight MH17 has a character and dimension that attains a level of severity which amounts to inhuman treatment and therefore brings it within the scope of Article 3 of the Convention, and dismisses the preliminary objection of the respondent Government in this regard (see paragraph 545 above). There has accordingly been a violation of Article 3 of the Convention in respect of the suffering of the relatives of those killed as a result of the downing of flight MH17.

B. Alleged violation of Article 13 of the Convention

553. The applicant Dutch Government alleged that Article 13 of the Convention had been violated by the respondent Government on account of their failure to provide an effective remedy in respect of the complaint under Article 3.

554. As explained above, the respondent Government did not participate in the present proceedings on the merits of this complaint (see paragraph 142 above). At the separate admissibility stage of the present proceedings, they argued that Russian law provided effective remedies in respect of the Convention violations alleged by the applicant Dutch Government (*Ukraine and the Netherlands v. Russia* (dec.), cited above, § 945).

555. In concluding that there has been a violation of Article 3 in the present case, the Court has already taken into account the respondent Government's failure to respond to the calls of the families for information, their failure to investigate the circumstances of the downing of flight MH17, and their denials of any involvement whatsoever in the events leading to the downing of the aircraft. The Court therefore considers that it is not necessary to examine separately the complaint under Article 13 of the Convention taken together with Article 3 of the Convention.

XI. ADMISSIBILITY OF APPLICATION NO. 11055/22

A. The parties' submissions

556. The respondent Government did not take part in the proceedings on the admissibility and merits of this application and have not made any submissions with regard to the admissibility of application no. 11055/22 (see paragraph 142 above).

557. The applicant Ukrainian Government submitted that the admissibility requirements of the Convention were met. In particular, they argued that the rule of exhaustion of domestic remedies was inapplicable to administrative practices and that their application had been submitted within the applicable four-month time-limit. They also submitted that their

complaints of administrative practices related to a continuing situation and that, therefore, the four-month time-limit had no application.

B. The Court's assessment

1. Identification of new complaints

558. A number of allegations of continuing administrative practices were lodged by the applicant Ukrainian Government in application nos. 8019/16 and 43800/14. Most of these complaints were declared admissible by the Court in its admissibility decision of 30 November 2022 (see *Ukraine and the Netherlands v. Russia* (dec.), cited above, § 889).

559. The complaints advanced in application no. 11055/22 concern further allegations of administrative practices in breach of the Convention following the Russian invasion of Ukraine on 24 February 2022. The question arises whether these are new complaints or whether they represent the continuation of complaints declared admissible by the Court on 26 January 2022. The Court is therefore required to examine the complaints pursued by the applicant Ukrainian Government in their memorial before the Grand Chamber to determine what new complaints have been lodged in application no. 11055/22. In undertaking its assessment of this question, the Court will refer to the summary of the complaints set out by the applicant Ukrainian Government in their memorial. It has the power to decide on the characterisation to be given in law to the facts of a complaint by examining it under Articles of the Convention that are different from those relied upon by the applicant Government (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 126, 20 March 2018).

560. The applicant Ukrainian Government allege in application no. 11055/22 that the administrative practice in respect of the alleged abduction of three groups of children in violation of Articles 3, 5 and 8 of the Convention and Article 2 of Protocol No. 4 extended throughout the "DPR" and the "LPR" from 2014 onwards. They contend that there was an escalation in the geographic scope and the scale of this practice following the 2022 invasion. The Court is satisfied that the allegation represents the continuation of the complaint of an administrative practice previously alleged and already declared admissible by the Court (see *Ukraine and the Netherlands v. Russia* (dec.), cited above, § 898).

561. In respect of Article 2 of the Convention, the complaint in the memorial reflects the complaint made in application no. 8019/16. It is true that it describes in more detail the types of civilian objects targeted by alleged unlawful military attacks (residential buildings, civilian infrastructure and humanitarian corridors). However, the Court is satisfied that the complaint essentially represents the continuation of the complaint of an administrative practice previously alleged under Article 2 of the Convention and already

declared admissible (see *Ukraine and the Netherlands v. Russia* (dec.), cited above, § 889).

562. Under Article 3 of the Convention, the majority of the allegations in the memorial relate to the complaint of an administrative practice already declared admissible by the Court (ibid.). There are, however, new allegations that make reference to alleged suffering, exceeding the minimum level of severity for Article 3, as a result of "mass deportations and displacement of the civilian population", "attacks upon civilians and civilian objects" and "abductions and forced disappearances". The Court considers that the allegation of suffering arising from attacks upon civilians and civilian objects and from abductions and forced disappearances amounts to a new complaint. The admissibility of this complaint therefore falls to be assessed now. It considers it appropriate, however, to examine the alleged suffering arising from mass deportations and displacement of the civilian population under Article 8 of the Convention (see paragraph 565 below).

563. The Court is satisfied that the complaint under Article 4 § 2 in the memorial represents the continuation of the complaint of an administrative practice previously alleged under Article 4 § 2 of the Convention in application no. 8019/16 and already declared admissible (see *Ukraine and the Netherlands v. Russia* (dec.), cited above, § 889).

564. The Article 5 complaint in the memorial contains many of the same allegations already advanced in application no. 8019/16. It includes references to abductions and unlawful detention of civilians in new factual circumstances, such as filtration centres and hostage-taking. However, in their essence these allegations fall within the scope of the complaint of an administrative practice of arbitrary deprivations of liberty in breach of Article 5 of the Convention already declared admissible by the Court (ibid.). In so far as the applicant Ukrainian Government's Article 5 complaint refers to detention of civilians in "dirty and suffocating conditions, restricting their access to food, water, and toilets", this will be examined solely in the context of the Article 3 complaint already declared admissible by the Court (see paragraph 562 above). Finally, the applicant Ukrainian Government also refer, under Article 5, to the trapping of civilians inside buildings and basements throughout the area within range of Russia's weapons. The Court considers that the essence of this allegation is the risk to civilian life from unlawful military attacks, the fear and suffering of civilians forced to shelter from frequent artillery attacks and bombing and the harsh living conditions endured by civilians on account of the widespread damage to essential infrastructure. For this reason, the Court finds it appropriate to examine this allegation from the perspective of Articles 2 and 3 of the Convention (see paragraphs 561-562 above).

565. The applicant Ukrainian Government have for the first time made a complaint of an administrative practice in breach of Article 8 of the Convention alleging, notably, destruction of homes, forced displacement and

transfer of civilians and the application of unlawful filtration measures. This is a new complaint and its admissibility must accordingly be examined now. However, in so far as the complaint includes the allegation that forced nudity was routinely ordered by Russian armed forces during filtration measures, the Court considers that such treatment is capable of amounting to ill-treatment within the meaning of Article 3 of the Convention and will accordingly examine the allegation in that context. The allegation therefore refers in essence to the allegations of ill-treatment of civilians in custody already declared admissible by the Court (see paragraph 562 above).

566. The complaint under Article 9 of the Convention refers to various forms of attacks and intimidation not previously explicitly mentioned in application no. 8019/16. However, the Court is satisfied that the complaint falls within the scope of the complaint of an administrative practice of deliberate attacks on, and intimidation of, various religious congregations already declared admissible by the Court (see *Ukraine and the Netherlands v. Russia* (dec.), cited above, § 889).

567. The complaint in the memorial under Article 10 largely repeats the allegations made in the context of application no. 8019/16 and to this extent represents the continuation of the alleged administrative practice already declared admissible (see *Ukraine and the Netherlands v. Russia* (dec.), cited above, § 889). However, it also refers to the "use of unlawful force, imprisonment and deadly violence against peaceful protesters". The Court observes that a similar allegation of "unlawful interference with the peaceful right to protest by the use of unlawful and often lethal force" is raised also under Article 11 of the Convention. The Court finds it appropriate to examine the allegation from the perspective of Article 11 only. Since the Article 11 complaint was not previously made by the applicant Ukrainian Government, it amounts to a new complaint whose admissibility therefore falls to be determined now.

568. In respect of Article 1 of Protocol No. 1 to the Convention, the complaint made in the memorial provides greater details as to the specific types of private property allegedly damaged or destroyed by the actions of the respondent State. However, the Court is satisfied that the allegations fall within the scope of the complaint of an administrative practice in breach of Article 1 of Protocol No. 1 which was already declared admissible (see *Ukraine and the Netherlands v. Russia* (dec.), cited above, § 889).

569. The applicant Ukrainian Government complain in their memorial of an administrative practice in breach of Article 2 of Protocol No. 1. Although a complaint under Article 2 of Protocol No. 1 was previously declared admissible, that complaint relates only to the prohibition of education in the Ukrainian language. The complaint made in the memorial is wider, encompassing allegations of a failure to ensure a right of access to educational facilities and indoctrination of students. These allegations amount to a new complaint whose admissibility also falls to be examined now.

570. The applicant Ukrainian Government invoke Article 2 of Protocol No. 4 in their memorial. A complaint under Article 2 of Protocol No. 4, made in the context of application no. 43800/14, concerning the alleged abduction and transfer to Russia of Ukrainian children, has previously been declared admissible (*Ukraine and the Netherlands v. Russia* (dec.), cited above, § 889). The relevant complaint advanced in application no. 11055/22 includes other allegations related, in essence, to attacks on civilians during evacuation or preventing their evacuation. The Court considers it appropriate to address these new matters in the context of its examination of the complaints under Article 2 of the Convention (see paragraph 561 above).

571. The applicant Ukrainian Government raised for the first time in application no. 11055/22 a complaint under Article 3 of Protocol No. 4 essentially concerning the alleged forcible deportation of Ukrainian civilians to the Russian Federation or to occupied territory. The Court considers that this complaint is more appropriately addressed from the standpoint of Article 8 of the Convention and will therefore deal with it in that context.

572. In addition, the applicant Ukrainian Government invoked, under Articles 2, 3, 4 § 2, 5, 8, 9, 10 and 11, Articles 1 and 2 of Protocol No. 1 and Articles 2 and 3 of Protocol No. 4, the alleged failure of the respondent State to investigate all credible allegations of the conduct amounting to the administrative practices alleged, or to provide any effective redress. They further contended, in each case, that this practice also violated Article 13. The Court observes that an administrative practice requires evidence of official tolerance, and that the alleged failure to investigate and provide redress is relevant in this regard (*Ukraine and the Netherlands v. Russia* (dec.), cited above, §§ 775, 824 and 826). It follows that a finding of an administrative practice in breach of Convention Articles reflects both the breach of the substantive obligation and also procedural failings to investigate alleged Convention violations and punish those responsible and to provide effective redress. The Court considers, in light of this observation and in view of the numerous procedural obligations invoked, that it is appropriate to examine these procedural complaints, in so far as it is deemed necessary to examine them, from the perspective of an alleged administrative practice under Article 13 only. This is a new complaint whose admissibility accordingly falls to be examined now.

573. The applicant Ukrainian Government have further alleged a breach of Article 14 in respect of all complaints advanced in application no. 11055/22, with the exception of the complaint under Article 13 of the Convention. As regards the new complaints identified above, the admissibility of the associated Article 14 complaints also falls to be assessed now.

574. The Court is accordingly required to examine the admissibility of the following new complaints:

i. under Article 3 of the Convention, the allegations concerning suffering exceeding the minimum level of severity on account of military attacks and abductions and forced disappearances;
ii. the substantive complaints under Articles 8, 11 and 13 of the Convention;
iii. under Article 2 of Protocol No. 1 to the Convention, the allegations of a failure to ensure a right of access to educational facilities and indoctrination of students; and
iv. the complaint under Article 14 of the Convention read in conjunction with the above Articles in respect of the above complaints, with the exception of the complaint under Article 13 of the Convention.

2. Compliance with Article 35 § 1 of the Convention

575. Article 35 § 1 of the Convention provides as follows:

> "The Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law, and within a period of four months from the date on which the final decision was taken."

576. The new complaints concern allegations of administrative practices. The exhaustion requirement is therefore inapplicable to these allegations. The question whether the applicant Ukrainian Government have succeeded in demonstrating the existence of the alleged administrative practice to the standard required at the admissibility stage is a separate question which must be answered in the affirmative before a case may proceed to consideration on the merits (*Ukraine and the Netherlands v. Russia* (dec.), cited above, § 784). This question is examined below (see paragraphs 581-582 below).

577. The four-month time-limit, however, applies to allegations of administrative practices (*Ukraine and the Netherlands v. Russia* (dec.), cited above, § 785). The Court must therefore determine whether it has been complied with in respect of the new complaints.

578. Having regard to the nature and the scope of the new complaints (see paragraphs 561-574 above), the Court is satisfied that they concern allegations of ongoing Convention violations. As a result, the four-month time-limit would only begin to run in respect of the allegations once the alleged violations had ceased. However, and in light of the Court's temporal jurisdiction in respect of the Russian Federation, the four-month time-limit began to run in respect of the alleged ongoing violations on 16 September 2022 at the latest (see *Ukraine and the Netherlands v. Russia* (dec.), cited above, § 786 and paragraph 188 above).

579. The Court observes that an allegation under Article 8 of the Convention concerning the suppression of the Ukrainian language in the public space was first raised in the applicant Ukrainian Government's memorial of 2 October 2023. This was more than four months after

16 September 2022. The Court therefore finds this complaint to be inadmissible under Article 35 § 1 of the Convention (see paragraph 578 above). It observes, however, that an alleged administrative practice in breach of Article 2 of Protocol No. 1 consisting of the prohibition of education in the Ukrainian language has already been declared admissible (*Ukraine and the Netherlands v. Russia* (dec.), cited above, § 889).

580. The remaining new complaints were raised for the first time in the applicant Ukrainian Government's application form of 23 June 2022 or in the supplement to their application form submitted on 8 August 2022. The Court finds, having regard to the evidence concerning the existence of administrative practices to which later parts of this judgment refer, that the complaints were lodged within the four-month period stipulated by Article 35 § 1.

3. Evidential threshold

581. The Court reiterates that the applicable standard of proof for the purposes of admissibility in respect of allegations of administrative practices is that of "sufficiently substantiated prima facie evidence" (*Ukraine v. Russia (re Crimea)* (dec.), cited above, § 263, and *Ukraine and the Netherlands v. Russia* (dec.), cited above, § 450). Moreover, the burden is on the applicant Ukrainian Government to provide evidence supporting its substantive allegations. While the Court may gather evidence of its own motion, it is not an investigative body and it is not its role actively to locate evidence supporting specific assertions made in the proceedings before it. It is therefore for the applicant Ukrainian Government to provide the prima facie evidence necessary to support their allegations of (ibid., § 864).

582. In the light of its findings on the merits, below, that there is sufficient evidence to show beyond reasonable doubt the existence of administrative practices in violation of the Convention in respect of the new complaints, the latter complaints are plainly also admissible by reference to the lower evidential threshold applicable at the admissibility stage.

4. Conclusion

583. The Court accordingly declares admissible the following new complaints of the applicant Ukrainian Government:

- the complaint of an administrative practice under Article 3 consisting of causing suffering exceeding the minimum level of severity through unlawful military attacks and abductions and forced disappearances;
- the complaint of an administrative practice under Article 8 of the Convention consisting of the forced displacement and transfer of civilians, the involuntary displacement of civilians and prevention of their return home, the application of filtration measures, the destruction of homes and personal possessions and the theft and pillage of personal possessions;

- the complaint of an administrative practice under Article 11 of the Convention consisting of unlawful interference with the peaceful right to protest;

- the complaint of an administrative practice under Article 2 of Protocol No. 1 to the Convention consisting of a failure to ensure a right of access to educational facilities and indoctrination of students;

- the complaint of an administrative practice under Article 14, taken in conjunction with the above Articles in respect of the above complaints; and

- the complaint of an administrative practice under Article 13 of the Convention in respect of administrative practices in breach of Articles 2, 3, 4 § 2, 5, 8, 9, 10 and 11 of the Convention, Articles 1 and 2 of Protocol No. 1 to the Convention and Article 2 of Protocol No. 4 to the Convention.

XII. THE APPROACH TO THE ADMINISTRATIVE PRACTICES ALLEGED

A. The identification of the administrative practices

584. The applicant Ukrainian Government have alleged a number of administrative practices in breach of Convention rights. Most of the allegations made concern Ukrainian territory occupied by Russia or the treatment of detainees, and in respect of these allegations, the Court will determine whether the evidence shows repeated conduct in breach of each of the particular Convention Articles invoked. In order to do this, it will examine each Convention right one by one.

585. However, the Court will examine the allegation of unlawful military attacks in the context of the conduct of hostilities, in respect of which the applicant Ukrainian Government have pleaded a number of Convention Articles, as a single thematic complaint. Such attacks did not take place in occupied territory and it is therefore appropriate to address them separately from allegations concerning the conduct of Russian agents in occupied areas (in Section XIII below). It will also examine separately the allegation of the abduction and transfer to Russia of Ukrainian children (in Section XXI below), which concerns a particular course of conduct alleged to engage a number of Convention rights which occurred in both occupied Ukrainian territory and Russian sovereign territory.

B. Evidence for an administrative practice

1. Repetition of acts

586. In order to show the existence of an administrative practice, the applicant Ukrainian Government must present evidence allowing it to be established beyond reasonable doubt that there was repetition of the acts in question and official tolerance (see, *mutatis mutandis*, *Ukraine and*

the Netherlands v. Russia (dec.), cited above, § 824). The Court reiterates that where the complaint is one of an administrative practice, the aim of the applicant State is to prevent the continuation or recurrence of that practice; the Court is not asked to give a decision on each of the cases put forward as proof or illustrations of that practice (ibid., § 775).

587. The applicant Ukrainian Government have alleged a number of administrative practices, many of which are alleged to have occurred over a period of more than eight years from 11 May 2014 to 16 September 2022. The Court explained in its admissibility decision that what is required by way of repetition is "an accumulation of identical or analogous breaches which are sufficiently numerous and inter-connected not to amount to merely isolated incidents or exceptions but to a pattern or system" (*Ukraine and the Netherlands v. Russia* (dec.), cited above, § 825). The Court further underlined that there is no place for excessive formalism in the interpretation and application of this test (ibid.). This is particularly true where the Court is confronted with allegations of an administrative practice spanning a lengthy time period, as in the present case.

588. The evidence summarised in this judgment is relevant to the Court's determination of whether the test is satisfied during the period from 11 May 2014 to 16 September 2022, or a shorter period if appropriate, in respect of each of the allegations made. In some instances there may be certain intervals within the period under consideration where fewer details as to incidents occurring in occupied territory are available. Where the repeated acts detailed in the material before the Court are essentially the same and there is no evidence of any intention to cease the pattern of conduct, temporal breaks between repeated sequences of acts or insignificant changes to the content of the practices, such as the incorporation of additional elements, are not factors which will affect the overall continuity of the pattern identified.

589. More broadly, however, the Court acknowledges, having regard to the overall context and the alleged pattern of violations, that direct evidence of the alleged events might be difficult to come by (see *Ukraine v. Russia (re Crimea)*, cited above, § 381).

590. First, witnesses and alleged victims might reasonably have feared possible persecution by "DPR" and "LPR" separatists (see, *mutatis mutandis*, ibid.). In a report from 2016, for example, the OHCHR explained that "[s]ome victims delayed reporting until they left the areas under the control of armed groups. In other cases, the relatives of those deprived of their liberty or otherwise abused by the armed groups requested that their cases remain confidential for fear of retribution" (B580). In a 2017 report, when discussing allegations of summary execution and wilful killings by armed separatists, the OHCHR noted that "relatives and witnesses interviewed by HRMMU often do not give consent for public reporting on such cases out of fear of retaliation or persecution" (B635).

591. Second, the Court observes that there was limited opportunity for monitoring in occupied territory. The reports show that independent monitors and external observers were not generally admitted to separatist-controlled areas of eastern Ukraine. As explained above, both the OHCHR and the OSCE deployed monitoring missions in eastern Ukraine (see paragraphs 41-42 above) and those missions shared their observations on a regular basis. However, even their movements and access rights were not unhindered. Some restrictions arose from the armed hostilities themselves, which severely curtailed access to areas in which there was intense fighting or mines and unexploded ordnance. Other restrictions were imposed by the separatist armed groups themselves. In its daily reports, the OSCE SMM frequently referred to restrictions of its freedom of movement by armed separatists, including denial of access to travel certain roads previously identified as important for effective monitoring by the SMM (see, for example, A1110, 1113-15, 1118, 1120 and 1124; and B854, 880, 944, 1071, 1160, 1178, 1211, 1214-15 and 1225). In 2020 "quarantine restrictions" as a result of the COVID-19 pandemic were frequently cited by separatists as a reason for refusing the SMM permission to pass checkpoints and cross into separatist-controlled areas (B1215, 1218 and 1223-25).

592. The OHCHR observed in its report covering the period from August to November 2015 that places of detention maintained by the separatists "remained virtually inaccessible for independent oversight, and international organizations, including the HRMMU, did not have access to detainees" (B571). It identified an urgent need for independent monitoring of these facilities, given the considerable number of cases of torture and ill-treatment documented by the HRMMU since the beginning of the conflict. In a report published in June 2016 the OHCHR noted a "worrying pattern of behaviour" involving the denial by the "DPR" and the "LPR" of unfettered access to places of deprivation of liberty by international organisations and external observers (B578). This "considerably limit[ed] OHCHR's ability to report on human rights abuses" perpetrated in "DPR"- and "LPR"-controlled territory (B580). In 2017 the OHCHR reported that it was denied access to places where people were deprived of their liberty and was not permitted to hold confidential interviews. It observed that "this denial of access raises serious concerns that human rights abuses may be occurring" (B639). From June 2018 its operations in territory controlled by the "DPR" and the "LPR" were "severely restricted". It highlighted that the continued denial of access, despite repeated requests, to detention facilities and its resulting inability to monitor treatment of detainees and detention conditions were of particular concern (B675, 681, 683, 688, 691 and 697).

593. In light of the continued denial of access to detainees, the OHCHR's documentation of human rights violations during capture, abduction or detention was often based on interviews with former detainees following their release. Because of the length of detention in many cases, the evidence

provided by detainees often relates to acts which have taken place several years earlier. This is notably the case with the witness statements provided to the Court from detainees returned to Ukraine under prisoner exchange agreements reached in 2017 and in 2019: many had been taken into captivity in 2014 and 2015 but were only able to share their accounts of the events leading to that captivity after their release. HRMMU reporting of alleged arbitrary killings, torture and ill-treatment and unlawful detention similarly refers often to incidents which happened in earlier years of the conflict, on the basis of recent interviews with released prisoners. In one report from 2016, for example, the OHCHR explained that though new cases of enforced disappearances, arbitrary detention, torture and ill-treatment it had documented mostly fell outside the relevant reporting period, it believed that this demonstrated "the hidden character of the phenomenon and delayed reporting by witnesses and victims, rather than a genuine improvement in the conduct of relevant actors" (B580).

594. Finally, the history of the conflict in Ukraine has shown that apparent human rights violations have often come to light following the recovery by the Ukrainian armed forces of control over territory. Thus, the recovery of control over Sloviansk and surrounding areas in the summer of 2014 resulted in the discovery of documents and testimony relating to "execution orders" carried out by separatists (see paragraphs 783-784 below). The reacquisition of control by Ukraine over Bucha in 2022 led to the discovery of mass graves and bodies showing evidence of torture (see paragraphs 894-896 and 1000 below). In view of the general stability of the contact line between 2015 and early 2022, opportunities during this period for uncovering human rights abuses in previously-occupied territory were absent.

595. The Court has previously drawn a parallel between a situation where a State restricts the access of independent human rights monitoring bodies to an area in which it exercises "jurisdiction" within the meaning of Article 1 of the Convention and a situation where there is non-disclosure by a government of crucial documents in their exclusive possession which prevents or hinders the Court establishing the facts (*Ukraine v. Russia (re Crimea)*, cited above, § 390). It has explained that in both situations, the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities of the respondent State (ibid.).

596. In view of the overall circumstances of the conflict in eastern Ukraine from 2014 to 2022 and the repeated restrictions imposed by the separatist authorities on the only two monitoring missions permitted to operate within the territory controlled by them during that period, the Court is satisfied that it may draw relevant inferences when assessing the evidence before it.

2. Official tolerance

597. As for official tolerance, what is meant is that illegal acts are tolerated by the superiors of those immediately responsible or by higher authorities (see *Ukraine and the Netherlands v. Russia* (dec.), cited above, § 826, and the authorities cited therein). The present case concerns the alleged widespread disrespect of a range of Convention rights by the respondent Government over a period of more than eight years, first in eastern Ukraine and then across Ukraine as a whole. For the reasons explained in the Court's admissibility decision, it would be artificial in the present context to consider the matter of official tolerance separately in respect of each of the Articles of the Convention alleged to have been violated (see *Ukraine and the Netherlands v. Russia* (dec.), cited above, § 827). The Court will therefore examine the question of official tolerance once it has established the relevant facts in the context of its examination of the alleged repetition of acts in breach of the Convention (see Section XXIII below).

C. "Lawfulness"

598. No act by the authorities of a High Contracting State which interferes with Convention rights will be found to be justified if it is not lawful. In this sense, lawfulness is a thread that runs through the Convention. At a very minimum, it requires that there be a legal basis in domestic law for the actions taken by State authorities.

599. In the majority of cases before the Court, the domestic law being applied is the law of the High Contracting Party which has sovereignty over the territory in question and is the respondent State. However, in the present case the respondent State has been found to be exercising extra-territorial jurisdiction in sovereign Ukrainian territory in the context of an armed conflict. In this context, it is necessary for the Court to explain its approach to "domestic law" in this case.

600. Article 43 of the Hague Regulations requires the occupying Power to respect, unless absolutely prevented, the laws in force in the country (B131). Article 64 GC IV further provides that the penal laws of the occupied territory must remain in force except where they constitute a threat to the security of the occupying Power or an obstacle to the application of the convention (B132). International humanitarian law therefore provides for the continued application of Ukrainian law in territory occupied by Russia. It follows that Ukrainian law may provide a legal basis for actions taken in occupied territory. It is for the respondent State, however, to show that any interference with a Convention right has a legal basis. In the present case, it was therefore for the Russian Federation to demonstrate that actions taken by its agents in, and general measures applied to, occupied territory were taken on the basis of Ukrainian law. The respondent Government have not argued in the present proceedings or in any other public statements to which the

present judgment refers that provisions of Ukrainian law provide the legal basis for the impugned acts and measures. On the contrary, the numerous reports before the Court suggest that the separatist entities and other occupying administrations applied their own, or Russian, law in the territory concerned. The Court therefore has no grounds to conclude that any of the acts or measures concerned were based on Ukrainian law.

601. Insofar as the evidence before the Court indicates that purported legal acts adopted by the "DPR" and the "LPR" were applied in the areas in the hands of these two respective entities since 2014, the Court has already provided guidance on how "legal acts" of subordinate administrations should be approached. As regards legal acts of the "TRNC" applied to sovereign Cypriot territory in northern Cyprus, the Court in *Demopoulos and Others v. Turkey* ((dec.) [GC], nos. 46113/99 and 7 others, ECHR 2010) said:

> "95. ... [T]he overall control exercised by Turkey over the territory of northern Cyprus entails its responsibility for the policies and actions of the 'TRNC' and ... those affected by such policies or actions come within the 'jurisdiction' of Turkey for the purposes of Article 1 of the Convention with the consequence that Turkey is accountable for violations of Convention rights which take place within that territory and is bound to take positive steps to protect those rights. It would not be consistent with such responsibility under the Convention if the adoption by the authorities of the 'TRNC' of civil, administrative or criminal law measures, or their application or enforcement within that territory, were then to be denied any validity or regarded as having no 'lawful' basis in terms of the Convention (see *Foka v. Turkey*, no. 28940/95, § 83, 24 June 2008, where arrest for obstruction of the applicant Greek Cypriot by a 'TRNC' police officer was found to be lawful, and *Protopapa v. Turkey*, no. 16084/90, § 87, 24 February 2009, where a criminal trial before a 'TRNC' court was found to be in accordance with Article 6, there being no ground for finding that these courts were not independent or impartial or that they were politically motivated).
>
> 96. In the Court's view, the key consideration is to avoid a vacuum which operates to the detriment of those who live under the occupation, or those who, living outside, may claim to have been victims of infringements of their rights. Pending resolution of the international dimensions of the situation, the Court considers it of paramount importance that individuals continue to receive protection of their rights on the ground on a daily basis. The right of individual petition under the Convention is no substitute for a functioning judicial system and framework for the enforcement of criminal and civil law. Even if the applicants are not living as such under the control of the 'TRNC', the Court considers that, if there is an effective remedy available for their complaints provided under the auspices of the respondent Government, the rule of exhaustion applies under Article 35 § 1 of the Convention. As has been consistently emphasised, this conclusion does not in any way put in doubt the view adopted by the international community regarding the establishment of the 'TRNC' or the fact that the government of the Republic of Cyprus remains the sole legitimate government of Cyprus ... The Court maintains its opinion that allowing the respondent State to correct wrongs imputable to it does not amount to an indirect legitimisation of a regime unlawful under international law."

602. The Court therefore accepts that legal acts of the "DPR" and the "LPR" are not precluded per se from constituting "domestic law" for the purposes of its Convention assessment. However, the Court's case-law

plainly shows that its examination of "lawfulness" goes beyond mere formal legality and includes a qualitative assessment of the domestic law, by reference in particular to its compliance with the requirements of the rule of law and overall conformity with the Convention (see, for example, *Denis and Irvine v. Belgium* [GC], nos. 62819/17 and 63921/17, § 127, 1 June 2021 (Article 5); *Big Brother Watch and Others v. the United Kingdom* [GC], nos. 58170/13 and 2 others, § 332, 25 May 2021 (Article 8); *Bayatyan v. Armenia* [GC], no. 23459/03, §§ 113-16, ECHR 2011 (Article 9); *Sanchez v. France* [GC], no. 45581/15, § 24, 15 May 2023 (Art 10); and *Vistiņš and Perepjolkins v. Latvia* [GC], no. 71243/01, § 96, 25 October 2012 (Article 1 of Protocol No. 1)). It is for the respondent State to identify the legal basis for the measures taken in respect of all relevant allegations, to provide detailed information on the content of the law applied and to demonstrate to the Court's satisfaction that the law complies with the "lawfulness" requirement of the Convention in respect of the right under examination.

603. However, in the present case, the Russian Federation have not taken part in the proceedings on the merits. They have provided no information as to the legal basis for any measures taken by "DPR" and "LPR" authorities. They have not provided the Court with copies of any purported laws applied nor have they provided any analysis of the compatibility of such laws with the requirements of "lawfulness". The Court's knowledge of relevant legal provisions purportedly adopted in the "DPR" and the "LPR" is derived solely from the reports and other evidence before it.

604. The Court further underlines that before accepting the legal acts of separatist entities as "law" for the purposes of the Convention, it would have to be satisfied that the legal system reflects a judicial tradition compatible with the Convention and the standards inherent in it, including respect for democracy, human rights and the rule of law (see, *mutatis mutandis*, the Court's judgments in *Cyprus v. Turkey*, §§ 231-37, and *Mozer*, §§ 148-150, both cited above; and more recently *Lypovchenko and Halabudenco v. the Republic of Moldova and Russia*, nos. 40926/16 and 73942/17, §§ 128-29, 20 February 2024, and *Mamasakhlisi and Others v. Georgia and Russia*, nos. 29999/04 and 41424/04, §§ 425-26, 7 March 2023). The respondent Government have provided no information, either at this merits stage or during the proceedings on admissibility in which they participated in the usual manner, which could allow the Court to assess the legal system in place in the "DPR" and the "LPR" during the relevant period.

605. It follows that the respondent Government have not provided the necessary information to enable the Court to conclude that any legal acts adopted by the "DPR" and the "LPR" may be accepted as "law" for the purposes of its assessment of alleged Convention violations.

606. As regards the acts of other Russian occupying authorities, the Court has already emphasised in its judgment in *Ukraine v. Russia (re Crimea*) the need to interpret the notion of "lawfulness" in the light of the relevant

provisions of international humanitarian law (cited above, §§ 934-42). As already noted (see paragraph 600 above), these provisions notably require the occupying Power to respect, unless absolutely prevented, the laws in force in the country and provide that the penal laws of the occupied territory must remain in force except where they constitute a threat to the security of the occupying Power or an obstacle to the application of GC IV. Article 64 GC IV further permits the occupying Power to subject the population of the occupied territory to measures essential to enable it to fulfil its obligations under the convention, to maintain the orderly government of the territory and to ensure the occupying Power's security (B132).

607. The Court can only determine whether the occupying authorities of the Russian Federation may rely on legal acts adopted by them or on Russian law itself in the context of the "lawfulness" assessment if it has been provided with all the necessary information to make such a determination. However, the respondent Government neither adduced any evidence nor submitted any arguments regarding the applicability of international humanitarian law in general or its relevance to, or impact on, the validity of such legal acts or Russian law within Ukrainian sovereign territory. In particular, there is no evidence at all that the Russian occupation authorities were "absolutely prevented", within the meaning of the Article 43 of the Hague Regulations, from respecting the laws already in force in Ukrainian territory or that the conditions in Article 64 GC IV were satisfied so as to justify repealing or suspending already applicable penal laws. There is likewise no basis for concluding that the provisions made by the occupying Power were essential to enable it to fulfil its obligations under the GC IV, to maintain the orderly government of the territory or to ensure its security (see, in a similar vein, *Ukraine v. Russia (re Crimea)*, cited above, §§ 943-45).

608. The Court further observes in this respect that a measure cannot be said to be "lawful" for the purposes of the Convention merely because it may be permitted by Article 64 GC IV. The power granted in Article 64 is subject to an important restriction: if local laws are sufficient to secure the aims envisaged, any new provision applied by the occupying authorities could not be viewed as "essential" and therefore lawful under Article 64. Moreover, the power afforded in Article 64 is expressed in broad terms and grants a significant degree of latitude to occupying authorities as to the measures they may apply in order to fulfil their obligations under the GC IV, to maintain orderly government or ensure security in occupied territory. This general legal basis must be reflected in the domestic legal order through more specific provisions in relevant legal instruments and appropriate guidance that satisfy the "quality of law" requirement inherent in the notion of "lawfulness". The respondent State has failed to make any argument concerning the applicability of Article 64 or to provide the Court with copies of any provisions adopted by the occupying authorities in purported application of that article.

609. It follows that the conditions required for Russian law or measures taken by the occupying authorities to be recognised as providing a valid legal basis, for Convention purposes, for acts undertaken in Ukraine have not been met in the present case (*Ukraine v. Russia (re Crimea)*, cited above, § 946). The consequences of this conclusion will be addressed as appropriate in the Court's assessment of the alleged administrative practices, below.

XIII. ALLEGED ADMINISTRATIVE PRACTICE OF UNLAWFUL MILITARY ATTACKS AGAINST CIVILIANS AND CIVILIAN OBJECTS

A. The complaints

610. In the context of their complaints of administrative practices under various Articles of the Convention, the applicant Ukrainian Government complained about the consequences of unlawful military attacks, notably bombing and shelling, against civilians and civilian objects conducted by agents of the Russian Federation since 11 May 2014. Such arguments were made in the context of the complaints, as qualified by the Court, under Articles 2, 3, 8, 9 and 10 of the Convention and Articles 1 and 2 of Protocol No. 1 to the Convention.

611. As explained above (see paragraph 585 above), the Court considers it appropriate to examine separately in the present chapter whether there has been an administrative practice of military attacks in breach of the Convention, since the alleged violations all stem from the alleged widespread campaign of targeted and indiscriminate bombing and shelling by Russian agents of territory in Ukraine which was not under Russian effective control. The essence of the complaints concerns the civilian deaths, the widespread destruction of homes and other property, and the terror and suffering caused to the local population by such military attacks. In so far as journalists, religious figures or teachers were killed in military attacks, or schools and churches were shelled, these are further examples of the death, suffering and destruction alleged under, notably, Articles 2 and 3 and Article 1 of Protocol No. 1. The Court is not persuaded, taking into account its examination below of alleged administrative practices in violation of Articles 9 and 10 of the Convention and Article 2 of Protocol No. 1, that it is necessary to examine separately whether these Articles were also violated in the context of an alleged administrative practice of military attacks in breach of the Convention. In determining whether there has been such an administrative practice, the Court will therefore restrict its examination to Articles 2, 3 and 8 of the Convention and Article 1 of Protocol No. 1 to the Convention.

612. In the first place, regarding the period from 11 May 2014, the applicant Ukrainian Government complained of an administrative practice in

breach of Article 2 of the Convention and Article 1 of Protocol No. 1 to the Convention. Under Article 2, they complained of the following:

> "a. attacks directed against residential buildings and areas, as well as indiscriminate or disproportionate attacks, including by the use of explosive weapons with wide-area effects (e.g., shelling from heavy artillery, multiple launch rocket systems, missiles, air strikes and cluster munitions), causing loss of life in such buildings and areas;
>
> b. attacks directed against the civilian infrastructure (most notably, hospitals, schools, universities, recreation facilities, public transport, religious buildings and administrative buildings), as well as indiscriminate or disproportionate attacks, including by the use of explosive weapons with wide-area effects, causing loss of life in such infrastructure;
>
> c. attacks directed against humanitarian corridors, as well as indiscriminate or disproportionate attacks, including by the use of explosive weapons with wide-area effects, causing loss of life in such corridors ..."

613. The Court has decided that the complaint about the "trapping of civilians inside buildings and basements throughout the area within range of Russia's weapons" falls to be examined under Article 2 (see paragraph 564 above). It has also decided to examine additional allegations related to attacks on civilians during evacuation or preventing their evacuation under Article 2 of the Convention (see paragraph 570 above). The relevant allegations are:

> "a. attacks (often fatal) upon civilian transport infrastructure, such as train lines and stations, with a view to preventing evacuation;
>
> b. restricting civilians to their homes or towns (at times amounting to a siege), preventing them from fleeing;
>
> c. attacks (often fatal) upon civilian evacuees (including children) travelling in cars that were clearly marked to be civilian and contain children, by train and bus, on foot;
>
> d. violation of humanitarian corridors through shelling and attempts to kill fleeing civilians ..."

614. Under Article 1 of Protocol No. 1, they complained of the following:

> "a. destruction of and damage to residential real property;
>
> b. destruction of and damage to commercial and industrial real property and businesses;
>
> c. destruction of and damage to personal possessions and chattels;
>
> d. the misappropriation of property by looting and seizure ..."

615. Second, in respect of the period from 24 February 2022, the applicant Ukrainian Government alleged that, in addition to the above allegations, the respondent State had also engaged in an administrative practice in breach of Articles 3 and 8 of the Convention. They moreover identified additional examples of conduct which they alleged formed part of the administrative practice in breach of Article 1 of Protocol No. 1 to the Convention.

616. Under Article 3, they complained that, from 24 February 2022, there had been "attacks upon civilians and civilian objects causing suffering

exceeding the minimum level of severity for Article 3". The Court has further decided to examine their complaints about the "trapping of civilians inside buildings and basements throughout the area within range of Russia's weapons" under this Article (see paragraph 564 above).

617. Under Article 8, the applicant Ukrainian Government complained of the "destruction of homes and personal possessions".

618. Under Article 1 of Protocol No. 1, in addition to the allegations concerning the period from 11 May 2014, they complained of the following from 24 February 2022:

> "e. destruction of and damage to essential infrastructure, in particular energy infrastructure (including gas and oil infrastructure and nuclear facilities), transport infrastructure and medical facilities;
>
> f. destruction of and damage to civic, cultural and religious property;
>
> g. destruction of and damage to NGO property;"

619. The relevant Articles provide as follows:

Article 2

"1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:

(a) in defence of any person from unlawful violence;

(b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

(c) in action lawfully taken for the purpose of quelling a riot or insurrection."

Article 3

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

Article 8

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

Article 1 of Protocol No. 1

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance

with the general interest or to secure the payment of taxes or other contributions or penalties."

B. The parties' submissions

1. The applicant Ukrainian Government

620. The applicant Ukrainian Government complained of an administrative practice of unlawful military attacks against civilians and civilian objects in breach of Article 2 of the Convention. The administrative practice allegedly consisted of directed attacks, as well as indiscriminate and disproportionate attacks, against residential buildings and areas, civilian infrastructure (most notably hospitals, schools, universities, recreation facilities, public transport, religious buildings and administrative buildings), and humanitarian corridors causing loss of life.

621. The applicant Ukrainian Government referred to the OHCHR's "conservative estimate based on available data" that, by 31 May 2016, up to 2,000 civilians had been killed since the beginning of the armed conflict in eastern Ukraine. The overwhelming majority of deaths (an estimated 85-90%) had been the result of the shelling of populated areas with mortars, canons, howitzers, tanks and multiple launch rocket systems. By 2021 this figure had risen to 3,404. They argued that the repeated shelling of civilian targets by Russian regular forces and proxies under their control had been in violation of the principles of distinction and proportionality. The OHCHR had frequently reported that the shelling had taken place without regard for the principles of distinction and precaution, resulting in civilian casualties and damage to civilian infrastructure. The applicant Ukrainian Government provided a number of illustrative examples of allegedly unlawful military attacks. The single greatest loss of civilian life had occurred when "DPR" forces had shot down flight MH17, resulting in the deaths of all 298 civilians on board. The applicant Ukrainian Government adopted and endorsed the submissions of the applicant Dutch Government in this respect (see paragraphs 433-445 above).

622. From 24 February 2022, attacks had been carried out through the use of explosive weapons with wide-area effects such as shelling from heavy artillery, multiple launch rocket systems, missiles, air strikes and cluster munitions. The attacks had been deliberate, indiscriminate or disproportionate in nature, with no apparent attempt to abide by the principle of distinction or to minimise the risk to civilian life. The UN had concluded that most of the over 14,000 civilian casualties recorded between 24 February 2022 and 11 September 2022 had been caused by Russia's use of wide-area effect weapons, including cluster munitions. The applicant Ukrainian Government provided a number of examples which were illustrative only: the staggering scale of the violations of Article 2 by the respondent State could not be set out exhaustively. The applicant Ukrainian Government drew

particular attention to the sieges of Chernihiv, Enerhodar, Kherson and Mariupol. In Mariupol, for example, the OHCHR had verified the deaths of 1,348 civilians during the siege, a figure described by the UN High Commissioner on Human Rights as a severe underestimate. According to the High Commissioner, by June 2022 Russian forces had destroyed or damaged all hospitals in Mariupol able to treat civilians. The applicant Ukrainian Government underlined that Russia had "deliberately and systematically targeted civilian infrastructure of special significance for the survival of the civilian population". They reiterated the indiscriminate nature of Russian attacks. By June 2022, 90% of residential infrastructure in Mariupol had been destroyed.

623. The respondent State had also risked the lives of the Ukrainian population in and around the Zaporizhzhia Nuclear Power Plant. Russian forces had shelled the plant from a tank gun on 3-4 March 2022 and had subsequently stormed and seized the plant. It remained under the *de facto* control of the Russian Federation's troops.

624. Finally, the applicant Ukrainian Government invoked the violation by Russia of humanitarian corridors. By way of example, on 5 March 2022 Russian forces had fired on evacuating citizens in Mariupol, despite having agreed a temporary ceasefire; and on 21 March 2022 they had shelled a humanitarian corridor from Zaporizhzhia to Mariupol.

625. As regards Article 3, Russian forces had launched attacks upon civilians and civilian objects causing suffering exceeding the minimum threshold of severity and amounting to inhuman and degrading treatment. The surviving victims of attacks had suffered, and continued to suffer, distress, anguish and physical and psychological trauma. The HRMMU had recorded 74 attacks on hospitals and medical facilities by 26 March 2022 (B734); in its report published in April 2022, the WHO had recorded over 100 attacks in health care facilities, killing 73 and injuring 51 (B249). The applicant Ukrainian Government provided examples of such attacks. An in-depth report by the Yale School of Public Health had found that the Russian forces had engaged in "a widespread and systematic pattern of damage to Ukrainian healthcare facilities by indiscriminate bombardment and in some cases intentional targeting" (B2193-95).

626. A large number of residential areas of Ukraine had also been directly and indiscriminately targeted by Russian forces by shelling with cluster munitions, unguided rockets, and S-300 surface-to-air missiles. There had been attacks on apartment blocks, houses, playgrounds, kindergartens, bus stops and civilian vehicles. As a result of such attacks, a large number of people had been killed, injured and trapped beneath collapsed buildings. The HRMMU had documented attacks on 35 educational facilities, including 23 schools, 8 kindergartens, 3 universities and one scientific centre (B734). Many of the attacks had caused serious injury to civilians, including children. There had also been large-scale attacks on other civilian objects and civilians.

The applicant Ukrainian Government provided a number of illustrative examples of relevant attacks. In all cases, the suffering occasioned had exceeded the minimum level of severity required to establish a violation of Article 3 of the Convention.

627. The applicant Ukrainian Government further argued that when unlawfully directing attacks against civilians and civilian objects, Russian forces had trapped civilians inside buildings and basements. In some cities they had cut off essential services and restricted the supply of goods and medical services, leading to the "choking" of these cities, while simultaneously stopping the exit of civilians from the cities, including through established humanitarian corridors. For example, in Mariupol, more than 100,000 civilians had been blocked in the city without power, water or gas due to shelling by Russian forces.

628. It had, moreover, been confirmed by independent media outlets, humanitarian agencies, international organisations and NGOs that Russian forces had caused extensive destruction to homes, dwellings and residential areas in many Ukrainian towns, villages, settlements and cities as a result of the indiscriminate shelling of civilian property. There were a large number of consistent reports clearly depicting this. By March 2022 an estimated 80% of the residential buildings in Mariupol had been destroyed or damaged (B218, 1442 and 2146). The OHCHR had reported on 27 September 2022 that, during the period to 31 July 2022, the extensive use of explosive weapons with wide-area effects in populated areas had caused mass damage to and destruction of civilian housing in several regions, including Kyiv, Chernihiv, Kharkiv, Sumy, Donetsk, Luhansk, Mykolaiv, Kherson and Zaporizhzhia (B744). In their oral submissions, the applicant Ukrainian Government underlined that levels of destruction similar to those found in Mariupol could be seen in Izium, which had been "almost completely flattened" by Russian artillery and aircraft bombing on 25 March 2022; in Irpin, where by 4 March 2022 most buildings had either been destroyed or damaged beyond repair; and in Kyiv, where over 390 buildings – including 222 apartment buildings – had been damaged by Russian attacks by 5 May 2022.

629. As regards the alleged violation of Article 1 of Protocol No. 1, the applicant Ukrainian Government referred to the Court's determination at the separate admissibility stage of the present proceedings that there was "extensive evidence" of widespread shelling which had resulted in the destruction of property. They provided illustrative examples concerning the period between 11 May 2014 and 24 February 2022.

630. The interference with property rights by the respondent State since 24 February 2022 was patently unlawful, under domestic and international law. The domestic law of Ukraine and Russia prohibited the planning, preparation and waging of an aggressive war. In addition, Russia's invasion of Ukraine had been widely acknowledged to be unlawful as a matter of international law (see paragraphs 80-89 and 95-96 above; and B197-98 and

344-49). Russia's widespread attacks on civilian objects, including private homes, commercial and industrial premises, cultural property and essential infrastructure throughout the period from 24 February to 16 September 2022 had constituted clear violations of the right of every natural and legal person to peaceful enjoyment of their possessions pursuant to Article 1 of Protocol No. 1 to the Convention. The victims had included individual residents and citizens of Ukraine and privately-owned enterprises and enterprises which enjoyed "sufficient institutional and operational independence from the State" (*Slovenia v. Croatia* (dec.) [GC], no. 54155/16, § 63, 18 November 2020).

631. From the first day of the Russian invasion, the HRMMU had documented "large-scale destruction and damage of civilian objects" throughout Ukraine. Exactly one month into the war, the European Council had concluded that Russian armed forces were "directing attacks against the civilian population and ... targeting civilian objects" in a war of aggression that "grossly violate[d]" international law (B734). By 28 March 2022 the HRMMU had concluded that most of the damage to civilian objects recorded by the UN to date had been caused by the use of explosive weapons with wide-area effects in populated areas. It had further noted that Russia's use of cluster munitions – deployed by Russian forces on at least sixteen separate occasions up until the date of the report, resulting in damage to civilian objects in densely populated areas – raised significant concerns, owing to their "disproportionate and long-term indiscriminate effects" which made them inherently "incompatible with the principles of international humanitarian law". Aside from the damage caused by indiscriminate shelling, there was evidence of a strategy of deliberately targeting civilian objects, notably essential infrastructure and property of significant civic, cultural and religious import for the people of Ukraine.

632. In the second phase of the invasion from 8 April 2022, Russia's interferences with property rights had continued on a vast scale, with Russia deliberately razing large areas of regions on the frontline (Donetsk, Luhansk, Kharkiv, Mykolaiv, Zaporizhzhia, Dnipropetrovsk, Chernihiv and Sumy) while also conducting multiple missile strikes on civilian buildings and infrastructure in other regions. The Ukraine Rapid Damage and Needs Assessment of August 2022, jointly prepared by the World Bank, the government of Ukraine and the European Commission, had estimated that by 1 June 2022 direct damage had already reached over 97 billion US dollars (USD), with reconstruction and recovery needs at about USD 349 billion (B251).

633. In respect of residential real property, in the first phase of the conflict from 24 February to 7 April 2022, Russia's indiscriminate attacks on populated areas in Ukrainian cities, towns and villages had inflicted widespread damage to residential property, including private homes and multi-storey residential buildings. In the besieged city of Mariupol, satellite

imagery analysis from the United Nations Satellite Centre (UNOSAT) had highlighted the extraordinary scale of Russian missile attacks and shelling. This pattern of destruction had continued from 8 April 2022 in Phase 2. On 9 September 2022 Ukraine's Deputy Prime Minister had reported that approximately 140,000 residential buildings had been destroyed as a result of Russia's invasion. Much of the destruction had taken place in front line regions. The applicant Ukrainian Government referred to OHCHR and OSCE reports, NGO reports and numerous media articles.

634. Russia's combination of indiscriminate, widespread and systematic attacks had also caused significant damage to commercial and industrial property, including property owned by non-governmental legal persons, and, in many cases, the inevitable destruction of businesses. Widespread and apparently systematic attacks on essential infrastructure, including energy, transport and telecommunications assets, had been a further hallmark of the Russian aggression. The "systematic destruction of essential infrastructure" by Russian forces had been denounced by the UN Secretary-General António Guterres on 28 March 2022 (B212). On 13 September 2022 the IOM had warned that escalating Russian attacks on power infrastructure would "have a terrible impact on the capacity to heat [targeted] cities", and could seriously jeopardise the living conditions of Ukrainian civilians over the winter, especially those internally displaced by the invasion (B3911). Within the first two weeks of the invasion, six separate attacks had also been reported at nuclear power plants, research institutes and waste sites across Ukraine. Medical facilities had also been the subject of widespread attacks. By 24 July 2022 nearly 900 medical facilities had been damaged or destroyed by Russia's invasion. The applicant Ukrainian Government referred notably to a report by the UN Office for the Coordination of Humanitarian Affairs (OCHA), media reports documenting the attacks and witness statements.

635. The OSCE fact-finding mission in Ukraine had documented an "impressive and depressing list" of cultural property and cultural heritage sites damaged or destroyed during Phase 1 of the war (up to 7 April 2022). By the end of Phase 1, UNESCO had verified the damage to at least 53 culturally significant sites across eight regions of Ukraine, including 29 religious sites, 16 historic buildings, 4 museums and 4 monuments. UNESCO's list did not include sites from the besieged cities of Mariupol or Kherson, since the scale of destruction there could not be verified. On 23 June 2022 the number of cultural and historic heritage sites reported by UNESCO as fully or partially destroyed since the beginning of the invasion had increased to 152. The evidence further indicated that the property of NGOs had not been respected by Russian forces in Ukraine. The applicant Ukrainian Government relied on OHCHR and OSCE reports and media articles.

636. The applicant Ukrainian Government underlined that the actions complained of were incompatible with international humanitarian law. Moreover, in so far as some of the Articles they invoked permitted

interferences with the rights protected, the military attacks were neither in accordance with the law nor necessary and proportionate.

2. The respondent Government

637. The respondent Government did not take part in the present proceedings on the merits of application nos. 8019/16, 43800/14 and 28525/20 and the admissibility and merits of application no. 11055/22 (see paragraph 142 above). At the separate admissibility stage of the proceedings, the respondent Government challenged the evidence submitted by the applicant Ukrainian Government in general and, in particular, in support of their claims of cross-border artillery attacks by the Russian military (*Ukraine and the Netherlands v. Russia* (dec.), cited above, §§ 408-15, 645-46 and 820). They did not make any submissions concerning alleged artillery attacks by the separatist administrations.

638. No submissions have been received from them in respect of the period after 26 January 2022, the date of the separate admissibility hearing in the present case, save for their brief response to the Court's request for information in the context of its 1 March 2022 indication under Rule 39 of the Rules of Court (see paragraphs 9 and 140-141 above).

C. Summary of the relevant evidence

639. Reports of artillery shelling in the context of the conflict in eastern Ukraine can be found as early as 12 May 2014 (A271). The OHCHR report covering the period from 8 June to 15 July 2014 noted that the separatists were using heavy weaponry, including missiles, mortars and anti-aircraft guns (A140 and B528. See also A693). It referred to "intense fighting using heavy weaponry in and around population areas" which it said had "devastated towns and villages, demolishing residential buildings and killing an increasing number of their inhabitants" (A977 and B528). It later described "heavy shelling ... from both sides" to the conflict and observed, "[q]uestions arise about the conformity of these attacks with the rules governing the conduct of hostilities" (B528). However, the report did not identify any specific artillery attacks on civilians or civilian targets by separatist forces, observing that the incidents involving civilian deaths had occurred "without any possibility to ascertain beyond any doubt whether the casualties were caused by Ukrainian forces or armed groups" (A272). The OHCHR further found that the armed groups were locating their military assets in, and conducting attacks from, densely populated areas, thereby putting the whole civilian population at risk (A704). It noted that locating military objectives within or near a densely populated area and launching attacks from such areas might constitute a violation of international humanitarian law (B528).

640. On 17 July 2014 civilian flight MH17 was shot down over eastern Ukraine, killing all 298 people on board. It has already been established,

based on the extensive evidence before the Court, that the plane was downed by a Buk missile provided by the Russian Federation and fired from separatist-controlled territory by a member of the Russian military crew of the Buk-TELAR or a member of the "DPR" (see paragraph 452 above, *Ukraine and the Netherlands v. Russia* (dec.), cited above, § 904, and A1496-620, 1644-793 and 1857-88).

641. While the SMM reported a number of shelling incidents in the conflict area between May and July 2014, the mission reports did not include findings as to the party responsible nor did they systematically disclose details of the damage caused by such attacks (A271, 280, 284-89 and 291-92; and B798, 800 and 802).

642. In August 2014 the OHCHR referred to numerous reports alleging the indiscriminate use of weapons, such as artillery, mortars and multiple rocket launcher systems, in and around densely populated areas (A712). The report continued:

> "27. As a result of intensified hostilities, there has been an escalation in the number of casualties which has more than doubled in total since the last report. By a very conservative estimate of the HRMMU and the World Health Organization (WHO), based on the best data available, at least 1,200 people have been killed, and at least 3,250 have been wounded in east Ukraine between 16 July and 17 August...
>
> 28. In total, since mid-April, and as of 17 August, at least 2,220 people (including at least 23 children) have been killed and at least 5,956 (including at least 38 children) have been wounded in the fighting in eastern Ukraine. This includes civilians, personnel of the Ukrainian forces and some members of the armed groups (for whom no separate casualty figure is known). This overall figure does not include the 298 people killed in the crash of the Malaysian Airlines flight MH-17 on 17 July."

643. The SMM also continued to report incidents of shelling throughout August 2014, but the details in their daily reports remained scarce and no findings as to the perpetrators of specific attacks were reported (A293-94, 296-97, 299, 302-05, 707-11 and 714-16). On 4 August 2014, for example, the SMM observed multiple incoming and outgoing mortars and artillery rounds near Petropavlivka and Rozsypne (A296). On 11 August 2014 the SMM heard from displaced residents of Pervomaisk that the town was being shelled by Ukrainian and separatist forces. The residents said that almost all apartment blocks in the town had sustained damage; that only 30% of detached houses remained intact; and that two hundred people had been killed and more than four hundred wounded (A709).

644. The events at Ilovaisk in August 2014 were the subject of a separate thematic report by the OHCHR. These events were described in the report as "emblematic of human rights violations and abuses and international humanitarian law violations that have been repeatedly committed during the conflict in eastern Ukraine", including the shelling of residential areas resulting in civilian casualties (A717). The report observed (A719 and 988; and B535):

> "7. Hostilities in Ilovaisk and the surrounding villages had a devastating impact on the civilian population. In Ilovaisk, 600 out of 1,800 individual houses were destroyed and 116 multi-storey buildings were damaged. For three weeks, residents of Ilovaisk did not have electricity, water and gas due to damages caused by the hostilities. During this period, there were also no functioning medical facilities. The shelling of Ilovaisk and two nearby villages resulted in the death of at least 36 civilians ... Monitoring conducted by OHCHR indicates that parties to the conflict employed explosive weapons in populated areas without complying with the principles of distinction, proportionality and precaution."

645. The report set out in further detail the shelling of Ilovaisk in August 2014 and the impact on civilians. However, while it identified dates and locations of shelling, it did not identify the perpetrators of particular attacks (B535).

646. The report further described negotiations to create a humanitarian corridor allowing the Ukrainian armed forces to retreat from the Ilovaisk area. On 29 August 2014 Ukrainian troops began a retreat from the Ilovaisk area through a humanitarian corridor discussed with the Russian Federation in two columns of armoured military vehicles, military and civilian trucks, buses and other vehicles. Soon after departing, the columns came under intense shelling and small arms fire. Hundreds of Ukrainian soldiers were killed and wounded in the attack (A718 and B536). Witnesses reported that an unarmoured truck carrying wounded soldiers and displaying a large white flag with a red cross was hit by a heavy weapon, killing all inside but one (B536). The 2016 Report on Preliminary Activities of the Office of the Prosecutor of the ICC also referred to reports that many Ukrainian troops had been killed as they had attempted to retreat from the Ilovaisk area (A77). Witness statements provided by Ukrainian soldiers described how they had been involved in the retreat from Ilovaisk via an agreed "green" corridor when they had come under artillery fire from the Russian armed forces (A1406, 1408, 1411, 1426, 1436, 1446, 1455 and 1458. See also A1152-53).

647. In early September 2014 Mariupol came under heavy shelling as the separatists closed in on the city (A311 and 317). On 6 September 2014 an SMM team reported artillery fire from Luhansk, which was under the control of the "LPR", towards Stanytsia Luhanska, under Ukrainian control (A723). In its report published in September 2014, the OHCHR indicated that the majority of civilian deaths to date had been the result of indiscriminate shelling in residential areas and the use of heavy weaponry. The mission reported the allegation that civilians evacuating from Luhansk had been shelled by separatist armed groups between the settlements of Novosvitlivka and Khriashchuvate. Seventeen people had been killed and six wounded (A725).

648. Despite the agreement of the Minsk Protocol on 5 September 2014, which set out a peace plan including an immediate ceasefire (see paragraph 56 above), throughout the following months the SMM continued to report on frequent shelling incidents in areas subject to heavy fighting, causing death

and damage to property (A318-87 and 727-35). In September 2014 there were a number of artillery attacks on or near Ukrainian checkpoints causing death, injury and damage to residential property (B805-06 and 808-09). The SMM also reported the shelling of government-controlled areas from "DPR" or "LPR" positions (B807 and 810-11). The SMM frequently referred to incoming and outgoing artillery fire (for example, A336-37, 343-44, 359 and 371). In October 2014 the SMM reported a number of instances of shelling of government-controlled territory. For example, in Krasnohorivka, it found traces of impact consistent with incoming Grad shelling (B812). It reported heavy shelling with Grad missiles to the north-east of Mariupol, fired from the east, killing seven and injuring fifteen (A730). In Hranitne, it observed recent shelling damage to houses and a school; it was able to ascertain that some of the impacts appeared to have been from mortar rounds fired from "DPR"-controlled territory (B814-15).

649. The OHCHR, in its report of 15 November 2014, commented on the conduct of hostilities as follows (B539):

> "25. Before, as well as after, the announcement of a 'silence regime' [in October 2014, during which armed hostilities and shelling were to cease in the conflict zone], residential areas continued to be indiscriminately shelled by various artillery and multiple launch rocket systems (MLRS) throughout the whole reporting period. This led to military and civilian casualties. Targeting of military positions occurred in the immediate vicinity of residential areas, but areas which were not located near military positions were also shelled, particularly in the city of Donetsk.
>
> 26. The reported use of cluster munitions in fighting between Ukrainian forces and the armed groups in more than 12 urban and rural locations in early October is of concern. The use of cluster munitions in populated areas violates the laws of war due to the indiscriminate nature of the weapon and may amount to war crimes. It is imperative that such reports be investigated promptly and thoroughly, as well as the reports of indiscriminate shelling of residential areas by conventional weapons.
>
> 27. The Government of Ukraine continued to blame the armed groups for the use of heavy weapons in populated areas, notably for the following incidents: the 29 September shelling of the town of Popasna (Donetsk region), which killed four civilians; the 1 October rocketing of the centre of Donetsk, which hit a bus and a bus stop, killing six civilians and wounding 25; the rocketing of a school, on the same day, which killed two civilians and wounded five; and the 2 October shelling near the ICRC office in Donetsk, which killed an ICRC administrator. On 14 October, the village of Sartana (north-east of Mariupol in the Donetsk region) was reportedly shelled with mortars and a MLRS 'Grad'. According to the Mariupol city council, shells hit a funeral procession, killing seven civilians and wounding 18. According to the Ukrainian army, a Ukrainian checkpoint 1 km away from the village was the supposed target. On 10 October, the Government of Ukraine accused armed groups of targeting an ambulance near the village of Shyroke (Donetsk region) which killed two medical personnel and a patient. The Government of Ukraine attributed some attacks on the populated areas to armed groups that report neither to the 'Donetsk people's republic' nor to the 'Luhansk people's republic'.
>
> 28. The armed groups have declined any responsibility for the aforementioned incidents and other instances where residential areas were shelled, blaming the Ukrainian armed forces ...

> 29. Since the start of the ceasefire, between 6 September and 31 October, at least 718 deaths were reported. Among them, at least 84 women were killed by indiscriminate shelling in Donetsk region ... Between 9 September and 28 October, the number of children killed in Donetsk and Luhansk regions increased by 28%, from 28 to 36 deaths, whilst the number of wounded increased by 82%, from 56 to 102 cases."

650. In its report of 15 December 2014, the OHCHR reported that the ceasefire agreed upon in Minsk in September 2014 (see paragraph 56 above) had "stopped large-scale offensive activity, but skirmishing and heavy artillery exchanges continued on a daily basis" (B549). It stated:

> "38. ... By 30 November, the total number of casualties in eastern Ukraine had reached at least 4,364 killed (including 298 from the MH-17 flight) and 10,064 wounded. The actual numbers of casualties is likely to be higher as both military and civilian casualties remain under reported. Over 1,000 bodies delivered to morgues in the conflict zone remain unidentified, and many sites had not been searched to recover all remains due to continued fighting and insecurity."

651. The SMM continued to publish its observations on the shelling of government-controlled areas causing deaths and injuries among the civilian population as well as significant damage to homes, schools, shops, banks and public buildings (B819-32). For example, it noted that two munitions found by Ukrainian soldiers in gardens in the village of Triokhizbenka in November 2014 appeared to have been fired from cluster carrier rockets (B820). It also reported on an attack with ten Grad rockets in Debaltseve on 15 December 2014. Ukrainian and Russian members of the Joint Centre for Control and Coordination of issues related to the ceasefire regime and the stabilization of the situation ("JCCC" – see *Ukraine and the Netherlands v. Russia* (dec.), cited above, § 77) as well as representatives of the "DPR" and the "LPR" had agreed that the rockets had been fired from "LPR"-controlled territory (B829).

652. From mid-January 2015 hostilities began to escalate once again. Both the SMM and the HRMMU observed frequent shelling throughout January and early February 2015, resulting in civilian deaths and injuries and significant damage to residential and civilian infrastructure (B837-50). In its report of 15 February 2015, the OHCHR said that at least 359 civilians had died and at least 916 had been injured between 1 December 2014 and 15 February 2015 (A743). It reported heavy civilian tolls of dead and wounded resulting from the indiscriminate shelling of residential areas in government-controlled territory such as Avdiivka, Debaltseve, Popasna, Shchastia and Stanytsia Luhanska (A388). In government-controlled Hranitne village, residents told the SMM that they had been shelled almost daily for months. The mission saw the funeral of a child who residents said had been killed when a shell had struck her house on 11 January 2014, and saw severe damage to the roof of the house (A735). Both the SMM and the OHCHR reported that on 13 January 2015, shelling had struck close to a civilian bus which had stopped at a checkpoint manned by Ukrainian armed forces near government-controlled Volnovakha. The bus had been hit by a

multiple launch rocket system Grad rocket launched from territory controlled by the "DPR". At least thirteen people on the bus had been killed and a further eighteen injured. (A734 and 742).

653. On 24 January 2015 government-controlled Mariupol came under heavy shelling in an area around 400 metres from a Ukrainian armed forces checkpoint. The SMM went to the impact site and saw seven dead bodies. Within an area of 1.6km by 1.1km, which included an open market, the SMM saw multiple impacts on buildings, shops, homes and a school and observed cars on fire. At least twenty people died and seventy-five were injured and hospitalised. The SMM conducted a crater analysis and determined that Grad rockets originating in the area of Oktiabr, and Uragan rockets originating in the area of Zaichenko, had caused the impacts. Both Oktiabr and Zaichenko were, at the time, controlled by the "DPR". The OHCHR reported that 31 civilians had died and 112 had been wounded in the attacks on Mariupol on 24 January (A736 and 742).

654. The attack in Mariupol was condemned by the UN Secretary General, who noted that the rockets appeared to have been launched indiscriminately into civilian areas in violation of international humanitarian law (A52). The UN Under-Secretary General for Political Affairs, in a speech of 26 January 2015 to the Security Council, referred to the barrage of attacks with multiple rocket launcher systems that had hit Mariupol on 24 January 2015, destroying buildings and impacting a market filled with civilians. He referred to the conclusion of the SMM that the rockets had been fired from "DPR"-controlled territory and concluded that the attackers had "knowingly targeted a civilian population" in a city that lay "outside of the immediate conflict zone" (A53). On 29 January 2015 the Council of the European Union condemned the indiscriminate shelling of Mariupol on 24 January and recent attacks on Debaltseve and other locations along the "line of contact" (A125). The NATO Secretary General issued a statement in January 2015 concerning the attack on Mariupol, alleging that separatist shelling had killed at least twenty civilians and injured many more (A2900).

655. Amnesty International reported on 3 February 2015 that government-controlled Debaltseve had been under constant shelling by separatists for several days. Amnesty International's research on the ground indicated that some of the attacks might have been indiscriminate. The report asserted that the only road out of town was being shelled constantly, which made the escape of the remaining civilians even more dangerous (A2201. See also A2793-94). One of the volunteers leading the evacuation effort from Debaltseve and surrounding areas in the Donetsk region was reported as saying that the evacuation vehicles had become targets of Russian-backed separatists (A2793). According to a press article covering the evacuation attempts, on 1 February, a shell had hit a yellow evacuation bus just a minute after it had stopped by a bomb shelter in Debaltseve. Two drivers and two passengers had been wounded. The article further claimed that eight more

people had been wounded by mortar shells while queuing for evacuation by the building of the local administration on the same day (A2794).

656. The OSCE also reported, on 4 February 2015, that indiscriminate shelling around Debaltseve and other areas in eastern Ukraine had intensified, forcing innocent civilians to flee their homes, noting that many of them were in "mortal danger" (B407). Following a truce agreed by both sides, on 6 February 2015 the SMM assisted in the evacuation of civilians from the "heavily-shelled city". The mission observed "significant damage to civilian infrastructure and residences caused by artillery strikes" (B408). In its 1 June 2015 report, the OHCHR referred to attacks by armed groups against Ukrainian troops around Debaltseve until 19 February, causing new casualties among the remaining civilian population (B556).

657. The SMM and the OHCHR reported that on 10 February 2015 there had also been shelling in heavily populated residential neighbourhoods in government-controlled Kramatorsk that had killed seven civilians and wounded twenty-six. Analysis had shown that the strike had been fired by one single launcher system, probably a BM-30 Smerch or Tornado multiple launch rocket system. All rockets had been equipped with sub-munition dispenser canisters. The OSCE Chief Monitor in Ukraine condemned the attack as another instance in which "innocent civilians are bearing the brunt of a violent conflict characterized by [an] increasing ... death-toll and indiscriminate shelling." (A394 and 741; and B851-53).

658. The UN Special Rapporteur on extrajudicial, summary or arbitrary executions noted that there was evidence of the use of cluster munitions by the separatists in attacks against Artemivsk, Hrodivka and Kramatorsk in February 2015 (B1439). A Human Right Watch ("HRW") Technical Briefing Note of June 2015, referenced by the Special Rapporteur, was prepared on the basis of field investigations by HRW researchers in eastern Ukraine in October 2014 and January-February 2015 (B1623). The briefing documented widespread use of cluster munitions by both government forces and separatists in dozens of urban and rural locations. Setting out the methodology, the briefing explained:

> "At each location suspected to have been attacked with cluster munition rockets, Human Rights Watch researchers conducted a detailed surface search of the impacted area. Researchers located remnants of the weapons, collected remnants of submunitions, and interviewed numerous residents including those present at the time of attack. Unless otherwise noted, all statements by local residents, officials, healthcare workers, and others are from interviews with Human Rights Watch. Researchers also took directional readings at the locations where they found intact remnants of cluster munitions to determine the apparent direction from which the attack originated. Researchers took photographs and made video recordings at each site, especially of the individual submunition impact points. They also took GPS coordinates at each strike location."

659. The briefing set out some illustrative examples of cluster munition attacks, including attacks with Smerch rockets launched from separatist-held

territory on the government-controlled towns of Hrodivka and Kramatorsk on 10 February and Artemivsk on 12 February 2015 (B1624).

660. The OHCHR report of 15 February 2015 highlighted the "heavy damage" done to civilian property and vital infrastructure by the fighting and indiscriminate shelling (B551). It said (B552):

> "23. Indiscriminate shelling of populated areas, both Government-controlled and those controlled by the armed groups continued to be widespread. Although, in some cases, imprecise targeting of military positions occurred in the immediate vicinity of built-up areas (especially in Debaltseve area), there were also numerous cases of shelling of residential areas not located near military positions."

661. The report commented on the evacuation of civilians from affected government-controlled areas, which it reported had been hampered by "constant shelling". The report further noted, "[r]eports suggest that some incidents of shelling coincided with the evacuation of civilians and may have been targeted to prevent it" (B552).

662. Following the Minsk II Agreement and the ceasefire which entered into force on 15 February 2015 (see paragraph 57 above), there was an overall decrease in indiscriminate shelling according to the OHCHR's report of 1 June 2015 (B557). However, isolated clashes continued to occur, and civilians continued to be killed and wounded as a result of shelling. For example, the OHCHR reported that in government-controlled Avdiivka, on 22 February, three civilians had been killed by an artillery shell and on 4 March a woman had been killed when her apartment had been hit by a shell (ibid.).

663. The SMM also continued to observe damage and record deaths and injuries caused by shelling in government-controlled areas. On 23 February 2015, the SMM visited Avdiivka and saw many buildings damaged by shelling. On 9 March 2015 it observed significant damage to houses and a school caused by shelling in government-controlled Novotoshkivske (B857-59). On 10 March 2015 it visited Pisky and saw that most structures there had been damaged by shelling (B857). The mission also visited Avdiivka in March 2015 and observed damage from tank projectiles, shells and anti-tank guided missiles. The attacks had struck residential areas and a factory (B860-63). It was informed by the JCCC of shelling on 18 April 2015 when eight Grad rockets hit the outskirts of Avdiivka. Three rockets had hit the residential area of Avdiivka old town and five had landed in fields. The SMM went to the location and saw three impacts in the area, and related damage to residential property (B865). On 19 and 20 April 2015 the SMM was informed by the JCCC of shelling in residential areas in Avdiivka which had damaged civilian property and resulted in a civilian casualty (B865-66). On 23 April 2015 the SMM in Avdiivka saw mortar shells explode thirty metres from their patrol, injuring a civilian (B867). In early May 2015 there was an attack on Novotoshkivske from "LPR"-controlled Frunze and Donetskyi (B870) and the SMM heard more than one hundred detonations,

estimated to be incoming fire from a Grad multiple launch rocket system, in Berdianske (B871. See also B872). There were also a number of "LPR" attacks on Stanytsia Luhanska in May 2015 (B872-74). An industrial coke-chemical plant in Avdiivka was heavily shelled in May 2015 (B876-78). Throughout June, July and August 2015 the SMM continued to report on the shelling of government-controlled areas, killing and injuring civilians and causing damage to residential housing and to essential infrastructure, including electricity, gas and water supplies, schools and a hospital (B882-87, 889-90 and 892-923).

664. In its 15 August 2015 report, the OHCHR noted the absence of "large-scale offensives" since mid-February. However, it reported that "locally-contained escalations of fighting" had occurred in various places, including government-controlled Marinka on 3 June 2015 and Starohnativka on 9-10 August 2015 (B563). There were clashes and exchanges of fire along the contact line reported daily. The main flashpoints in government-controlled areas were, according to the OHCHR, Avdiivka, Marinka, Pisky and Shyrokyne in the Donetsk region, and Shchastia and Stanytsia Luhanska in the Luhansk region. Both sides continued to use "mortars, cannons, howitzers, tanks and multiple launch rocket systems". The OHCHR reported that they "routinely did not comply with the international humanitarian law principles of distinction, proportionality and precautions, with numerous incidents of indiscriminate shelling of residential areas causing civilian casualties observed" (ibid.). Since the ceasefire of 15 February 2015, there had been 165 casualties resulting from shelling in government-controlled areas, with most casualties occurring in Avdiivka, Marinka and Dzerzhynsk (B564).

665. In the autumn of 2015 SMM reports on the shelling of residential areas, essential infrastructure and schools in government-controlled areas continued at a lower frequency (B925-37). The mission met with village council heads in Hranitne and Valuiske. They were told that 600 houses in Hranitne had been partially damaged and 10 had been completely destroyed; and that in Valuiske, 1,012 houses had been damaged since the start of the conflict, with 18 civilians killed and 70 injured (B928). In its report of 9 December 2015 the OHCHR reported a considerable decrease in hostilities since a "cease-fire within a cease-fire" had been agreed on 26 August 2015. In September and October 2015 exchanges of artillery fire had almost ceased. However, in the first half of November there had been increasing skirmishes along the contact line, including with the use of artillery. This raised fears of a "resumption of large-scale indiscriminate shelling of populated areas" (B569). According to the report, there had been 87 casualties in government-controlled areas between 16 August and 15 November 2015, 21% of which had resulted from shelling (B570).

666. Over the winter of 2015-16 reports by the SMM of shelling in government-controlled areas increased, particularly around Marinka. A

number of civilians were killed or injured, and residential buildings, schools and essential infrastructure was damaged (B938-56). The OHCHR's report of 3 March 2016 referred to an "overall de-escalation of hostilities" but observed that isolated clashes, localised exchanges of fire and minor shifts in the contact line had continued. Exchanges of fire from artillery systems had been rare, the OHCHR reported, with eleven civilian casualties being reported altogether (in both government and separatist-controlled areas) during the reporting period (B574).

667. Shelling of residential areas and infrastructure continued throughout spring and early summer 2016 (B957-75). On 3 June 2016 the OHCHR reported that the ceasefire in place under the Minsk II agreement had "slowly unravelled" during the reporting period. Skirmishes in Avdiivka and Yasynuvata that had erupted in early March 2016 were ongoing, affecting both towns which were located on either side of the contact line. There had been civilian casualties resulting from shelling in the government-controlled towns of Avdiivka and Marinka and villages of Novooleksandrivka, Pisky and Vodiane. In total, there had been forty-six casualties as a result of shelling by both parties in the reporting period (B579).

668. The UN Special Rapporteur on extrajudicial, summary or arbitrary executions published his report on his mission to Ukraine in May 2016. He referred to the latest figures from the OHCHR and observed that the majority of the deaths had been caused by shelling, "which it would appear has taken place indiscriminately on both sides or without the taking of adequate precautionary steps to protect civilians" (B1439). The report continued:

> "57. The Special Rapporteur is also concerned by allegations that the conflict is being waged in part with inherently indiscriminate weapons, such as cluster munitions and landmines, including anti-personnel mines. Researchers have documented widespread use of cluster munitions by both government forces and armed groups in dozens of urban and rural locations, with some locations hit multiple times. The weapons used were ground-fired 300 mm Smerch (Tornado) and 220 mm Uragan (Hurricane) cluster munition rockets, which deliver 9N210 or 9N235 antipersonnel fragmentation submunitions ..."

669. In July 2016 the OHCHR published a report on accountability for killings in Ukraine from January 2014 to May 2016. It estimated that between mid-April 2014 and 31 May 2016, up to 2,000 civilians had been killed as a result of the conflict, around 85-90% of which had resulted from "the indiscriminate shelling of residential areas, in violation of the international humanitarian law principle of distinction". A further 298 civilians had been killed when flight MH17 had been downed in July 2014 (A750 and B587).

670. In its report of 15 September 2016, covering the period from May to August, the OHCHR referred to an escalation in hostilities by both sides in the summer of 2016, with a corresponding increase in the number of casualties caused by shelling (B590). The SMM also continued to report on attacks on government-controlled areas, causing injuries and damage to homes and property (A756 and 1002-03). From June 2016 through to

mid-September, the SMM reported incidents of shelling and artillery attacks in government-controlled areas on an almost daily basis (B976-1030). Most of the attacks reported had struck residential areas and caused damage to homes, with a number of civilians injured and killed. The OHCHR reported a marked escalation of clashes in the second half of August (B598).

671. In a report based on regular monitoring by the SMM from May to September 2016, the OSCE discussed a number of hotspots, where ceasefire violations frequently occurred (B1086). In the Luhansk region, the report noted new hotspots that had emerged in government-controlled Lobacheve and Lopaskyne, and in "LPR"-controlled Zhovte. It continued:

> "In these locations armed formations have continuously failed to make a clear distinction between civilian and non-civilian objects, firing out of and into populated areas disregarding the protections afforded to civilians under international humanitarian law..."

672. The report repeated previous findings that armed formations placed weapons and military hardware in populated areas and it provided various examples of this practice. As regards damage to property, it said (B1088):

> "Continued fighting in both Luhansk and Donetsk regions, including the use of heavy weapons near populated areas, has led to extensive conflict-related damage to private residences of civilians on both sides of the contact line. The SMM has reported numerous cases of damage to civilian property caused by artillery and mortar shelling with craters found in inhabited areas and in nearby fields on both sides of the contact line. For example, the SMM was informed that around 227 people were residing in the government-controlled part of Zhovanka, south of Zaitseve in Donetsk region, where most houses had been damaged due to the conflict: three out of four houses/buildings suffered light damage, typically shattered windows and light damage to the roofs, around 20 homes require major repairs, while around 16 homes are beyond repair. Residents reported that intense shelling in mid-August had destroyed all homes located on one street. In government-controlled Myrne, Donetsk region, an elderly woman whose house had been completely destroyed by shelling on 18 August, had to sleep in the summer kitchen located in her yard. ..."

673. There was a renewed de-escalation of hostilities following an agreement reached between the parties to the conflict on 21 September 2016 (B597). This led to a substantial decrease in civilian casualties in late September 2016. However, the OHCHR reported that in October civilian casualties scaled up again after a new upsurge in fighting along the contact line, before again decreasing following a decline in the intensity of the hostilities in November (B598; see also B1031-49). The OHCHR referred to the destruction and damage caused to civilians' lives by the "continuing ... pattern of hostilities in densely populated towns and neighbourhoods" around the contact line (B604). Its report published in December 2016 expressed "deep concern" that government forces and armed groups operating in civilian areas "do not take all feasible precautions against the effects of fighting, resulting in damage to schools, kindergartens and medical facilities" (ibid.).

674. In a resolution of 12 October 2016 (Resolution 2133 (2016)), the Parliamentary Assembly of the Council of Europe referred to the "indiscriminate or even intentional shelling of civilian areas, sometimes provoked by the stationing of weapons in close proximity" (A104).

675. An OSCE report entitled "Civilian casualties in eastern Ukraine 2016" reported 442 confirmed civilian casualties in the Donetsk and Luhansk regions in the course of 2016, of which 88 were fatalities (B1140). Shelling represented the major cause of civilian casualties, with 32 killed and 231 injured in 2016. The report noted (ibid.):

> "The SMM established that during the reporting period, the Ukrainian Armed Forces, 'LPR' and 'DPR' armed formations continued to often fire out of and into residential areas, as they located armed positions in and near civilian objects. With sides positioning themselves as close as 200m from each other in some instances, civilians living near the approximately 500km-long contact line were and continue to be particularly vulnerable to the indiscriminate use of weapons. In many settlements close to the contact line there was no distinction between armed positions and civilian dwellings as armed units were embedded in villages, including through occupation of private properties ..."

676. In March 2017 the OHCHR reported that "spikes in hostilities in November and December 2016 and the drastic escalation over a very short time span at the end of January through the beginning of February 2017 caused damage to critical civilian infrastructure, including school and medical facilities, further endangering civilians and disrupting essential water, electricity and heating services amid freezing temperatures" (B606). The SMM recorded regular shelling in government-controlled areas from late November through December 2016 and January and February 2017 (A1009 and B1050-94). The OHCHR noted that both sides continued to maintain positions in close proximity to towns and villages near the contact line in violation of international humanitarian law, to carry out indiscriminate shelling and to use explosive weapons with wide-area effects in populated areas (B607). The mission referred to a flare-up of hostilities in the Avdiivka-Yasynuvata-Donetsk airport triangle and in areas south of Donetsk between 29 January and 3 February 2017, which had caused 53 civilian casualties altogether, most of them a result of massive shelling of populated areas (ibid.). Thirteen of the casualties had been recorded in government-controlled areas.

677. In its eighteenth report covering spring 2017, the OHCHR referred to the routine use of heavy weaponry and observed that indiscriminate shelling continued to take a heavy toll on civilian lives, property and critical infrastructure, including those supplying water, electricity and gas, and health and educational facilities (B618). The mission referred to the "tense and dangerous" situation for civilians, with spikes in hostilities in late February and early and late March, and recurrent fighting in several hotspots along the contact line (ibid.). It continued to witness the positioning of armed groups in or near residential areas, without taking necessary precautions, which it

considered to be in violation of international humanitarian law (ibid.). The SMM reports also show frequent attacks against residential areas in government-controlled territory in spring 2017 which killed and injured a number of civilians and damaged civilian infrastructure, including schools, and residential and business property (B1095-120).

678. Artillery attacks continued throughout the summer and autumn of 2017. According to OHCHR figures, 1 person was killed and 28 were injured as a result of shelling in government-controlled areas between 16 May and 15 November 2017 (B625 and 633). The SMM continued to record in its daily reports regular incidents of shelling of government-controlled areas, including through the use of multiple launch rocket systems, which resulted in death, injury and damage to property, including homes and civilian infrastructure (B1121-44). The 2017 Report on Preliminary Examination Activities of the ICC Office of the Prosecutor referred to "intense shelling" reported in Avdiivka and Yasynuvata, notably in built-up residential areas (A69). It further referred to at least 2,505 civilian deaths between April 2014 and August 2017, most of which had resulted from "the shelling of populated areas in both government-controlled territory and areas controlled by armed groups" (A72).

679. In its report of 1 September 2017, the OHCHR noted (B626):

> "24. Heavy weapons, including explosive weapons with a wide impact area (such as artillery and mortars) or the capacity to deliver multiple munitions over a wide area (such as multiple launch rocket systems), continued to be present near the contact line and used frequently, in disregard of the Minsk agreements. Further, OHCHR recalls that the use of such weapons in civilian populated areas can be considered incompatible with the principle of distinction and may amount to a violation of international humanitarian law due to their likelihood of indiscriminate effects.
>
> 25. OHCHR remained concerned that placing military objectives in densely populated areas and near civilian objects and facilities necessary for the survival of the civilian population, and the resulting shelling of such areas, objects and facilities, remained a general pattern in the hostilities, suggesting that insufficient regard has been given to their protection.
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> ...
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> 31. OHCHR recalls that water and power supply, as well as heating in the winter period, are critical to the survival of the civilian population, and that placing military objectives in residential areas, particularly near hospitals, schools, or facilities necessary for the survival of the civilian population, may amount to a violation of international humanitarian law."

680. In its 1 December 2017 report, the OHCHR referred to the repeated use of weapons with a wide impact area (such as artillery and mortars) or the capacity to deliver multiple munitions over a wide area (such as multiple launch rocket systems). It observed that "[t]he use of such weapons in densely populated areas can be considered incompatible with the principle of distinction and may amount to a violation of international humanitarian law due to the likelihood of indiscriminate effects". During the reporting period,

the HRMMU had documented civilian casualties and damage to civilian property caused by heavy weapons. The OHCHR further reported that it had continued to observe military presence in densely populated areas and military use of civilian property on both sides of the contact line. It emphasised that locating military positions and equipment within or near residential areas and objects indispensable for the survival of the civilian population fell short of taking all feasible steps to separate military objectives from the civilian population, in contravention of international humanitarian law (B632-34).

681. The pattern of shelling residential areas in government-controlled territory with heavy weaponry, including through the use of weapons with wide-area effects, continued throughout the winter of 2017/2018 (B1145-57). In its report of 1 March 2018 the OHCHR noted (B643):

> "19. Most civilian casualties continued to be caused by the use of indirect and/or explosive weapons systems ...
>
> 20. The parties to the conflict continued to employ indirect and/or explosive weapons with wide area effects, including MLRS [multiple launch rocket systems], in areas populated and used by civilians. This may constitute a violation of international humanitarian law prohibitions on indiscriminate attacks and of the obligation to take all feasible precautions to avoid harm to the civilian population and damage to civilian objects ..."

682. The HRMMU documented 1 civilian death and eleven injured as a result of shelling or small arms and light weapons fire during this period (A781).

683. In its report of 1 June 2018 the OHCHR observed that the continued use of indirect and/or explosive weapons by parties to the conflict remained the primary concern regarding protection of civilians. It noted that while most civilian casualties from shelling appeared to occur indirectly in incidents that had not specifically targeted civilians, the conflict's civilian toll remained a serious concern. It recorded 3 casualties from the shelling of government-controlled areas in the reporting period (B648). The SMM daily reports show that although there was a relatively low casualty count for this three-month period, the shelling of government-controlled areas remained regular and strikes on or near residential property were common (B1158-63).

684. According to the OHCHR, between 16 May and 15 August 2018 hostilities were marked by the continued use of indirect and/or explosive weapons which impacted civilian residential areas and essential civilian infrastructure. The greatest number of civilian casualties during the reporting period had been caused by shelling or light weapons fire. Three civilians had been killed and 8 injured as a result of the shelling of government-controlled areas. All of the incidents had occurred in residential neighbourhoods, including the victims' houses, or other areas regularly frequented by civilians (A793 and B652). The reports of the SMM also indicate regular shelling of residential areas in government-controlled territory (B1164-79). In one

incident on 28 May 2018, reported by both the OHCHR and the SMM, a 15-year-old girl was struck by shrapnel and killed instantly when a shell landed in the garden of her grandparents' home in Zalizne (B652 and 1169).

685. Between 16 August and 15 November 2018, the OHCHR documented 1 death and 1 injured civilian in government-controlled areas caused by shelling or small arms and light weapons fire (B657). The SMM also reported fewer incidents of shelling in government-controlled areas during this period (B1180-87). The OHCHR referred in its December 2018 report to a disregard by the parties to the conflict for the principles of distinction and precaution, resulting in civilian casualties and damage to civilian infrastructure (A797).

686. The December 2018 Report on Preliminary Examination Activities of the ICC Office of the Prosecutor referred to widespread damage and destruction of civilian infrastructure, residential property, hospitals and other medical facilities, schools and kindergartens on account of the use of heavy weaponry by all sides to the conflict (A76).

687. Over the winter of 2018/2019, a decreasing number of ceasefire violations was reported by the SMM, but exchanges of fire across the contact line continued to impact residential areas and result in civilian casualties and damage to civilian property and infrastructure, including water facilities and electricity lines (B664 and 1188-91). Only 1 person was injured as a result of attacks on government-controlled territory (B664).

688. The remainder of 2019 saw a lower level of active hostilities, reflected in a lower rate of casualties among the civilian population. Between 16 February and 15 November 2019, the OHCHR recorded 2 civilian deaths and 14 civilians injured as a result of shelling of small arms and light weapons fire by the separatist armed groups (B670, 676 and 682). The SMM reports similarly showed less frequent, although nonetheless regular, shelling of government-controlled areas with residential property and operational schools being hit (B1192-212). In its report of 1 June 2019, the OHCHR noted that regular exchanges of fire across the contact line continued to expose those residing nearby to a constant threat of death or injury, while civilian property and critical civilian infrastructure continued to be damaged, "often in disregard for the principles of distinction, proportionality and precaution" (B670).

689. The year 2020 was characterised by a continuation of the lower level of civilian casualties seen in 2019. This was helped by the strengthened ceasefire agreed in the context of the Trilateral Contact Group, which took effect on 27 July 2020 (see paragraph 59 above) and led to a significant reduction in hostilities: in the three months from that date, the HRMMU recorded no civilian casualties resulting from active hostilities and no damage to civilian objects (except civilian housing, which the HRMMU did not document) (A808). Only 10 casualties resulting from shelling and small arms and light weapons fire were recorded that year in government-controlled

areas: two deaths and eights injured (A809 and B692). The OHCHR also recorded a total of 10 incidents affecting civilian objects in government-controlled territory in 2020 (A1021-22 and B693). The de-escalation of active hostilities is also reflected in the reports of the SMM (B1213-230). The reports make it clear, however, that there were still regular attacks across the contact line which struck residential areas in government-controlled territory.

690. On 11 December 2020 the Prosecutor of the ICC announced the conclusion of the preliminary examination, having concluded that there was a reasonable basis to believe that a broad range of conduct constituting war crimes and crimes against humanity had been committed in Ukraine, including crimes in the context of the conduct of hostilities (A83).

691. In 2021 the number of ceasefire violations in the conflict zone considerably increased, with spikes occurring in March to May and August to November 2021 (B710 and 720). This resulted in an increase in civilian casualties caused by active hostilities and increased damage to civilian objects. In the period from 1 February 2021 to 31 January 2022, the OHCHR documented 1 death and 9 civilian injuries in government-controlled areas as a result of armed engagements (ibid.). It further documented 16 incidents involving shelling or small arms and light weapons fire that affected civilian infrastructure in government-controlled territory, noting that although none of these incidents had resulted in civilian casualties, they had endangered the lives of civilians in and near these institutions, and had affected the population's access to basic services (A1023-25 and B721). From 1 August 2021 to 31 January 2022 it recorded 114 cases of civilian housing in government-controlled areas being damaged or destroyed by active hostilities (B721). The SMM reports for 2021 and early 2022 provide further details of the attacks on residential areas and on other civilian objects in government-controlled areas, including a working hospital, working kindergartens or schools and commercial properties (B1231-69).

692. From 14 April 2014 to 31 January 2022, the OHCHR recorded a total of 3,405 conflict-related civilian deaths in eastern Ukraine. The number of injured civilians was estimated to exceed 7,000 (B720).

693. On 24 February 2022 the full-scale invasion began. Multiple military attacks by the separatists and the Russian armed forces were perpetrated across Ukrainian territory (B1270-71).

694. On 28 February 2022 the Prosecutor of the ICC opened an investigation into allegations of war crimes, crimes against humanity and genocide (B325). He explained that a review of the preliminary examination of the situation in Ukraine had confirmed that there was a reasonable basis to proceed with opening an investigation. In particular, he was satisfied that there was a reasonable basis to believe that both alleged war crimes and crimes against humanity had been committed in Ukraine "in relation to the events already assessed during the preliminary examination by the Office". Given the expansion of the conflict in recent days, the Prosecutor intended

that the investigation encompass any new alleged crimes falling within the jurisdiction of his Office that were committed by any party to the conflict on any part of the territory of Ukraine.

695. In its report for the period from 1 February to 31 July 2022, the OHCHR noted that following 24 February, most of the hostilities had occurred in or near densely populated areas, including big cities such as Chernihiv, Kharkiv, Donetsk, Horlivka, Makiivka, Mariupol, Kherson and Mykolaiv. It observed that the use of explosive weapons with wide-area effects, including shelling from heavy artillery, multiple launch rocket systems, missiles and air strikes in the vicinity of densely populated settlements, often in an indiscriminate manner, had resulted in civilian casualties on a massive scale and damage and destruction of civilian objects at an unprecedented level, far in excess of previous periods of hostilities since 2014. The hostilities had furthermore resulted in the contamination of broad swathes of territory of Ukraine by tens of thousands of mines and explosive remnants of war (B742). From 1 February to 31 July 2022, the OHCHR had recorded 12,649 civilian casualties in Ukraine: 5,385 civilians killed and 7,264 civilians injured. Of these, 11,398 (5,131 civilians killed and 6,267 injured) had been recorded in 518 settlements in areas under Ukrainian government control at the time the casualties had occurred, constituting 90.1% of civilian casualties recorded in the reporting period (B743). It added that the actual numbers were likely considerably higher, since many reports of civilian casualties were still pending corroboration by the OHCHR, for example in Mariupol, Izium, Lysychansk, Popasna and Sievierodonetsk (ibid.). 92.1% of the civilian casualties had been caused by the use of explosive weapons with wide-area effects, including shelling from heavy artillery, multiple launch rocket systems, missiles and air strikes, in populated areas (ibid.).

696. The OHCHR further reported that it had verified the widespread destruction of and damage to civilian objects across Ukraine, in particular medical and educational facilities, and to housing in Kyiv, Chernihiv, Kharkiv, Sumy, Donetsk, Luhansk, Mykolaiv, Kherson, Zaporizhzhia and Donetsk. The majority had been caused by explosive weapons used in populated areas. While the OHCHR had not been able to assess compliance with international humanitarian law for each individual incident, it observed that the scale of the damage and destruction strongly indicated that violations of international humanitarian law had occurred. The OHCHR had verified damage or destruction to 252 medical facilities caused by the hostilities, including 152 hospital, 12 psycho-neurological facilities and 88 other medical facilities. Out of those, 209 had been damaged, 24 had been destroyed and 19 had been looted. The OHCHR believed the actual number of affected medical facilities to be likely considerably higher. The OHCHR also verified that hostilities had damaged or destroyed 384 educational facilities (252 schools, 70 kindergartens, 41 specialised schools, 20 universities and

1 scientific centre). Of these, 79 had been destroyed, and 305 damaged. It said that some attacks on educational facilities were likely due to the belligerent parties' use of schools for military purposes. The OHCHR believed the actual number of affected education facilities was likely considerably higher (B744).

697. The OHCHR further noted that the wide-scale hostilities and the extensive use of explosive weapons with wide-area effects in populated areas by both sides to the conflict had caused mass damage to and destruction of civilian housing in several regions, notably Kyiv, Chernihiv, Kharkiv, Sumy, Donetsk, Luhansk, Mykolaiv, Kherson and Zaporizhzhia. It reported that according to the Deputy Head of the Ukrainian Parliamentary Committee for the Organisation of State Power, some 15 million square meters of housing had been damaged or destroyed in government-controlled territory by 7 July 2022 (ibid.). In its March 2023 report, the OHCHR reported that it had recorded 11,350 conflict-related civilian deaths from 14 April 2014 to 31 January 2023 (B757).

698. On 24 February 2022 the Secretary General of the OSCE decided to temporarily evacuate all international mission members from Ukraine as soon as possible. During the evacuation, the SMM continued to publish limited observations in the areas where it remained active until the completion of the evacuation and suspension of its reporting activities on 7 March 2022 (see paragraph 116 above). It reported multiple explosions, including multiple launch rocket system and heavy artillery fire, in and around the cities of Kyiv, Kherson, Mykolaiv, Ivano-Frankivsk, Kharkiv, Mariupol, Shchastia and Odesa (B1270-80).

699. On 4 March 2022 the Commission of Inquiry was mandated by the UN HRC to investigate all alleged violations and abuses of human rights, violations of international humanitarian law and related crimes in the context of the aggression against Ukraine by the Russian Federation (see paragraph 97 above).

700. In its report of 18 October 2022 the Commission of Inquiry published its first findings about events since 24 February 2022 (C.II). It noted that military strikes using explosive weapons had been launched by the Russian armed forces across Ukraine, "including in areas situated far from the front lines, causing significant civilian casualties and large-scale destruction of residential buildings and critical infrastructure" (C.II.26). On 24 February 2022 Russian armed forces had advanced towards Kyiv and captured key areas in the north and west of the city. They had also surrounded Chernihiv and had subjected it to heavy airstrikes and artillery fire, which had severed it from essential supply and evacuation routes (C.II.27). By the end of March 2022, however, the offensive on Kyiv had stalled (C.II.28). In north-eastern Ukraine, Kharkiv and Sumy had quickly become the scenes of heavy urban warfare. Shelling had "pounded residential and other key buildings and led to large-scale destruction" in the cities (C.II.29). In April

2022 the Russian forces had withdrawn from the Sumy area and in May 2022 a Ukrainian counter-offensive had forced them to retreat from Kharkiv. However, artillery attacks on Kharkiv and localities nearby had continued (ibid.).

701. In southern Ukraine, Russian armed forces had attacked the regions of Kherson, Mykolaiv and Zaporizhzhia and had occupied several cities and localities (C.II.30). The report continued:

> "On 26 February 2022, Russian armed forces launched an offensive on Mariupol. The city suffered from constant shelling, which led to large-scale destruction. For weeks, heavy fighting hampered repeated efforts to evacuate civilians and curtailed the access of inhabitants to basic necessities. Tens of thousands of civilians fled. On 20 May 2022, the Russian Federation declared that it had gained full control of the city."

702. On 19 April 2022, the report explained, a second phase of the war had begun. This phase had concentrated mostly on the regions of Donetsk and Luhansk and on southern Ukraine. There had been intense fighting in and around the city of Sievierodonetsk until its eventual capture by Russian armed forces in June 2022, and in the region of Zaporizhzhia. Fighting had also raged in the Kharkiv region until September 2022, when the Ukrainian armed forces had recovered large swathes of territory in a counter-offensive (C.II.31).

703. As to the impact on civilians of the hostilities, the report recorded:

> "33. Civilian casualties continue to grow. As at 17 October 2022, OHCHR had recorded 6,306 people killed and 9,602 wounded in all of Ukraine since 24 February 2022. From 24 February to 31 March 2022, in the four provinces under the Commission's investigation [Kyiv, Chernihiv, Kharkiv and Sumy], 1,237 civilians, including 112 children, were killed, according to OHCHR. Actual figures are likely to be much higher. Months of fighting have gravely impacted the country's infrastructure, with thousands of residential buildings, as well as medical and education facilities, destroyed or severely damaged. As of mid-October 2022, millions had lost homes and livelihoods, and were forced to flee. Over 7 million people from Ukraine have sought refuge abroad and over 6 million are internally displaced. In most of the affected areas within Ukraine, essential supplies are lacking, and there are access challenges for humanitarian assistance.
>
> 34. Some people, however, have remained in their homes. Older persons, in particular, have remained, despite the danger, because they may have no place to go, wish to protect their homes, may not want to burden their families or may be prevented from leaving because of disabilities. Many of them are trapped on or near the front lines and are isolated and in critical need of food, water, heating and medical and mental health support. Their difficulties will be exacerbated in the winter.
>
> 35. The ongoing hostilities have hampered people's enjoyment of their human rights and fundamental freedoms. Countless allegations of violations and abuses of human rights and international humanitarian law and related crimes have been reported ..."

704. The report investigated whether international human rights law and international humanitarian law had been complied with. It examined the conduct of hostilities by the parties, and made the following general remarks:

> "38. ... The Commission documented the indiscriminate use of explosive weapons in populated areas that were under attack by Russian armed forces. The Commission also found that Russian armed forces attacked civilians attempting to flee. There were also examples of both parties to the armed conflict, although to different degrees, failing to protect civilians or civilian objects against the effects of attacks, by locating military objects and forces within or near densely populated areas."

705. On the impact of explosive weapons in civilian areas under attack by Russia, the Commission of Inquiry report noted that according to the OHCHR, the use of explosive weapons with wide-area effects in populated areas had caused 1,495 deaths and injuries in the regions of Kyiv, Chernihiv, Kharkiv and Sumy during the period under review, which represented 70% of the civilians killed and injured in those areas. The actual numbers were likely to be higher (C.II.39). Attacks with explosive weapons had had a "devastating effect" on buildings and infrastructure. Thousands of residential buildings, schools, hospitals and facilities hosting essential infrastructure had been damaged or destroyed. In Chernihiv, the Commission of Inquiry had seen "dozens of houses and other buildings that had been destroyed or damaged during the attempt by Russian armed forces to take the city". In Kharkiv, explosive weapons had "devastated entire areas of the city" (C.II.40). Fighting and attacks had also affected a significant number of hospitals. The Commission of Inquiry had documented damage to or destruction of five hospitals, three in Chernihiv, one in Sumy and one in Kharkiv. Four of the hospitals had been operating when they had been hit by explosive weapons. Three had been severely or completely damaged, which had impacted access by the civilian population to health services (C.II.41). The Commission of Inquiry had documented attacks with explosive weapons that had affected educational institutions and had visited seven such institutions, where it had observed the damage first-hand (C.II.42).

706. The report also recorded the Commission of Inquiry's conclusion that several Russian attacks with explosive weapons that it had investigated had been indiscriminate and that feasible precautions to reduce civilian harm had not been taken (C.II.44). The indiscriminate attacks documented in the report had taken place in areas controlled by the Ukrainian armed forces during attempts by the Russian armed forces to capture those areas. In the city of Chernihiv, for example, when Russian armed forces had surrounded the city between 25 February and 31 March 2022, multiple indiscriminate attacks with the use of explosive weapons had occurred. In Sumy, attacks had occurred in the context of repeated attempts by Russian armed forces to seize the city through ground battles and airstrikes. In reaching the conclusion that the attacks had been indiscriminate, the Commission of Inquiry had taken into account the potential existence of military objectives. In some of the cases, the Commission of Inquiry had collected credible information about the presence of Ukrainian armed forces, which might have been the intended target of the attack, at or near the impact locations. However, the type and number of munitions used in the attacks had impacted civilians and civilian

objects in a wider area, beyond any apparent military objective. For this reason, the Commission of Inquiry concluded, they had constituted indiscriminate attacks (C.II.47).

707. The Commission of Inquiry documented indiscriminate attacks by Russia with the use of cluster munitions, which it observed affected a large area and were therefore indiscriminate when used in populated areas. On 17 March 2022 an attack with cluster munitions had struck the Chernihiv Regional Children's Hospital at a time when some of the victims had been queuing for water on the premises of the hospital. It had killed several civilians and injured dozens (C.II.48).

708. The Commission of Inquiry also documented indiscriminate attacks by Russia with the use of unguided rockets, which it noted could not be precisely targeted and affected a large area when fired in salvos, and were therefore indiscriminate when used in populated areas. On 16 March 2022 several munitions, including unguided rockets, had struck an area in Chernihiv where more than 200 civilians had been queuing for bread near a supermarket and had killed at least 14 civilians and injured 26 (C.II.49).

709. The report noted that significant civilian harm, both in terms of casualties and damage to buildings and infrastructure, had resulted from indiscriminate airstrikes by the Russian armed forces using multiple unguided bombs in populated areas. On 3 March 2022 an aeroplane had dropped several unguided bombs on a residential area in the city of Chernihiv, killing at least 14 civilians and injuring dozens. The Commission of Inquiry had seen large craters and destruction, indicating that at least six munitions had struck within an area of about 130 metres, causing significant damage to the infrastructure. Around the same time, also in Chernihiv, an aeroplane had dropped several unguided bombs in the Podusivka district, about two kilometres east of the first attack, killing at least 6 civilians. The impact of the attack had spanned over 500 metres and had affected a large area, which included two schools and residential buildings. In both cases, the Commission of Inquiry had identified potential military objectives in the vicinity, which might have been the intended target. However, the area impacted had been much larger (C.II.50).

710. On 7 March 2022, in the city of Sumy, an airstrike had dropped at least two bombs on a residential area, killing at least 15 civilians and injuring 6. The Commission of Inquiry had seen two impact sites where 6 houses had been entirely destroyed. Other residential buildings had been significantly damaged in a radius of more than 100 meters from where the bombs had landed. The only potential military objective identified in the vicinity was a mobilisation office, which, according to residents, had not been in use at that time (C.II.51).

711. The report made findings concerning the impact on children of the Russian military attacks. It noted:

"100. Many children died as a consequence of attacks with explosive weapons in populated areas. The Commission investigated attacks in which children were victims. On 25 February 2022, in the town of Okhtyrka, in Sumy Province, for example, two attacks with explosive weapons killed a 7-year-old girl and injured an 8-year-old boy. On 7 March 2022, in the city of Sumy, an attack killed four children between the ages of 6 and 16. In the city of Chernihiv, several airstrikes killed one boy and injured seven children on 3 March 2022.

...

104. The hostilities have had a significant impact on children's right to education. Attacks with explosive weapons have damaged or destroyed hundreds of schools and kindergartens in the four provinces, according to the Ukrainian authorities. The Commission independently documented damage to seven such institutions ... Airstrikes on Chernihiv on 3 March 2022, for example, severely damaged schools 18 and 21, where more than 1,200 pupils had studied previously.

105. One reason for the extensive damage and destruction to schools is that both the Russian armed forces and the Ukrainian armed forces used some of the schools for military purposes ... While international law does not prohibit military forces from using schools, the presence of military personnel on school premises and their utilization for military purposes puts schools at risk of being attacked as military objectives."

712. In its report of 16 March 2023 (C.III), the Commission of Inquiry provided further results of its investigations into events in Ukraine. It noted:

"17. On 10 October 2022, Mr. Putin announced attacks on the energy infrastructure of Ukraine. Since then, waves of missile and drone attacks have affected the gas, heating and electricity infrastructure of the country.

...

24. The Commission also documented the barrage of attacks targeting the energy infrastructure of Ukraine, which started on 10 October 2022. It found these attacks to have been disproportionate, widespread and systematic."

713. As regards the impact on the civilian population of the military attacks since 24 February 2022, the Commission of Inquiry observed:

"20. In one year, the armed conflict has taken a devastating toll on the civilian population. As at 15 February 2023, according to the Office of the United Nations High Commissioner for Human Rights (OHCHR), 8,006 civilians had been killed and 13,287 injured in Ukraine since 24 February 2022 ... OHCHR believes that the actual figures are considerably higher. In addition to the human losses, the armed conflict in Ukraine has caused a population displacement not seen in Europe since the Second World War. As at 21 February 2023, the Office of the United Nations High Commissioner for Refugees (UNHCR) had reported approximately 8 million refugees from Ukraine across Europe, of which approximately 90 per cent were women and children. In addition, approximately 5.4 million people are currently displaced across Ukraine. Nearly 18 million people in Ukraine are in need of humanitarian assistance, and endured particularly harsh conditions during the winter months. The conflict has affected people's right to health, education, adequate housing, food and water. Some vulnerable groups, such as older persons, children, persons with disabilities and persons belonging to minority groups, have been particularly affected. No region of the country has been spared by the conflict."

714. Reporting its further findings on the conduct of hostilities by the Russian armed forces, the Commission of Inquiry began with the following general remarks:

> "23. The Commission investigated 25 individual attacks with explosive weapons in populated areas in nine provinces of Ukraine, in both territory controlled by the Government of Ukraine and areas controlled by the authorities of the Russian Federation. All those attacks involved weapons that predictably cause civilian harm in populated areas and affect civilians or civilian objects. Many of the attacks were determined to have been indiscriminate as, among other things, they entailed a method or means that could not be directed at a specific military objective or their effects could not be limited as required. The armed forces of the Russian Federation launched or likely launched the majority of the attacks. Several attacks were disproportionate, as they were initiated with an apparent disregard for the presence of large concentrations of civilians or objects with special protection, causing excessive harm and suffering ...
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> ...
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> 26. The use of explosive weapons with wide-area effects in populated areas was one of the main causes of civilian casualties. OHCHR estimated that 90.3 per cent of the civilian casualties were caused by explosive weapons. Such attacks damaged or destroyed thousands of residential buildings, more than 3,000 educational institutions, and more than 600 medical facilities. The systematic targeting of energy-related installations deprived large portions of the civilian population of electricity, water and sanitation, heating and telecommunications during certain periods and hampered access to health and education.
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> 27. In all the places that it visited, the Commission documented considerable civilian harm and observed first-hand the damage to buildings and infrastructure. It was struck by the extent of the destruction in the cities of Kharkiv, Chernihiv and Izium. While it was unable to visit the city of Mariupol, it interviewed more than 30 civilians who had been in the city during the siege and bombardment by the armed forces of the Russian Federation. They reported intensive shelling and air strikes, including on civilian buildings, and described the use of explosive weapons during the period as 'constant' and 'never-ending'. Photographs, videos and satellite imagery corroborated the widespread destruction of residential areas. In addition, civilians were left without basic services during that period."

715. The Commission of Inquiry noted that some of the attacks carried out with explosive weapons in populated areas controlled by the Ukrainian authorities had been conducted in the context of attempts by the armed forces of the Russian Federation to capture towns or cities, while others had struck areas far from the front lines. It clarified that the attacks it had investigated were a "small fraction of the total number" (C.III.28). The documented attacks had affected civilian objects, including residential buildings, hospitals, schools, a hotel, shops, a theatre, a pharmacy, a kindergarten and a train station (C.III.29).

716. In some of the situations examined, the Commission of Inquiry had been unable to identify a military objective. Where possible military targets had been identified in the vicinity of some of the impact sites, the Commission of Inquiry had generally found that the Russian armed forces had used weapons that had struck both military and civilian objects without

distinction. It had identified four types of weapons whose use in populated areas had led to indiscriminate attacks: unguided bombs dropped from aircraft; long-range anti-ship missiles of the Kh-22 or Kh-32 type, which had been "found to be inaccurate when striking land targets"; cluster munitions, which, "by design, spread small submunitions over a wide area"; and multiple-launch rocket systems, which "cover[ed] a large area using inaccurate rockets" (C.III.30).

717. The circumstances of the attacks by Russia investigated by the Commission of Inquiry had led it to determine that the majority of them had been indiscriminate. This was the case, for example, for the attack of 16 March 2022 carried out during the siege of Mariupol on the city's theatre, which had killed and injured a large number of people; the attack of 8 April 2022 on Kramatorsk train station, which had killed 59 people and injured 92; and the attack of 27 June 2022 on a shopping mall in Kremenchuk, which had killed 21 people and injured dozens (C.III.31). In several attacks, the Russian armed forces had failed to take feasible precautions to verify whether civilians were present. Hundreds of civilians had gathered in the areas affected by the attacks on Kramatorsk train station and the Mariupol theatre. Similarly, hundreds of civilians had been in the residential areas of Chernihiv during attacks of 3 March 2022, which had killed at least 20 people and injured many others. The report noted that "[i]rrespective of whether there was a military objective, an assessment of the targets should have alerted the armed forces of the Russian Federation to the presence of large numbers of civilians" (C.III.32). The Commission of Inquiry further considered that the fact that attacks had affected civilian buildings, such as functioning medical institutions, also manifested a failure to take precautions. Such attacks included that of 9 March 2022 on Maternity Ward No. 3 in Mariupol, in which at least one pregnant woman and her unborn child had been killed. Even if there had been military objectives in conducting the attacks, extra care ought to have been taken in view of the special protected status of medical institutions (C.III.33). The report noted:

> "34. The Commission concluded that the armed forces of the Russian Federation committed, and in some cases likely committed, indiscriminate and disproportionate attacks, in violation of international humanitarian law. The multiple examples of such attacks and the failure to take feasible precautions show a pattern of disregard on the part of the armed forces of the Russian Federation for the requirement to minimize civilian harm."

718. The March 2023 report contained a section on attacks against Ukrainian energy-related infrastructure. It noted that "[c]ritical energy-related infrastructure in Ukraine had come under attack from the early stages of the invasion" but the investigation was largely directed at the period following President Putin's announcement on 10 October 2022 of a "massive strike ... against Ukrainian energy, military and communications facilities" (C.III.40). The report observed that "attacks prior to 10 October 2022 had

been focused mainly on fuel installations and electric infrastructure related to the railway system", and that it was only after that date that attacks had "systematically targeted power plants and other infrastructure critical for the transmission of electricity and the generation of heat across Ukraine" (C.III.41).

719. In its conference room paper of 29 August 2023 (C.IV), the Commission of Inquiry reiterated that since the outset and throughout the armed conflict, military strikes using explosive weapons with wide-area effects had been carried out in major Ukrainian cities with significant populations, including in areas situated far from frontlines. They had caused scores of civilian deaths and casualties and large-scale destruction (C.IV.68). The paper repeated to some extent the findings already outlined in earlier reports, with additional details emerging from subsequent investigations. Setting out the background, it summarised the start of the invasion as follows:

> "69. ... On the way to Kyiv, the Russian armed forces surrounded Chernihiv, which became the scene of heavy airstrikes and artillery fire. On 25 February 2022, a representative of the Russian Federation' Ministry of Defence declared that its armed forces had 'blocked' the city.
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> ...
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> 71. In north-eastern Ukraine, Kharkiv and Sumy cities quickly became the scenes of heavy urban warfare. Shelling pounded residential and other key buildings and led to large-scale destruction.
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> ...
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> 73. In south-eastern Ukraine, as of 24 February 2022, Russian armed forces with Russian-affiliated armed groups from the former self-proclaimed Donetsk People's Republic, launched attacks on the city of Mariupol from within Russian-controlled areas in the Donetsk region and from occupied Crimea. They laid siege to the city and gradually gained control of swaths of territory, as attacks intensified, with unremitting air raids and artillery bombardments, leading to large-scale destruction. Heavy fighting hampered evacuation efforts and curtailed access to basic necessities for civilians."

720. The paper discussed the siege of Mariupol, noting (C.IV.76):

> "Mariupol became one of the worst-hit areas. Ukrainian authorities estimated that thousands of civilians had been killed and that a large number of the city's residential buildings, houses, and civilian facilities had been destroyed, while many other buildings had been damaged beyond repair. The full extent of casualties and of the damage to civilian objects has been impossible to assess at this time."

721. The paper noted that large-scale attacks in Ukraine had destroyed residential buildings, hospitals and schools, and had curtailed people's access to heat, electricity, food and water. While the effect of the hostilities was particularly visible along frontlines, "the whole country" was "deeply affected". The report observed that people were living "in a climate of uncertainty and fear" and that survivors were "coping with the physical, psychological, and socio-economic consequences of violent events and large-scale damage" (C.IV.95-96 and 98).

722. The Commission of Inquiry referred to an OHCHR estimate that 90.3% of civilian casualties had been caused by explosive weapons (C.IV.110). It observed that such attacks had damaged or destroyed thousands of residential buildings, hospitals, schools and critical infrastructure. Entire neighbourhoods had been decimated. The paper continued:

> "The Commission is struck by the level of destruction in Mariupol, where detailed accounts from survivors, satellite imagery, photographs and video footage show that large parts of the city have been erased."

723. The paper reiterated that while some of the attacks with explosive weapons had been conducted in the context of Russian armed forces' attempts to capture towns or cities, others had struck areas far from frontlines. Russian armed forces' waves of attacks systematically targeting power plants and other energy-related installations in Ukraine, which had intensified considerably since October 2022, had struck almost all the regions of Ukraine. These attacks had, during certain periods, deprived large portions of the civilian population of not only electricity, but also water, heating, telecommunications, means of preserving food and cooking, causing great harm and suffering, in particular during the cold months (C.IV.111).

724. The paper referred to the Commission of Inquiry's more detail investigation of twenty-five individual attacks with explosive weapons in populated areas in nine regions of Ukraine (see paragraph 714 above). It had inspected the attack sites where possible, heard witness testimonies and authenticated and analysed relevant photographs, satellite imagery and video footage. It found that these attacks had impacted a variety of civilian objects and places where civilians were present, and had caused deaths, injuries and considerable harm. It noted that "[t]he use of certain types of weapons has been particularly lethal in populated areas, as they could not be directed at a military objective, were inaccurate, or struck a wide area" (C.IV.113 and 120). It reiterated:

> "115. The Commission has concluded that a majority of attacks it has investigated were indiscriminate, as they, among other things, used a method or means which could not be directed at a specific military objective or their effects could not be limited as required. Russian armed forces were responsible or likely responsible for most of the attacks. In some cases, it found that they failed to take feasible precautions to verify that objectives were neither civilians nor civilian objects. Several attacks were also disproportionate, as they were initiated with an apparent disregard for the presence of large concentrations of civilians or objects with special protection, which caused excessive harm and suffering ..."

725. The paper contained a discussion of the impact on civilians of hostilities and attacks with explosive weapons. It stated:

> "122. Attacks with explosive weapons in populated areas have inflicted considerable civilian harm. The Commission has observed first-hand the damage to buildings and infrastructure in virtually all places it visited. It was particularly struck by the extent of the destruction that it saw in the cities of Chernihiv, Izium, and Kharkiv. While it has not been able to visit the city of Mariupol, in Donetsk region, the Commission has

reviewed hundreds of photos and videos from the city and satellite imagery analysis of destroyed buildings. It has interviewed over 30 civilians who were in the city during heavy fighting and the Russian armed forces' siege of the city, starting early March 2022. The witnesses reported frequent and intensive shelling and airstrikes, including on civilian buildings, and described explosive weapons use during these periods in the city as 'constant', 'non-stop', and 'never-ending'. Photos and videos from Mariupol and satellite imagery corroborate the widespread destruction of residential areas. As of 12 May 2022, 32 per cent of buildings in two of Mariupol's main districts, the Livoberezhnyi and Zhovtnevyi districts, had sustained damage that was visible on satellite imagery.

123. Many civilians are believed to have died during the siege of Mariupol; the actual number cannot be verified at present. Witnesses recounted attacks that struck the buildings where they lived or nearby residential buildings. They told the Commission that they saw people being killed in attacks with explosive weapons, dead bodies on the streets, and graves in residential areas. A woman recounted how she had to evacuate from Mariupol without being able to bury her nine-year-old daughter, who was killed by shelling on their home. One man reported that a neighbour killed during the siege, together with many other people, had been buried in the playground of a nearby kindergarten. One woman told the Commission that she had sheltered in three different places in Mariupol and that she had to leave all of them because of constant attacks. She shared the shock she had when she emerged from one of the shelters, as everything was in ruins and she could not recognize areas of the city.

124. During the siege, from the first days of March 2022, civilians were in addition left without basic services such as water, gas and electricity, in cold weather. Residents prepared food and gathered water outside, which also exposed them to risks of shelling. Extended periods of hardship have taken both a deep physical and psychological toll. Witnesses recounted the immense difficulties and fear during their attempts to evacuate under fire, which compounded their trauma. A witness described the passing of over 15 checkpoints in 15 hours to reach a safe area, as he fled with his family from Mariupol. The full effects of these compound factors will only manifest themselves over time.

125. Attacks carried out with explosive weapons in urban areas have affected educational institutions and hospitals throughout Ukraine. They have damaged or destroyed thousands of residential buildings, over 3000 educational institutions and more than 600 medical facilities. The Commission has collected witness accounts about the damage or destruction of more than 30 educational institutions in the regions of Chernihiv, Dnipropetrovsk, Donetsk, Kharkiv, Kherson, Kyiv, and Sumy. Fighting and attacks also affected a significant number of hospitals, which generally have protected status under international humanitarian law. The World Health Organization recorded 611 incidents of attacks by heavy weapons from 24 February 2022 to 1 February 2023 impacting medical facilities, patients, or personnel. The Commission has also documented that fighting and attacks led to the destruction or damage of five hospitals, including three in Chernihiv, one in Kharkiv, and one in Sumy regions."

726. The paper documented a number of attacks, which the Commission of Inquiry described as "just a small sample of the multitude of attacks with explosive weapons since the beginning of the invasion" (C.IV.127). As already noted in its March 2023 report, the majority of attacks had been found to be indiscriminate (see paragraph 717 above). They had impacted civilians or civilian objects and at times, no military target could be identified in the

area of the attack. Where military targets could be identified, the Russian forces had used unguided or inaccurate explosive weapons designed to strike a wide area. The Commission of Inquiry said:

> "133. For example, in the case of the 9 March 2022 attack that struck the Mariupol Primary and Sanitation Aid Centre No. 3, often referred to as Maternity Ward No. 3, the Commission found that the hospital was functioning at the time of the attack and did not find any military target in its vicinity. In the case of an attack carried out on 17 March 2022 that struck a residential area in Chernihiv city, which comprised the Chernihiv Regional Children's Hospital, and killed and injured several civilians, the Commission did not find evidence of military targets in the area. Regarding the ... January 2023 missile attack on a residential building in Dnipro city, the Commission also did not identify a military target near the impact site of the attack."

727. The Commission of Inquiry identified three types of weapons used in the attacks it had documented:

> "135. For some of the attacks with the highest civilian casualties, the Commission has concluded that the weapons employed had the characteristics of long-range anti-ship Kh-22 or Kh-32 missiles, which are launched from aircraft. Experience shows that, fired in pairs or more at the same target, these types of missiles appear as particularly inaccurate against targets on land. In some situations, missiles presumably intended to strike the same target landed several hundred meters apart. For example, the Commission has documented the 1 July 2022 attack in which two missiles struck the town of Serhiivka, in Odesa region, and destroyed both a hotel and a nine-story residential building, killing 22 civilians.
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> 136. In several other attacks, the weapons used were air-dropped unguided high-explosive bombs. While in some cases they appear to have hit their targets, they often also appear to miss. In addition, they cause a large zone of blast and fragmentation that may inflict damage to civilian objects and military objectives without distinction. In one example, on 3 March 2022, an aircraft dropped multiple unguided high-explosive bombs on an intersection in Chernihiv city, possibly targeting a small checkpoint staffed by Ukrainian Territorial Defence Forces at that location. However, the bombs fell in an area of 130 m in diameter around the intersection, killing at least 15 people, and injuring dozens of civilians.
>
> 137. Finally, the Commission has also documented attacks carried out with cluster munitions and multiple launch rocket systems. These weapons are intended to attack an area and are therefore inherently indiscriminate when used in areas with a civilian population. For instance, in the case of the April 2022 attack on Kramatorsk train station, the Commission found that a train with Ukrainian military equipment, which could have been the likely target, was stationed there more than one hour before the attack. However, the attack perpetrated with cluster munitions impacted an area with a large concentration of civilians hoping to evacuate, reaching beyond a possible military target, and killed dozens."

728. The Commission of Inquiry had also assessed whether the Russian forces had taken requisite feasible precautions to minimise civilian harm. The paper observed:

> "141. In several cases, attacks struck places with large concentrations of civilians. For instance, in March 2022, several hundreds of civilians were sheltering in the Drama Theatre in Mariupol, at the time it came under attack, as the theatre had become one of the gathering points for attempts to evacuate civilians from Mariupol. Similarly, in

April 2022, at the time of the attack on the Kramatorsk train station, a very large crowd of people had gathered there with the hope to evacuate. These attacks have caused an excessive harm to civilians in relation to a possible military advantage and the Commission has found them to be disproportionate ...

142. There are also examples of attacks which struck functioning medical facilities. This was the case of the 9 March 2022 attack against Maternity Ward No. 3 in Mariupol, in which at least one pregnant woman and her unborn child were killed; and of the 1 March, 6 March, and 7 March 2022 strikes on the Izium Central City Hospital. Hospitals have special protection under international humanitarian law ..."

729. The paper outlined the main cases that the Commission of Inquiry had documented. It had investigated three attacks likely carried out with powerful and inaccurate long-range anti-ship missiles in densely populated areas in Dnipro and Kremenchuk cities and in the town of Serhiivka. It had also reviewed videos apparently showing attacks with the use of such missiles in populated areas in two other locations. Its summaries of the incidents in Kremenchuk and Serhiivka, which both occurred prior to 16 September 2022, were as follows:

"*Kremenchuk city, Poltava region, 27 June 2022*

152. On 27 June 2022, in the afternoon, two missiles struck the centre of Kremenchuk city, Poltava region. One missile impacted a shopping mall, causing a fire, and another missile struck about 500 m away, on the compound of the Kredmash road machinery factory. According to local authorities, 21 civilians, including 11 women and 10 men, were killed, and dozens were injured.

153. At the time of the attack, Kremenchuk was 180 km from the frontline. The Kremenchuk Oil Refinery, located in the outskirts of the city, was repeatedly attacked with missiles in April, May, and June 2022.

154. The Commission has determined that the weapons used in the attack had the characteristics of Kh-22 or Kh-32 missiles. Footage from two separate security surveillance cameras posted online, each show a missile in flight just before impact. Their distinctive shape and trajectory in the security surveillance footage, as well as their characteristics in photos of weapon remnants and videos obtained after the attack, are consistent with the known characteristics of the Kh-22 or Kh-32 missiles. The Commission has also geolocated the impact sites of the missiles, which are about 500m apart, demonstrating the inaccurate nature of this weapon.

155. Russian authorities acknowledged that they had attacked the road machinery factory in Kremenchuk, but claimed that they had targeted a hangar storing weapons and ammunition with high-precision air-based weapons and that the detonation of the ammunition caused a fire which spread to a 'non-functioning' shopping mall next to the factory. The Commission has found no evidence to support the claim that ammunition and weapons were stored in the area. Witness accounts and videos of the immediate aftermath do not suggest possible secondary explosions or weapon remnants, which would have been consistent with detonation of arms or ammunition.

156. Evidence from the immediate aftermath of the attack indicates that the shopping mall was operational at the time of the attack. The Commission has established that the damage to the shopping mall and the civilian casualties were caused by a direct hit on the building, and not by fire spreading from elsewhere. Security surveillance footage of

the strike and satellite imagery indicate that one missile hit the north-eastern corner of the shopping mall, about 50 m from the factory compound.

157. The factual circumstances of the attack show that an inaccurate missile was used in a populated area, and that it struck a functional shopping mall, causing numerous civilian casualties and damage to a civilian object. Russian authorities have acknowledged that they perpetrated an attack in the area. The Commission has therefore concluded that Russian armed forces carried out an indiscriminate attack in Kremenchuk on 27 June 2022 and failed to take feasible precautions such as verifying the objective to be attacked and regarding the choice of means and methods of attack. These are violations of international humanitarian law.

Serhiivka town, Odesa region, 1 July 2022

158. On 1 July 2022, after midnight, a missile struck the town of Serhiivka and destroyed the Godji hotel. Another missile struck about 230 m north of the hotel, next to a nine-story residential building, which it destroyed. The Commission has obtained the personal data of 22 civilians killed in the attack: 13 women, eight men, and a 12-year-old boy. Dozens of people, including six children, were injured.

159. At the time of the attack, the frontline was located about 100km from Serhiivka, a town on the Black Sea. Russian armed forces appear to have been carrying out attacks along the coast during that period, including an attack the same day, about 70 km away. The day before, Russian armed forces announced the withdrawal from Zmiinyi Island, which is about 85 km from Serhiivka.

160. The Commission reviewed images of weapon remnants and the damage at the impact site and found them to be consistent with the known characteristics of the Kh-22 or Kh-32 missiles. Ukrainian authorities have informed the Commission that six Kh-22 missiles were launched in the attack that struck Serhiivka.

161. The missile impacted a populated area. The Commission has not identified any potential military targets in the immediate vicinity of the impact sites. There appears to be a Ukrainian military base, located about 3.5 km north-east of the impact site. However, satellite imagery from before and after 1 July 2022 does not show any damage to or near the site of this military base.

162. In relation to the attack, Dmitry Peskov, Press Secretary of President Putin, did not explicitly deny responsibility, but stated that Russian armed forces ‘do not attack civilian targets’, only ‘military ammunition storages, factories that produce and repair equipment, ammunition storage, places for the training of mercenaries’.

163. Based on the context of the strike, the likely identification of the weapons as Kh-22 or Kh-32 missiles, and their use in a populated area, causing numerous civilian casualties, the Commission has concluded that Russian armed forces likely carried out an indiscriminate attack with inaccurate and powerful missiles in Serhiivka on 1 July 2022, and failed to take feasible precautions such as verifying the objective to be attacked and regarding the choice of means and methods of attack. These are violations of international humanitarian law.”

730. Using open source material and satellite imagery, the Commission of Inquiry considered it likely that the 52nd Heavy Bomber Long-Range Aviation Regiment, located at the Shaykovka airbase in the Kaluga region of the Russian Federation, had carried out the attacks in Kremenchuk and Serhiivka (C.IV.149-51).

731. The Commission of Inquiry also investigated several attacks carried out, or likely carried out, with air-dropped bombs in populated areas in the cities of Chernihiv, Izium, Mariupol and Sumy. The paper described in detail five such attacks, as follows:

"*Chernihiv city, Chernihiv region, 3 March 2022*

First airstrike

172. On 3 March 2022, at around 12.15p.m., two airstrikes with multiple munitions struck the centre of Chernihiv city. One of the two strikes impacted a residential area near the intersection of Chernovola and Kruhova streets, significantly damaging three multi-story residential buildings, a pharmacy, and the Chernihiv Regional Cardiac Centre. The Commission observed the damage during its visit to the area. It has obtained a list of 15 people who were killed in the attack (seven men and eight women); the total number is likely higher. Dozens were injured.

173. At that time, Russian armed forces were launching numerous attacks against the city until the end of March 2022. They surrounded the city as they attempted to take control of it. A spokesperson for the Russian Ministry of Defence declared that Russian armed forces had imposed a blockade on the city on 25 February 2022.

174. The Commission has determined that the attack was an airstrike. Several witnesses said that they heard an airplane before the attack and one witness located at a distance said she saw the plane fly low over the houses after the attack. A video of the attack analysed by the Commission shows several projectiles falling towards the intersection in a line and in close succession, a pattern indicative of an attack with unguided air-dropped bombs. The damage to buildings and impact craters are consistent with the use of such bombs.

175. The attack impacted a populated area. The Commission has found that there was likely some Ukrainian military presence in the vicinity at the time of the attack. Witnesses reported that there was a checkpoint at the intersection, which was staffed by members of the Ukrainian Territorial Defence Forces, as well as a small presence of Territorial Defence Forces in the area.

176. However, at the time of the attack, a large number of civilians were gathered on the streets nearby, queuing for bread and in front of a pharmacy, where people had to wait outside due to COVID-19 restrictions. There were also several medical institutions in the immediate vicinity. Given the nature of the populated urban area, Russian armed forces should have known or assumed that a large number of civilians could have been in the area and should have taken feasible precautions to verify their presence and to avoid harming them.

177. Based on the context of the attack and the use of multiple unguided munitions in a populated area, where a significant number of civilians were present, causing numerous civilian casualties and damage to civilian objects, the Commission has concluded that Russian armed forces conducted an indiscriminate, disproportionate attack in the area of the Chornovola and Kruhova streets intersection in Chernihiv city on 3 March 2022 and failed to take feasible precautions such as the choice of means and methods of attack with a view to minimize civilian harm. These are violations of international humanitarian law.

Second airstrike

178. At about the same time as the attack described above, another attack struck the Stara Podusivka district of Chernihiv, about two kilometres away, and severely

damaged two schools and several houses in a residential area. The Commission has found that six civilians, including a 14-year-old boy, were killed in the residential area, and that several people were killed in the schools, the latter including some members of the Territorial Defence Forces.

179. The Commission has determined that the attack was an airstrike, based on the extensive damage and on accounts from witnesses that they heard an aircraft flying above.

180. Several local residents interviewed by the Commission reported military presence at the two schools. School 18, in particular, appeared to function as a gathering point for the Ukrainian Territorial Defence Forces and local residents reported that several among their members were killed there during the attack. This is consistent with the Commission's own observations. During its visit, the Commission observed several improvised defence positions made of sandbags and tires along the perimeter of that school. Residents also said that volunteers were cooking and gathering items for Ukrainian Territorial Defence Forces at School 21 and that at times a significant number of armed personnel gathered there. Finally, obituaries posted on the internet confirm that several members of Territorial Defence Forces were killed at the two schools during the attack ...

181. The Commission has, however, not found any evidence of military presence in the residential area north of School 21 that was also struck. At least two bombs fell in this area, about 100-200 m from the school. This distance is similar to the distance between bombs that fell in the abovementioned attack on Chernihiv carried out on the same day, which demonstrates how inaccurate unguided air-dropped bombs can be.

182. The Commission has also considered if Russian armed forces did everything feasible to verify whether there were civilians present in the schools that were attacked. Local residents said that people from the neighbourhood had started using School 21 as a bomb shelter on 25 February 2022 and that they had written 'children' in large letters above the entrance to the school to indicate that there were civilians there. They said that civilians were coming and going to the school every day and that, by one estimate, up to 200 persons were sheltering on the ground floor and in the basement of the school at the time of the attack. The Commission believes that a proper assessment of whether civilians were present should have alerted the Russian armed forces to the presence of a large group of civilians at school 21 and that they should have refrained from attacking it.

183. Based on the context of the attack and the use of multiple unguided munitions in a populated area, where a significant number of civilians were present, causing numerous civilian casualties and damage to civilian objects, the Commission has concluded that Russian armed forces conducted an indiscriminate attack in a densely populated area in the Stara Podusivka district of Chernihiv city on 3 March 2022 and failed to take feasible precautions such as the choice of means and methods of attack with a view to minimize civilian harm. These are violations of international humanitarian law.

Sumy city, Sumy region, 7 March 2022

184. On 7 March 2022, in the late evening, an attack struck a residential area between Romenska and Spartak streets, in Sumy city, completely destroyed six houses, and damaged residential buildings in at least five neighbouring streets. The Commission has obtained a list of 14 persons, comprising seven women, three men and four boys, who were killed in the attack.

185. At the time of the attack, Russian armed forces were attempting to take the city and had encircled it.

186. The Commission has determined that that attack was carried out with unguided air-dropped bombs, based on witness accounts of the sound of an aircraft flying above, examination of weapon remnants, and the damage on the ground. During an inspection of the area, the Commission identified two large impact sites, located about 50 m apart. The Commission has received credible information that an aircraft, possibly the same that attacked the residential area, attacked two other sites further north shortly after the attack on the residential area. The damage to these sites also appears to be consistent with air-dropped bombs. This is consistent with information from the Ukrainian authorities that they detected and tracked 'airborne targets' crossing the airspace from Russia to Ukraine in the direction of Sumy around 10.31 p.m. on 7 March 2022.

187. The attack impacted a populated area. The Commission has not been able to identify any likely military targets in the immediate vicinity. According to residents, a mobilization office was located about 350 m from the impact sites, but it was not in use at the time of the attack.

188. Based on the context of the attack, the use of unguided munitions in a populated area, causing numerous civilian casualties and damage to civilian objects, the Commission has concluded that Russian armed forces conducted an indiscriminate attack with air-dropped unguided bombs in Sumy city on 7 March 2022, and failed to take feasible precautions such as the choice of means and methods of attack with a view to minimize civilian harm. These are violations of international humanitarian law.

Izium city, Kharkiv region, 9 March 2022

189. In the morning of 9 March 2022, an attack struck two residential buildings at Pershotravneva Street 2 and Khlibozavodska Street 3 in Izium city and killed more than 50 persons who were sheltering in their basements. During a visit to the area, the Commission observed that the midsections of two six-story apartment buildings had collapsed.

190. At the time of the attack, fighting was ongoing in Izium. Russian armed forces controlled the left (northern) bank of the Siverskyi Donets river, and Ukrainian armed forces controlled the right (southern) bank. The two apartment buildings that were hit were located next to a bridge in the Ukrainian-controlled part of the city.

191. The Commission has determined that the attack was likely carried out with an airstrike. One witness recounted that she heard an airplane overhead a few seconds before the explosion. An employee of the State Emergency Services who participated in the recovery of the bodies, told the Commission that weapon remnants from a high-explosive unguided air-dropped bomb were found among the ruins of the buildings, but that Russian armed forces who subsequently took over the area did not allow them to collect the remnants or to take photos. While the damage observed is consistent with air-dropped munitions, further investigation is required to conclusively identify the weapon.

192. The attack impacted a populated area. Residents reported that as heavy fighting broke out from across the river in the morning before the attack, they saw Ukrainian soldiers around the apartment block and some of the weapons fire coming from a residential apartment block less than 100 m from Khlebozavodska Street 3. Residents of the latter building stated that they sought shelter in the basement of that building and that Ukrainian forces were trying to help them evacuate when the attack took place. Based on the casualties, it is clear that dozens of civilians were also sheltering in Pershotravneva Street 2.

193. Given the circumstances of the attack, including Russian armed forces fighting from across the river, the presence of Ukrainian soldiers in and around the buildings that were hit, and the direct impact on the two buildings, the Commission assessed that Russian armed forces likely carried out the attack on the two residential buildings. While the Ukrainian soldiers fighting from or near the apartment buildings were legitimate targets, Russian armed forces should have known or assumed that there may still have been civilians in the buildings and the forces should have taken feasible precautions to minimize harming civilians. The information currently available to the Commission does not allow it to draw firm conclusions whether, in this situation, Ukrainian armed forces fulfilled its obligations to protect civilians, in particular to avoid locating soldiers within or near densely populated areas.

194. Based on the context of the attack and the use of powerful munitions in a populated area, where a significant number of civilians were present, causing numerous civilian casualties and damage to civilian objects, the Commission has concluded that Russian armed forces likely conducted an indiscriminate attack with air-dropped bombs in Izium city on 9 March 2022 and failed to take feasible precautions such as the choice of means and methods of attack with a view to minimize civilian harm. These are violations of international humanitarian law.

Mariupol city, Donetsk region, 9 March 2022

195. On 9 March 2022, an attack struck the grounds of the Primary Medical and Sanitary Aid Centre No. 3, known as Maternity Hospital No. 3, in Mariupol city, significantly damaging the maternity and children's wing of the hospital. The attack was widely reported in local and international media. At least one pregnant woman and her unborn child were killed in the attack.

196. At the time of the attack, intense fighting was ongoing in Mariupol. Ukrainian armed forces controlled the part of the city where the hospital was situated.

197. The Commission has determined that the attack was carried out with an airstrike. Several witnesses told the Commission that they heard an airplane overhead before the impact. The crater in the courtyard and the damage caused in the attack are also consistent with an airstrike.

198. The attack struck a populated area. In the aftermath of the attack, Russian Government officials claimed that the hospital was not functional and that it was being used for military purposes, referring to information from local residents. The Commission has not found any support for these allegations. Witnesses interviewed confirmed that the hospital was functioning at that time and added that the oncology building of the hospital, located next to the maternity wing, was at the time used to treat wounded Ukrainian soldiers. It follows from international humanitarian law that the hospital does not lose its protected status if wounded soldiers are nursed there, nor are wounded soldiers – who are receiving medical treatment and no longer taking active part in hostilities (i.e., *hors de combat*) – legitimate targets. Witnesses said that apart from a few soldiers guarding the oncology department, there was no military presence or equipment at the hospital.

199. In his daily briefing on 10 March 2022, a spokesperson for the Russian Ministry of Defence said, regarding the strike on Primary Medical and Sanitary Aid Centre No. 3, that the 'Russian aviation had no missions of hitting targets on the ground in the Mariupol area'.

200. Based on the context of the attack, the use of powerful munitions in a populated area, causing civilian casualties and damage to a civilian object with special protection, the Commission has concluded that Russian armed forces conducted an indiscriminate

attack on the Primary Medical and Sanitary Aid Centre No. 3, in Mariupol, on 9 March 2022. They also failed to take feasible precautions such as to verify whether the objective was a civilian object subject to special protection. These are violations of international humanitarian law.

Mariupol city, Donetsk region, 16 March 2022

201. On 16 March 2022, in the morning, an attack struck the Donetsk Academic Regional Drama Theatre in Mariupol city, significantly damaging large sections of the building. The attack was widely reported in local and international media. Reports about the number of casualties vary widely. Initial reports suggested that several hundreds of people were killed.

202. At that time, intense fighting was ongoing in Mariupol. Ukrainian armed forces controlled the area of the city where the theatre was situated.

203. The Commission has determined that the attack was carried out with at least one high-explosive bomb delivered from an aircraft. Several witnesses confirmed hearing or seeing airplanes just before or at the time of the attack on the theatre. The damage to the theatre is consistent with the use of air-dropped bombs.

204. The attack struck a populated area. Several hundred civilians were sheltering in the theatre at the time of the attack, as it was one of the gathering points for attempts to evacuate civilians from Mariupol and planned evacuations were postponed. Witnesses estimate that on the day of the attack, there were 500 to 600 civilians in all parts of the building. Satellite imagery shows that the word 'children' had been written in large letters on the ground in front of the theatre to signal their presence there.

205. In the aftermath of the attack, Russian Government officials claimed that the Azov battalion had used the upper floors as firing positions, holding civilians hostage. While some witnesses said that they occasionally saw a few Ukrainian soldiers around the theatre, the Commission has found no evidence of significant military presence there. Moreover, with hundreds of civilians in the building, the presence of a few soldiers should not have led to those planning or deciding upon the attack to consider it to be a proportionate attack. Rather, the expected incidental civilian harm would be excessive in relation to the concrete and direct military advantage anticipated.

206. The Commission has considered whether the attack was intended to strike another target. It has collected information suggesting that Ukrainian armed forces were present in buildings about 150 m from the theatre and that they were conducting attacks from those locations. Nevertheless, the theatre is set apart from other buildings by roads, parking spaces, and a park. Because of this and since the air strike impacted the theatre directly, landing in the middle of the building, the Commission has found it most likely that the theatre was the intended target of the attack.

207. Based on the context of the attack, the use of powerful munitions in a populated area, where a significant number of civilians were present, causing numerous civilian casualties and damage to a civilian object, the Commission has concluded that Russian armed forces conducted an indiscriminate, disproportionate attack that struck the Mariupol Drama Theatre on 9 March 2022 and failed to take feasible precautions such as the choice of means and methods of attack with a view to minimize civilian harm. These are violations of international humanitarian law."

732. The Commission of Inquiry also investigated several attacks carried out with cluster munitions in populated areas. It noted that cluster munitions were "inherently indiscriminate when used in populated areas (C.IV.208).

The paper described three attacks, in Chernihiv and Kramatorsk cities and in Okhtyrka town, and concluded that in respect of at least two of them, the Russian armed forces had been responsible for the attacks, which had been indiscriminate. The incidents were summarised as follows:

"*Okhtyrka town, Sumy region, 25 February 2022*

209. On 25 February 2022, an attack struck a residential area and Sonechko Kindergarten in Okhtyrka city, Sumy region. The Commission has gathered the names of five persons, four men and one woman, who were killed in the attack; furthermore, at least three victims were injured, including an eight-year-old boy.

210. At the time of the attack, there was heavy fighting between Russian and Ukrainian armed forces for control of the city. While Russian armed forces had managed to reach its centre, and an area close to the kindergarten the day before, Ukrainian armed forces had repelled the attack and remained in control on 25 February. The area that came under attack was therefore controlled by Ukrainian armed forces at the time.

211. The Commission has determined that the attack was carried out with cluster munitions. During its visit to the area, it observed small impact craters with surrounding scatter patterns consistent with the use of cluster munitions in the asphalt. Photos that were posted on the Internet, and that the Commission geolocated, show the cargo section of a 220-mm Uragan ('Hurricane') cluster munition rocket stuck in the ground about 200 m from the kindergarten. This is also consistent with witness accounts.

212. The attack struck a populated area. Although the kindergarten was not operational on 25 February 2022, civilians were using its basement as a shelter. The Commission has identified two possible military targets in the vicinity of the kindergarten but has not been able to verify whether the cluster munition attack affected either of these locations. The headquarters of the 91st Separate Operations Support Regiment of the Ukrainian armed forces was located about 600 m to the east-southeast of the kindergarten. An attack on this facility on the following day resulted in the reported death of 70 servicemen of the Ukrainian armed forces. Another Ukrainian facility, which had been used, at least in the past, to store military equipment, was located 300 m to the north-east of the kindergarten.

213. The Commission has not been able to conclusively establish who was responsible for the attack. The military situation then prevailing in Okhtyrka and the presence of Ukrainian military bases in the vicinity, suggest that these were the likely targets and that Russian armed forces were responsible. To the Commission's knowledge, there were no Russian armed forces in the affected area at the time of the attack. The analysis of the angle of a cargo section of a cluster munition stuck in the ground nearby indicated that the attack was fired from a west-northwest direction, which had been under the control of the Ukrainian armed forces. However, multiple reports indicate that Russian armed forces were seen north-west of Okhtyrka in the days following the attack, making it possible that they were in the potential launch area also at the relevant time. Nevertheless, the Commission has not been able to establish with certainty which forces were located in the launch area at the time of the attack.

214. Based on the above, the Commission has concluded that a cluster munition attack took place in Okhtyrka on 25 February 2022 but has not been able to establish who was responsible for the attack.

Chernihiv city, Chernihiv region, 17 March 2022

215. On 17 March 2022, an attack struck a residential area in Chernihiv city, including the Chernihiv Regional Children's Hospital; it killed several civilians and injured dozens.

216. At that time, Russian armed forces were launching numerous attacks against Chernihiv with a wide range of weapons, until the end of March 2022. The city was under Ukrainian armed forces control.

217. The Commission has determined that the attack was carried out using cluster munitions. Witnesses described hearing one explosion in the air and then many small explosions on the ground, which is indicative of a cluster munition attack. During a visit to the area, the Commission documented several impact craters with surrounding scatter patterns on hard surfaces around the hospital, and damage to the hospital walls, which are consistent with the use of cluster munitions. Medical staff showed fragments that were found after the attack that are also consistent with characteristics of cluster munitions. The Commission reviewed photos and videos of unexploded submunitions and the cluster munition cargo section that had been used in the attack. It has identified these as 220-mm 9M27K-series Uragan cluster munition rockets. Photographs obtained suggest that at least four such rockets were used.

218. The attack struck a populated area. The Commission has found no evidence of military targets in that area at the time of the attack. According to medical staff, the hospital was operational at that time, with dozens of patients, including eight children in intensive care. In addition, about 200 persons, including families and older persons, had sought shelter in the hospital. That morning, many civilians were also queueing for water which was being distributed on the grounds of the hospital.

219. The Commission has analysed damage from the attack and weapon remnants, including the damage on the hospital grounds and a cargo section from one of the cluster munition rockets stuck in the ground about 300 meters from the hospital. The available evidence suggests that the attack was launch from the south, south-east, or east of the hospital. The 9M27K-series Uragan rocket, identified above as the weapon used in the attack, has a range of 10 to 35 km. While the Commission has not been able to exclude the possibility that Ukrainian armed forces were located in some of the potential launch areas, frontline reports, satellite imagery, and testimony from local residents show that Russian armed forces were at the time present in areas to the south and east of Chernihiv and within firing range with Uragan rockets from the hospital.

220. Documents left behind by Russian armed forces list the 55th Separate Motorized Rifle Brigade, the 74th Separate Guards Motorized Rifle Brigade, and the 228th Motorized Rifle Regiment as present in the relevant area. The Commission has collected information about the identity of the commanders of these units.

221. Based on the context of the attack, the use of cluster munitions in a populated area, where a significant number of civilians were present, causing numerous civilian casualties and damage to civilian objects, the Commission has concluded that Russian armed forces likely conducted an indiscriminate attack in Chernihiv city on 17 March 2022, and failed to take feasible precautions such as the choice of means and methods of attack with a view to minimize civilian harm. These are violations of international humanitarian law.

Kramatorsk city, Donetsk region, 8 April 2022

222. In the morning on 8 April 2022, an attack struck the area around the train station in Kramatorsk city, Donetsk region; it killed 59 persons, namely 38 women, 15 men, 3 girls and 3 boys, and injured 92 persons.

223. At the time of the attack, the closest frontline between Russian and Ukrainian forces ran a semi-circle about 60-75 km to the southeast, east, north, and northwest of Kramatorsk.

224. The Commission has determined that the train station was attacked with cluster munitions. Several witnesses who were present during the attack described multiple small explosions, which are typical of a cluster munition attack. Using available photos and videos, the Commission identified eight locations affected by such small explosions around the train station. In two locations, the explosions left a shallow indentation on hard surfaces with a surrounding scarring pattern, characteristics that are indicative of a cluster munition attack. Photos and videos from the aftermath of the attack also show a large missile remnant lying on a patch of grass in front of the train station. Based on the above, the Commission determined that the weapon used in the attack had characteristics of a 9M79-1 series Tochka U ballistic missile with a 9N123K cluster munition warhead.

225. The attack struck a populated area. At that time, the train station in Kramatorsk city was teeming with civilians. The State Emergency Service of Ukraine and Ukrainian Railways had been organizing evacuations for civilians from eastern Ukraine, including seven trains the day before the attack. More evacuation trains were expected on the day of the attack. A large crowd of people had gathered at the train station, hoping to evacuate. They included older persons, people with disabilities, and families with children.

226. The Commission has also found that there was a train with military equipment at the station before the attack. Two witnesses, interviewed separately, observed a train with military vehicles on the morning of the attack. One of them said that the train departed about one hour before the attack. The Commission obtained a photo of the train with military vehicles, taken by a family member of one of the witnesses.

227. Ukrainian and Russian armed forces have blamed each other for the attack. Since the Tochka-U missile has a range of 120 km, the launch of the missile could have originated from territory controlled by both armed forces. Since the position of the tail section and its relative location to the submunition impacts are not always reliable indications of the direction of the attack with this kind of weapon, the Commission has not been able to establish the direction of the attack based on the physical evidence on the ground.

228. Both armed forces are reported to have this type of missile in their arsenal. While the Russian Ministry of Defence stated in 2019 that it had introduced the Iskander-M, replacing the Tochka-U missile, the Commission is not aware of any evidence that the Tochka-U missiles and their related equipment were destroyed. On the contrary, it has compiled videos, photos, and other information of multiple sightings of Tochka-U related equipment in Belarus and Russian-occupied areas in Ukraine. This includes a sighting of Tochka-U equipment in the relevant area around the time of the 8 April 2022 attack.

229. The Commission has noted that a key military objective of the Russian armed forces at the time of the attack was to disrupt the delivery of weapons and ammunition by train to Ukrainian armed forces in the east. In its 8 April 2022 daily update, for example, the Russian Ministry of Defence said that '[h]igh-precision missiles launched from the Donetsk region on train stations in Pokrovsk, Slovyansk, Barvenkovo destroyed weapons and military equipment of the reserves of Ukrainian troops that arrived in the Donbass'. Slovyansk is located just 12km north of Kramatorsk. The Russian Ministry of Defence posted similar updates about attacks on other train stations with 'accumulation of Ukrainian military equipment' on 6 and 7 April 2022. Given the

presence of military equipment at the Kramatorsk train station, attacking the train station would be consistent with Russian armed forces' overall objective at that time.

230. Based on the context of the attack and the use of cluster munitions in a populated area, where a significant number of civilians were present, causing numerous civilian casualties and damage; also considering the presence of Ukrainian military equipment at the train station prior to the attack, and the objectives of Russian armed forces at the time, the Commission has concluded that Russian armed forces likely launched an indiscriminate, disproportionate attack using cluster munitions on the Kramatorsk train station on 8 April 2022 and that they failed to take feasible precautions such as the choice of means and methods of attack with a view to minimize civilian harm. These are violations of international humanitarian law."

733. Finally, the Commission of Inquiry investigated attacks carried out with unguided artillery rockets in the cities of Chernihiv and Marhanets. It determined that both attacks were carried out by the Russian armed forces and were indiscriminate. It set out its findings in respect of the incidents as follows:

"*Chernihiv city, Chernihiv region, 16 March 2022*

232. On 16 March 2022, in the morning, several munitions struck a residential area, including the Soyuz Supermarket in Dotsenka Street, in Chernihiv city. The attack killed at least 14 persons, seven of whom were 70 years or older.

233. At that time, Russian armed forces were launching numerous attacks against the city, until the end of March. The city was under Ukrainian armed forces control, but almost fully encircled by the attacking Russian forces.

234. The Commission has found it likely that two different weapons were used in the attack. One crater and the damage to a wall near the supermarket suggest that the site was struck by an artillery shell. In addition, damage to buildings and photos of weapon remnants indicate that several unguided artillery rockets, likely 122mm Grad rockets, also struck the neighbourhood. In the latter case, accounts from witnesses indicate that multiple explosions took place at almost the same time, which is consistent with the use of unguided artillery rockets.

235. The attack struck a populated area. According to the Commission's interviews, a large crowd of people had gathered around the supermarket at that time. Some were standing in line on the eastern side of the supermarket, waiting to buy bread. Others were queuing to enter the supermarket or to receive pensions at the post office. Many of those present were older people.

236. There are indications that there might have been legitimate military targets in the vicinity at the time of the attack. Witness accounts collected by other organizations suggest that Ukrainian armed forces used the nearby Berezovyi Hai park to attack Russian armed forces. This is consistent with videos posted later on social media, which show extensive damage in the park and to nearby residential buildings, indicating that the park was a frequent target of attacks. Furthermore, this was supported by news and information about the city on a website, which described the park as 'one of the important defensive outposts during the defense of Chernihiv' after Russian forces withdrew from Chernihiv region. While the supermarket is a few hundred meters from the entrance of the park, many of the buildings that were struck by 122mm Grad rockets were located right next to the park, which would be consistent with the park being the intended target of the attack.

237. The Russian Ministry of Defence denied responsibility for the attack, claiming that the dead persons were either 'victims of terror by Ukrainian nationalists', or that the videos were 'another production' by the Ukrainian security services. The Ministry further stated that the videos contained no indications of explosions, that windows were intact, and that there was no damage to walls. The Commission visited the site of the attack and reviewed multiple photos and videos showing craters in the ground, damage to buildings, and destroyed windows.

238. The Commission has determined that the attack was launched from a position to the north-east of the impact site. The crater and the damage to the wall and a gate from the artillery shell that struck near the supermarket suggest that the shell arrived from the north-east. Likewise, all the BM-21 Grad rocket impacts on buildings struck walls that were facing either in a northern, or north-eastern direction, showing that the attack came from that direction.

239. A document found at an abandoned command post of the Center Group of Forces of the Russian armed forces, indicates that on 6 March 2022, the forward command post of the 35th Separate Guards Motorized Rifle Brigade was located in Terekhivka village, about 14km north-east of Chernihiv. Satellite imagery published by a non-governmental organization and taken on 17 March 2022 shows at least two artillery firing lines, two and four kilometres further north-east. These firing lines were within the maximum range of the weapons that struck around Dotsenka Street on 17 March 2022.

240. Based on the context of the attack, the use of rocket artillery in a populated area, where a significant number of civilians were present, causing numerous civilian casualties and damage to civilian objects, the Commission has concluded that Russian armed forces conducted an indiscriminate attack in Chernihiv city on 16 March 2022 using weapons, including unguided artillery rockets. They also failed to take feasible precautions, such as the choice of means and methods of attack with a view to minimize civilian harm. These are violations of international humanitarian law.

Marhanets city, Dnipropetrovsk region, 10 August 2022

241. During the night of 9 to 10 August 2022, an attack struck Marhanets, damaging several buildings, including at least one school. It killed at least 11 civilians, all men, and injured 11 – eight men and three women.

242. Marhanets is located on the right bank of the Dnipro River. At the time of the attack, Russian armed forces were in control of the territory on the left bank.

243. The Commission has determined that the attack was carried out with weapons which had characteristics consistent with a multiple launch rocket system. Residents described the attack as lasting for a long time, with a large number of impacts. Witness accounts and photos and videos of the impact sites show that the attack affected a large area, as well as medium-sized craters and holes in the wall, where munitions have struck directly. Taken together, these indications on the duration of the attack, the size of the area affected, and the type of damage caused, point to an attack with a multiple launch rocket system, likely BM-21 Grad rockets.

244. The attack struck a populated area of the city, which included residential buildings, a school, and a dormitory. The Commission has received videos and photographs of significant damage to two civilian homes that were hit directly.

245. The Commission has assessed that the attack came from a south-southwest direction based on an analysis of the photos and videos of the impact sites. Residents told the Commission that there had been frequent attacks with explosive weapons in

Marhanets since mid-2022. They could see some of the attacks coming from the direction of the Zaporizhzhia Nuclear Power Plant, in Enerhodar, which is about 14km away on the opposite side of the river and therefore within the maximum range of 122mm Grad rockets. According to an employee of the plant, Russian armed forces frequently attacked Marhanets from locations near the plant, including with multiple launch rocket systems.

246. Based on the context of the attack, the use of rocket artillery in a populated area, causing civilian casualties and damage to civilian objects, the Commission has concluded that Russian armed forces conducted an indiscriminate attack on a populated area in Marhanets on 10 August 2022, and failed to take feasible precautions such as the choice of means and methods of attack with a view to minimize civilian harm. These are violations of international humanitarian law."

734. The Commission of Inquiry also investigated the series of large-scale attacks on energy-related installations in Ukraine. In its 29 August 2023 paper, it noted that since the beginning of the Russian Federation's invasion of Ukraine, both Russian and Ukrainian armed forces, albeit to a very different degree, had carried out attacks on energy-related installations in each other's countries. Although Russian armed forces had been carrying out strikes on Ukrainian energy facilities since the first days of the invasion, such attacks had been expanded onto a large scale from 10 October 2022. For the purposes of its investigations, the Commission of Inquiry had focused on the period from 10 October 2022 to 26 January 2023 (C.IV.267). However, as regards the earlier period, the paper noted:

"268. Prior to 10 October 2022, attacks by the Russian armed forces impacted, among others, oil refineries and electric sub-stations related to railways. These early attacks affected civilians in many ways, including those trying to flee, as well as created fuel shortages during the spring and summer 2022."

735. It highlighted the difference between the attacks launched before and after 10 October 2022 in that the "intensity, geographical scope and type of installations targeted" in the later attacks led the Commission of Inquiry to concluded that the objective of the large-scale attacks was not just to damage or destroy individual energy installations, which could serve a military purpose, but also to disrupt and destabilise the entire energy system in Ukraine C.IV.271). It further observed that, while attacks prior to 10 October 2022 had focused mainly on fuel installations and electric infrastructure related to the railway system, attacks after that date targeted systematically power plants and other infrastructure critical for the transmission of electricity and the generation of heat across Ukraine (C.IV.274).

736. The conference room paper discussed the heavy fighting at Zaporizhzhia Nuclear Power Plant following the 4 March 2022 Russian attack on the plant. It noted:

"291. Witnesses interviewed by the Commission and public statements of the IAEA have confirmed that there have been numerous incidents of shelling near the powerplant. The IAEA warned that the use of military force at or near the nuclear facility could lead to a serious nuclear incident. It is not only direct attacks on the

powerplant that pose a risk. The plant requires power supply for the cooling systems and other essential safety functions. It relies on four 750 kilovolt power lines providing electricity supply, as well as one back-up 330 kilovolt powerline and fuel-powered generators for emergency use. Damage to energy installations have sometimes forced the powerplant to rely on its generators, leaving it extremely vulnerable. Loss of cooling systems can lead to a meltdown, and the release of radiation into the atmosphere.

292. While the Commission has not been, at this stage, in a position to determine which party was responsible for attacks on the power plant and the connected power lines, it has established that Russian armed forces had launched an armed attack to take control of the plant and has placed military equipment in and near the facility."

737. In the context of a discussion of the health impact of the armed conflict, the conference room paper addressed the psychological impact of military attacks, noting:

"796. Several survivors of explosive weapons attacks reported how they experienced panic attacks and anxiety in the aftermath and reported the same about their children. A woman from Kharkiv explained that her 11-year-old daughter, who received minor injuries during an air raid, continued to have panic attacks for a long time after they had reached safety, whenever she heard an air raid alarm. A resident of Mariupol city remained traumatized by the sound of airplanes several months after her evacuation from the city, while a father of an 8-year-old boy, also from Mariupol city, explained that his son continued to have panic attacks triggered by the sound of airplanes or by power cuts. A psychologist said that she had observed air raid sirens triggering physical reactions with children; for instance, their hands started to shake. One victim recounted that she is now scared of thunder and fireworks, even when she is outside of Ukraine, and that she sits in the corridor, just in case.

797. According to the United Nations and media reports, stress provoked by the armed conflict has impacted pregnant women and increased the risk of premature births ...

798. ... A doctor who treated injured people in Kremenchuk city, Poltava region, after a missile struck a shopping centre killing 21 persons and injuring dozens, noted the psychological impact on his staff, and in particular the traumatic effect of interacting with desperate relatives who were searching for their loved ones. Psychiatrists and psychologists have also been directly impacted by the armed conflict and have been overwhelmed because of the increased workload; some had to take refuge outside the country."

738. The Commission of Inquiry examined the impact of shelling on the right to adequate housing, food and water. It noted that the armed conflict had affected civilians' right to an adequate standard of living, including adequate housing. The use of explosive weapons with wide-area effects had damaged or destroyed thousands of residential buildings across the country, particularly in areas close to the front line. This had had a "worrisome toll on civilians", and in particular on the most vulnerable groups (C.IV.810). The paper continued:

"812. The Commission has observed first-hand damage and destruction of houses and buildings, as well as of schools and hospitals in most of the areas it visited. It has been concerned by the level of destruction in several Ukrainian cities, including Chernihiv, Izium, Kharkiv, and Mariupol. In many instances, buildings have been damaged beyond

repair. In other cases, people had no other place to live than in partially demolished homes, despite freezing temperatures. Entire sections or walls of apartment buildings have collapsed or disappeared, which endangered their internal structure. Humanitarian organizations launched programmes to provide people with warm, safe and dignified living conditions. However, many persons, especially residents of small villages close to fighting or directly on frontlines, did not have access to this type of support. Fighting has also been the most intense in the regions with the lowest temperatures.

813. Civilians' right to adequate housing has also been affected by the systematic attacks on Ukraine's energy-related infrastructure ... The attacks have put the Ukrainian energy system under considerable pressure just as winter was setting in. They caused disruptions not only impacting the electricity supply for the population, but also water, heating, sanitation, and telecommunication."

739. The Commission of Inquiry further observed that the armed conflict had significantly compromised civilians' access to food and water. This had been particularly the case in areas affected by heavy fighting or under siege. Fighting or attacks had led to damage of critical installation providing water and electricity, and civilians were taking considerable risks while attempting to find basic supplies (C.IV.814). The paper noted that, according to OCHA, 11.1 million people in Ukraine were in need of food assistance as at the end of 2022. Intense fighting in many areas meant that people were unable to look for food and water. The paper provided examples:

"816. ... For instance, in Hostomel city, a few days after the outset of the armed conflict, there was already no electricity, limited water and gas, and people were struggling to find food. A resident of Mariupol told the Commission that starting early March 2022, there was first no electricity, then no water, and finally no gas and heating. She was cooking over a small stove in the yard. Airstrikes had also started in early March 2022. Another resident from Mariupol recounted that together with his family, he spent nearly a month without most essential necessities, including water, electricity, heating, and communications. They cooked in the courtyard on a grill, with a fire, and gathered water from open sources outside. One woman in Izium, Kharkiv region, reported to the Commission that she did not eat for two days after shelling struck her building, cutting it off from water, electricity and gas during intensive fighting in her area.

817. Getting water was sometimes challenging. Residents from Kupiansk city, Kharkiv region, and Mariupol city, Donetsk region, explained that they had to collect and boil water from rain or wells. Several people indicated that for some time, they only had access to non-potable water, which led to health issues.

818. Civilians' rights to food and water were particularly affected in towns and cities that came under siege by Russian armed forces. Many people in these cities recounted the scarcity of food, especially when their ability to move was limited.

819. Despite ongoing attack and considerable risks, civilians eventually had to leave their shelters to look for food and water. A woman farmer in Mala Rohan village, Kharkiv region, recounted how she, at considerable risk because of ongoing shelling, distributed bread and milk from her farm to older persons in the village because of the shortages. While she was not injured, in several cases documented by the Commission, civilians were killed or injured because they went to search for food."

740. The paper discussed the particular risks faced by older people and people with disabilities. Many older people living near or on frontlines had been unable or unwilling to evacuate to safety and had become trapped in the conflict zone (C.IV.824). The paper continued:

> "825. In smaller towns and villages, older persons told the Commission that they sheltered from explosive weapons in small cellars, usually used for food storage and often located outside the main dwelling, which exposed them to particular risks and hardship. One 62-year-old woman in Sumy region was injured in an explosion while running to her cellar – her husband and an older couple staying with them were killed. A 75-year-old woman told the Commission that she spent 83 days taking cover in a small cellar, with her son and her three-year-old grandson.
>
> 826. Often dependent on distribution of aid or pensions, which required them to stand in queue in the street, older persons were sometimes more vulnerable to the impact of attacks with explosive weapons. In two cases documented by the Commission, older persons were disproportionately represented among those killed and injured because they were standing in line outside when the attacks happened. This was the case of the 17 March 2022 attack in Chernihiv city and the 16 July 2022 cluster munition attack in Izium city ..."

741. The paper also highlighted that children and adults with disabilities had faced a disproportionate risk of death or injuries. They, and those caring for them, had encountered considerable difficulties in seeking safety or fleeing from the hostilities, or had been unable to do so (C.IV.827). The paper continued:

> "829. In mid-April 2022, the Committee on the Rights of Persons with Disabilities estimated the number of persons with disabilities potentially affected by the armed conflict in Ukraine to be 2.7 million. In a special report released in September 2022, the same Committee expressed its concerns related to the disproportionate risk of death or injury to which persons with disabilities are exposed, as a result of indiscriminate attacks against the civilian population, the lack of involvement and meaningful participation of persons with disabilities in emergency preparedness and response, including in setting priorities for evacuation strategies and aid distribution, or the lack of accessibility of information and alert mechanisms in evacuation procedures ...
>
> 830. Many persons living with disabilities are bedridden and most often unable to seek shelter during attacks. For instance, in Izium city, an older woman who was bedridden and could not go to the shelter in the basement remained in her apartment on the third floor. The building was destroyed in an airstrike and the woman was never found.
>
> 831. Caregivers, mostly women, are often put in a very difficult situation where they have to choose between fleeing to safety or staying to care for their loved ones. In Mariupol city, a woman became exposed to airstrikes because she had to help her 71-year-old uncle who had a disability and was unable to leave his apartment. One man who was living with his chronically ill mother in Mariupol city explained how he could not leave the city because of her."

742. Subsequent reports by the Commission of Inquiry of October 2023, March 2024, October 2024 and March 2025 provide similar assessments of the conduct of hostilities by the Russian Federation and the impact on civilians in Ukraine in the subsequent periods of the conflict (C.V, C.VI,

C.VII and C.VIII). These reports also provided further information in respect of incidents which had occurred earlier in the conflict, as such information had become available in the course of the Commission of Inquiry's continuing investigations. In its March 2024 report, the Commission of Inquiry published further findings of its continuing investigation into the siege of Mariupol (C.VI). The report contained the following passages:

> "13. Starting on 24 February 2022, Russian armed forces attacked Mariupol from various directions, and encircled it by 1 March 2022. Heavy street fighting ensued, causing immense suffering to the residents. Ukrainian armed forces fought from within the city and ultimately took shelter at the Azovstal steel plant. The siege of Mariupol continued until 20 May 2022, when Russian authorities declared the 'complete liberation' of the city.
>
> *Significant loss of life and destruction of civilian buildings*
>
> 14. The Commission interviewed 50 women and 33 men, who shared their horrific experiences during the siege. Residents described periods of relentless shelling and aerial bombardments. While satellite imagery indicates that 15,555 structures were affected (831 destroyed, 5,877 severely damaged and 8,847 moderately damaged), the actual damage was likely more significant ... Residents saw buildings and houses collapsing under the shelling, in some instances killing and injuring loved ones, and whole areas of the city in ruins. Two residents, for instance, witnessed tanks firing rounds at civilian residences. A woman recollected that an airstrike hit a nine-storey building near hers, and people living there jumped out of windows.
>
> 15. Ukrainian authorities estimated that thousands of civilians died in Mariupol during that period. After constant fighting, residents emerging from shelters saw dead bodies strewn on the streets and in the rubble of houses. They recognized relatives, neighbours and acquaintances. A woman who evacuated an injured man described her way to the hospital: 'It was hell. Explosions. Destroyed buildings. Houses on fire. Wounded people crying'. In the hospital, she saw three rooms full of dead bodies, and more in the corridor. Others also recollected seeing large numbers of dead bodies in the city's hospitals.
>
> *Impact on medical facilities*
>
> 16. The fighting in Mariupol damaged or destroyed at least 58 medical buildings, according to data sets obtained. This affected those who sought urgent treatment or attempted to shelter in hospitals. The Commission interviewed residents who witnessed and suffered from the damage or the destruction of medical facilities.
>
> 17. Around 13 March 2022, a T-72M3-variant main battle tank fired at hospital No. 2, leading to civilian casualties and damage to its fourth and fifth floors. The hospital was treating injured persons and sheltered dozens. The Commission interviewed several witnesses who suffered the impact of the attack and had observed a tank with the letter 'Z' mark used by Russian armed forces stationed in front of the building. One eyewitness saw the tank firing on the hospital. Interlocutors reported that Russian armed forces had taken control of the hospital the previous day and conducted a search. The Commission concluded that the Russian armed forces had committed an attack that was indiscriminate and constituted the war crime of excessive incidental death, injury or damage. It assessed that it was disproportionate to fire on a functioning hospital with civilians, as well as Russian soldiers, inside. Hospitals also have special protection under international humanitarian law.

18. The Commission previously found that on 9 March 2022, Russian armed forces had conducted an indiscriminate air attack that hit maternity hospital No. 3. For the present report, the Commission interviewed additional civilians who were injured in the strike. A young woman waiting to give birth lost contact with her parents, who were both injured in the attack, and had to evacuate to another maternity hospital. There, she gave birth to a boy in a freezing room, with no water. She stated: 'This was supposed to be the happiest moment in my life, but it was one of the scariest'.

19. Residents from Mariupol also reported that there was a shortage of medical personnel and of essential supplies for urgent assistance to the injured. A medical practitioner told the Commission that she saw an endless number of wounded people coming in. A woman waiting for her son to be operated on said that limbs had to be amputated without anesthesia. An injured patient stated that medications had run out and injured persons were dying of their wounds. A woman sheltering in a hospital described the stairway as the 'pathway of death'. She saw severely injured people, with missing body parts, asking for water. Even that could not be provided.

Lack of access to basic necessities

20. As the fighting intensified, energy facilities and supply lines were damaged. Satellite imagery shows damage to 11 power stations. According to residents from Mariupol, water, power and heating went off on 2 March 2022, one day after the siege started. A few days later, gas was no longer available. Around mid-March 2022, water and food also became scarce. Shops that could open had limited products. Despite the ongoing shelling, residents had no choice but to go outdoors to look for food and to cook. Some were killed and injured as a result. Residents stated that they were forced to melt snow or to drink water from radiators and boilers. Witnesses described suffering intensely from the cold. Living conditions were particularly harsh in crowded shelters in the basements of hospitals and cultural or administrative buildings, where dozens of people sought refuge, often without basic necessities.

Takeover by Russian armed forces and evacuation

21. Many residents of Mariupol reported that, at the height of the fighting, the mobile phone signal was virtually non-existent and residents were cut off from information about evacuation corridors. Interlocutors reported that they had attempted to flee on their own initiative, risking their lives. Some residents witnessed Russian combat vehicles and soldiers firing at civilians who were attempting to flee by car.

22. As Russian armed forces took gradual control of parts of the city, they carried out so-called 'clearings' ('зачистки'), which included searching the area. Residents sheltering in a hospital reported that Russian soldiers intimidated and shot at persons during this process. Sometimes, they ordered civilians to leave immediately the locations where they had sheltered. Russian armed forces allowed or ordered evacuations to areas they controlled. Civilians had to cross multiple checkpoints and filtration points. According to interlocutors, during lengthy controls, some persons were forced to undress so they could be checked for tattoos, and some were detained. To reach territories under Ukrainian Government control, many had to flee through the Russian Federation and several other countries ...

23. Survivors from Mariupol described the trauma and fear that haunted them. When asked about justice, one young woman replied: 'We lived happily in wonderful Mariupol ... but someone's decision caused us to lose everything, our lives, our friends, our houses, our relatives ... nothing could replace our loss ... all this cannot be returned'.

24. The Commission previously found that Russian armed forces had committed indiscriminate attacks affecting the Mariupol Drama Theater and maternity ward No. 3,

in violation of international humanitarian law. During the current mandate, the Commission found that Russian armed forces had committed an indiscriminate attack and the war crime of excessive damage affecting hospital No. 2. In these cases, Russian armed forces failed to take all requisite feasible precautions under international humanitarian law. The current findings confirm the need to continue investigations, including regarding whether the conduct of hostilities and the siege may constitute crimes against humanity."

D. The Court's assessment

1. General principles

743. The Court has dealt with applications where it was undisputed that individuals had died in circumstances falling outside the exceptions set out in the second paragraph of Article 2 of the Convention. Where it found it to be established that the victims had been killed by State agents, or with their connivance or acquiescence, it found the respondent State liable for their death (see *Georgia v. Russia (II)*, cited above, § 202 and the authorities cited therein, and §§ 220 and 222). Article 2 may also apply where the force used was not, in the event, lethal. In such cases, the degree and type of force used and the intention or aim behind the use of force may, among other factors, be relevant in assessing whether the facts fall within the scope of the safeguard afforded by Article 2 of the Convention, having regard to the object and purpose pursued by that Article (see *Makaratzis*, cited above, §§ 49-55).

744. In *Georgia v. Russia (II)*, the Court found a violation of Article 3 in the context of grave violations of the Convention committed during an armed conflict having regard to the seriousness of the abuses committed, owing to the feelings of anguish and distress suffered by the victims (cited above, §§ 220 and 222).

745. The Court has moreover recognised that there may, in certain circumstances, be positive obligations on the State under Articles 2 and 3 to protect the lives of individuals and to ensure that individuals within their jurisdiction are not subjected to torture or inhuman or degrading treatment (see *Makaratzis*, cited above, § 50, and the examples given there; and *O'Keeffe*, cited above, §§ 144-48, and the examples given there).

746. The deliberate destruction of civilian homes and their contents by State agents constitutes a serious interference with the right to respect for their family lives and homes and with the peaceful enjoyment of their possessions under Article 8 of the Convention and Article 1 of Protocol No 1 to the Convention respectively (*Akdivar and Others v. Turkey*, 16 September 1996, § 88, *Reports* 1996-IV, and *İpek v. Turkey*, no. 25760/94, § 194, ECHR 2004-II (extracts). See also *Georgia v. Russia (II)*, cited above, § 204 and the additional cases cited there, and §§ 220 and 222).

2. Application of the general principles to the facts of the case

747. In its interpretation of the respondent State's obligations under Articles 2, 3 and 8 of the Convention and Article 1 of Protocol No. 1, the Court will have regard to relevant provisions of international humanitarian law in accordance with its duty of harmonious interpretation (see paragraphs 429-430 above). It has recognised the possibility that a conflict may arise between Article 2 and relevant provisions of international humanitarian law in circumstances where lethal force is used in the context of armed conflict (see paragraph 430 above). It concludes, however, that there is no potential inconsistency between the provisions of Article 2 and the content of international humanitarian law in the context of the present complaint, since the applicant Ukrainian Government's allegations concern military attacks which they say were in breach of international humanitarian law. The Court will therefore confine its examination to alleged military attacks which do not comply with international humanitarian law: the question how to approach killings compatible with international humanitarian law from the point of view of Article 2 of the Convention, in the absence of any derogation under Article 15, does not therefore arise for consideration.

748. Before considering whether Convention guarantees have been violated, the Court must assess the evidence and determine the facts in respect of the military attacks by the respondent State.

749. The evidence shows that as early as May 2014, armed separatists were using heavy weaponry in eastern Ukraine (see paragraph 639 above). It is clear from both the OHCHR and the OSCE reports that there was regular use of heavy weaponry by both sides around the line of contact over the summer of 2014 (see paragraphs 640-646 above). Despite the negotiation of a number of ceasefires, starting with the Minsk Protocol in September 2014, it is apparent from the extensive evidence summarised above that military attacks by the separatists across the contact line continued almost uninterrupted for the following seven and a half years (see paragraphs 647-692 above). For much of that period, there were almost daily exchanges of fire with skirmishes and local escalations on a regular basis. There were also periods of particularly active hostilities, such as the heavy shelling of populated areas in Ilovaisk in August 2014, in Mariupol in January 2015, in Debaltseve in February 2015 and in Avdiivka in early 2017 (see paragraphs 644, 653-656, 660, 676 and 678 above).

750. From 24 February 2022 the scale and territorial reach of the military attacks launched by the respondent State escalated sharply (see paragraphs 693-698 above). The reports of the Commission of Inquiry set out the results of its detailed investigations into particular incidents (see paragraphs 700-742 above). These reports leave no doubt that from 24 February 2022, the armed forces of the respondent State, including "DPR" and "LPR" separatists, conducted an intense, sustained and widespread campaign of military attacks. These attacks killed and injured thousands of civilians and damaged and

destroyed civilian objects, including homes, hospitals, schools, commercial property and essential infrastructure, on a massive scale.

751. The rules regarding the conduct of hostilities set out in the Hague Regulations and customary international law were reaffirmed and further developed in AP I. The principles of distinction, proportionality and precautions in attack are fundamental in the conduct of hostilities rules under international humanitarian law. According to the principle of distinction, attacks may only be directed against military targets; civilians must never be the direct target of attacks (B123 and 139-40). Under the principle of proportionality, launching an attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated, is prohibited (B140). Pursuant to the rules governing precautions in attack, in the conduct of military operations, constant care must be taken to spare the civilian population, civilians and civilian objects. All feasible precautions must be taken to avoid, and in any event to minimise, incidental loss of civilian life, injury to civilians and damage to civilian objects. In addition to this overarching obligation, parties to the conflict have to take a number of specific precautionary measures (ibid.). Finally, international humanitarian law provides for rules governing the means and methods of war. These rules reflect and overlap with the three principles outlined above. Of particular relevance in the present case, they prohibit the use of weapons which are by nature indiscriminate and the starvation of civilians (B134 and 140). Article 51(2) AP I prohibits "acts or threats of violence the primary purpose of which is to spread terror among the civilian population" (B140; see also Rule 2 of the ICRC's study on customary international humanitarian law (CIHL) at B134). Moreover, under international humanitarian law, it is prohibited to kill, injure or capture an adversary by resort to perfidy (B135 and 139).

752. As early as August 2014, the OHCHR referred to allegations that the use of heavy weaponry in eastern Ukraine was "indiscriminate" and to the deployment of such weapons in densely populated areas (see paragraph 642 above). Since then, there have been multiple references throughout OHCHR and OSCE reports to the shelling of residential areas in violation of international humanitarian law (see, for example, paragraphs 644, 647, 649, 656-657, 660, 669, 671, 676, 680 and 695-696 above). The OHCHR referred to the deployment of explosive weapons in populated areas without complying with the principles of distinction, proportionality and precautions (see, for example, paragraphs 644, 664 and 688 above). There is ample evidence of the extensive shelling of civilian areas in the absence of any immediately identifiable military targets (see notably paragraphs 649, 660, 716 and 726 above). Sustained shelling by separatists of residential areas has been a frequent occurrence since the start of the conflict, including in Ilovaisk in August 2014, in Mariupol in January 2015, in Debaltseve and Kramatorsk

in February in 2015 and in Avdiivka in February 2017 (see paragraphs 644, 653-660, 676 and 678 above). Following the 2022 invasion, this practice continued and intensified, with the almost total devastation of cities like Mariupol and Izium by the Russian armed forces (see paragraphs 701, 714, 725 and 738 above).

753. The evidence shows the frequent use by the armed forces of the respondent State, including the separatist forces, of explosive weapons with wide-area effects in populated areas and regular attacks with cluster munitions, unguided rockets and multiple unguided bombs in populated areas (see, for example, paragraphs 651, 658-659, 676, 681, 695, 707-708, 714, 719 and 738 above). The Commission of Inquiry has published its detailed findings on the use by the Russian armed forces of long-range anti-ship missiles, air-dropped unguided high-explosive bombs and cluster munitions and multiple launch rocket systems in, among other localities, the cities of Kremenchuk, Chernihiv, Mariupol, Sumy, Kramatorsk and Marhanets (see paragraphs 729-733 above). Such weapons, which are incapable of distinguishing between military objects and civilians, are by their very nature indiscriminate when used in populated areas.

754. There is also evidence that the armed forces of the respondent State have deliberately attacked fleeing civilians (see paragraphs 647, 655, 661, 704, 727-728, 731-732, 734 and 742 above). The Court further notes the attack on Ukrainian soldiers retreating through a humanitarian corridor at Ilovaisk in August 2014. The exact circumstances of the retreat remain unclear. While it is not apparent from the information available whether all the retreating soldiers could be described as *hors de combat* and thus unlawful targets for military attack under international humanitarian law, there is evidence that the retreating convoy included unarmoured vehicles carrying wounded soldiers and clearly marked as such (see paragraph 646 above). The applicant Ukrainian Government have, moreover, alleged that the safe retreat of the soldiers was agreed following negotiations between Ukrainian and Russian armed forces. At the separate admissibility stage of the present proceedings, the respondent Government were invited by the Court to provide information about the negotiations and they declined to do so (*Ukraine and the Netherlands v. Russia* (dec.), cited above, § 457). The Court observes that an attack on the retreating convoy at Ilovaisk following an agreement between the parties allowing the safe retreat of Ukrainian soldiers would appear to amount to perfidy and thus constitute impermissible conduct under international humanitarian law (see paragraph 751 above).

755. There have been attacks on functioning medical institutions, essential infrastructure and buildings sheltering civilians and clearly marked as such (paragraphs 644, 663, 666, 673, 676-677, 679, 684, 686-687, 691, 696, 700, 703, 705, 707, 714-715, 718, 721-722, 731-732, 738 and 742 above). Such attacks included, notably, the attacks on the maternity hospital and on civilians sheltering in a clearly marked theatre in Mariupol in March

2022 and the attack on evacuating civilians at Kramatorsk train station in April 2022. These incidents were investigated in detail by the Commission of Inquiry and its description of the events in its various reports provides compelling evidence to the Court (see paragraphs 717, 726, 728 and 731 above).

756. The sheer scale of civilians killed and injured and the extent of the damage to civilian property arising from military attacks perpetrated since May 2014 in itself gives rise to serious concerns as to whether the attacks complied with international humanitarian law. The reports of the OSCE, the OHCHR and the Commission of Inquiry, which examined more closely a number of attacks carried out over the more than eight-year period, provide strong support for the allegation that the military attacks of the respondent State were widely conducted in violation of international humanitarian law. Indeed, many of the military attacks perpetrated by the respondent State since 24 February 2022 investigated in detail by the Commission of Inquiry have been characterised by them as being in breach of international humanitarian law (see in particular paragraphs 729-733 above).

757. In the face of the evidence and the numerous credible and reputable reports, the burden is on the respondent State to show that the military attacks perpetrated by its armed forces, including the "DPR" and the "LPR", were compatible with international humanitarian law. The respondent State could have provided information on targeting decisions and instructions to its troops, strategic and tactical decisions regarding the use of particular weapons in particular areas, decisions regarding precautions taken to minimise harm to civilians and civilian objects and documentary evidence concerning investigations and evidence obtained about the use of artillery or other heavy weaponry in the context of specific incidents such as those to which the preceding paragraphs refer. The respondent Government could have engaged with the findings of the OSCE, the OHCHR, the Commission of Inquiry and others to explain why the conclusions reached with respect to these incidents were inaccurate and to provide information allowing a different conclusion to be reached. The insertion into the Rules of Court in September 2023 of Rule 44F on the treatment of highly sensitive documents further facilitated the provision of relevant evidence to the Court while protecting any national security interests of the respondent State. However, no submissions have been made nor evidence produced by the respondent Government on the conduct of armed hostilities, by its *de jure* or *de facto* armed forces in eastern Ukraine and, later, beyond from spring 2014 to 16 September 2022 (see paragraphs 637-638 above). The Court reiterates that the respondent Government participated in the separate proceedings on admissibility and could have, in that context, provided relevant information concerning the military attacks perpetrated before that date. It further reiterates that the respondent Government were asked, on 1 March 2022, to inform the Court as soon as possible of the measures it was taking to ensure that the Convention

was fully complied with in the context of its military actions across Ukraine from 24 February 2022 (see paragraph 9 above). In their reply of 5 March 2022 the respondent Government provided no such information, making instead bare assertions that the Russian Federation was not attacking civilians or civilian objects and that it was taking every measure to avoid civilian casualties (see paragraphs 140-141 above). Such bare assertions cannot stand in the face of the overwhelming evidence to the contrary. No further submissions were received from the respondent Government (see paragraph 142 above).

758. In view of the weight of the evidence and the failure of the respondent Government to provide any explanation, it is appropriate for the Court to conclude that the accounts of the OSCE, the OHCHR and the Commission of Inquiry of the military attacks that occurred throughout this period were entirely, or at least largely, accurate. On the basis of the wealth of evidence it has before it, the Court finds that the respondent State was responsible for a pattern of military attacks from May 2014 to September 2022 that did not comply with the principles governing the conduct of hostilities under international humanitarian law.

759. There is no doubt as to the scale of the deaths, injury and damage to property caused over the more than eight years of military attacks under examination in the present judgment. The Court has not been provided with figures for the number of civilians killed and injured as a result of military attacks by the respondent State prior to the February 2022 invasion of Ukraine. The OHCHR recorded a total of 3,405 conflict-related civilian deaths from 14 April 2014 to 31 January 2022 in eastern Ukraine. The number of injured civilians during this period was estimated to exceed 7,000 (see paragraph 692 above). Daily SMM reports and periodic OHCHR reports attest to the regular civilian deaths and injuries and damage to property caused by military attacks on government-controlled areas during this time. With the significant escalation of hostilities from 24 February 2022, the numbers of dead and injured also increased substantially. From 1 February to 31 July 2022, the OHCHR recorded 5,131 civilians killed and 6,267 injured in 518 settlements in areas under Government control when the casualties had occurred. Over 90% of the total civilian casualties in both government-controlled and occupied areas were caused by the use of explosive weapons with wide-area effects, including shelling from heavy artillery, multiple launch rocket systems, missiles and air strikes, in populated areas (see paragraph 695 above). By 17 October 2022, 6,306 civilian deaths had been recorded since 24 February 2022 and 9,602 wounded (see paragraph 703 above). It is important to emphasise that all of these figures are based on verified fatalities and casualties. The actual number of civilians killed and injured as a result of Russian military attacks is likely to be considerably higher (see paragraphs 695 and 703 above).

760. There is accordingly no doubt that Article 2 is applicable in respect of the military attacks conducted in breach of international humanitarian law by the respondent State between May 2014 and 16 September 2022. This is the case irrespective of whether such attacks resulted in death or injury: the very nature of the conduct, involving indiscriminate and disproportionate military attacks and also attacks directed at residential areas and civilian infrastructure, was such as to put civilian lives at risk. These deadly attacks cannot be justified under Article 2 § 2 and therefore breached Article 2 of the Convention.

761. As regards the allegation that the military attacks conducted from 24 February 2022 also breached Article 3 of the Convention, the Court observes that the scale and intensity of the military attacks across Ukrainian territory and their widespread failure to respect provisions of international humanitarian law intended to protect civilians inevitably created fear and terror among the civilian population in Ukraine. The Court reiterates that international humanitarian law prohibits acts of violence which have as their primary purpose spreading terror among the civilian population (see paragraph 751 above). Survivors of attacks have been left physically scarred and psychologically traumatised (see paragraphs 721, 725, 737 and 742 above). Even before the intense campaign of bombing civilian energy infrastructure began on 10 October 2022, civilians in heavily targeted cities and cities under siege were left with limited or no access to housing, electricity or water. Those in besieged cities were forced to shelter in basements and buildings for weeks or months, in dire conditions and in the absence of the most essential supplies such as water, food, heat and access to essential medical assistance (see paragraphs 703, 713-714, 725, 738-739 and 742 above).

762. The Court has no doubt that the level of suffering described meets the minimum level of severity for the purposes of Article 3 of the Convention. It therefore finds that the intense and sustained military attacks on Ukrainian sovereign territory by the respondent State between 24 February 2022 and 16 September 2022 amounted to inhuman treatment of civilians in Ukraine and was in breach of Article 3 of the Convention.

763. The findings above in respect of the respondent State's violation of its negative obligations under Articles 2 and 3 of the Convention necessarily apply to military attacks on cities, notably in Mariupol, Izium and Chernihiv, which amounted to a siege. However, in addition to its negative obligations, the Court has also considered whether the use of sieges as a method of warfare was compatible with the respondent State's positive obligations arising under Articles 2 and 3 of the Convention.

764. It observes in this respect that international humanitarian law does not prohibit the use of sieges *per se* as a method of warfare. However, a number of provisions impose limitations on the use of sieges. Article 27 of the Hague Regulations provides that in sieges and bombardments, all

necessary steps must be taken to spare, as far as possible, buildings dedicated to religion, art, science, or charitable purposes, historic monuments, hospitals, and places where the sick and wounded are collected, provided they are not being used at the time for military purposes (B135). Article 51(2) AP I and Rule 2 CIHL prohibit terrorising the civilian population (B134 and 140). Article 54(1) and (2) AP I and Rules 53 and 54 CIHL prohibit the starvation of the civilian population and attacks against objects indispensable to the survival of the civilian population (ibid.). Article 17 GC IV requires the parties to the conflict to endeavour to conclude local agreements for the removal from besieged or encircled areas of wounded, sick, infirm and aged persons, children and maternity cases, and for the passage of ministers of all religions, medical personnel and medical equipment on their way to such areas (B138. See also B136-37). Taking into consideration the content of international humanitarian law, the Court is satisfied that aside from the negative obligations concerning the conduct of hostilities arising in the context of the sieges conducted by the respondent State, the latter was also under a positive obligation pursuant to Articles 2 and 3 of the Convention to protect civilian lives and well-being in the besieged cities in order to alleviate the suffering of the civilian population. This included an obligation to ensure adequate supplies of water, food and heat for settlements under siege as well as access to medical assistance and humanitarian corridors for the safe evacuation of the civilian population.

765. The reports before the Court reveal a complete disregard by the respondent State for the lives and well-being of civilians in besieged areas. Shelling was described as constant, non-stop and never-ending (see paragraph 725 above). Witnesses described days without food and collecting rainwater to drink; the consumption of non-potable water led to health issues (see paragraph 739 above). Elderly civilians and those with disabilities who were unable to move to shelters remained in their homes; family members were faced with the impossible choice of remaining with them or fleeing to safety (see paragraph 741 above). To the extent that there is evidence of the organised evacuation of civilians, this did not adequately secure their human rights because the respondent State also shelled evacuation corridors and directed evacuating civilians to Russia or to other occupied territory and subjected them to mandatory filtration measures (see paragraph 742 above). The respondent State failed to respond to the Court's request of 1 March 2022 for details of the measures taken to protect the civilian population (see paragraphs 9 and 140-141 above). There is no evidence before the Court of any measures taken by the respondent State to protect civilian lives and well-being through the provision of essential assistance and access to safe evacuation routes in the areas to which it laid siege.

766. The Court accordingly finds that in conducting sieges between 24 February 2022 and 16 September 2022 without taking the necessary measures to protect civilian lives and well-being in the areas affected, as well

as violating the negative obligations under Articles 2 and 3 of the Convention the respondent State was also in breach of its positive obligations under these Articles.

767. Finally, the applicant Ukrainian Government have also alleged that there has been a breach of Article 1 of Protocol No. 1 on account of the damage to and destruction of property as a result of unlawful military attacks throughout the conflict. From 24 February 2022, they also invoke Article 8 in respect of the destruction of homes and possessions. The Court considers it appropriate to limit its examination of Article 8 to the period following 24 February 2022, as alleged by the applicant Ukrainian Government, notwithstanding the evidence of destruction of homes and personal possessions concerning the period from May 2014 which has been submitted to the Court in support of the complaint under Article 1 of Protocol No. 1.

768. It is plain from the evidence and the Court's findings above that the respondent State's military attacks conducted in breach of international humanitarian law caused enormous damage to private property in Ukraine, including homes and personal possessions, commercial and business property and privately-owned energy, transport and medical facilities. In some towns and villages, the evidence shows that a significant percentage of the residential property was damaged or destroyed following periods of sustained attacks (see paragraphs 643-644, 656, 665 and 672 above). The Commission of Inquiry reported the striking scale of the damage to buildings and infrastructure in the cities of Mariupol, Kharkiv, Chernihiv and Izium (see paragraphs 714, 720, 722, 738 and 742 above). There has therefore been a serious interference by the respondent State with the right to respect for homes and with the peaceful enjoyment of possessions.

769. The Court has already referred to the need, in the context of occupation, to interpret the "lawfulness" requirement in the light of international humanitarian law (see paragraphs 606 above). The same is true when reviewing "lawfulness" in the context of the conduct of hostilities in an armed conflict. Moreover, whether the attacking Party has respected international humanitarian law provisions, in particular the provisions prohibiting indiscriminate and disproportionate attacks, is also plainly relevant to the question whether the interference with property rights was proportionate. In the absence of any information as to the domestic legal basis and in view of the egregious failure of the respondent State to comply with the principles of international humanitarian law, it cannot be said that this serious interference with the right to peaceful enjoyment of possessions was in accordance with the law, pursued a public or general interest permitted by Article 1 of Protocol No. 1 to the Convention or was necessary and proportionate. The military attacks between May 2014 and 16 September 2022 therefore breached Article 1 of Protocol No. 1 to the Convention. Between 24 February 2022 and 16 September 2022, they were also in breach of Article 8 of the Convention.

770. There is no doubt from the nature of the evidence and the analysis in which the Court has engaged that the unlawful military attacks by the respondent State amounted to an accumulation of identical or analogous breaches of Articles 2, 3 and 8 of the Convention and Article 1 of Protocol No. 1 to the Convention during the periods under consideration in respect of each Article, which were sufficiently numerous and interconnected to amount to a pattern or system.

771. For the reasons set out below, there is no doubt that the military attacks conducted in breach of international humanitarian law were not only officially tolerated but were in fact organised and directed by senior Government figures in the respondent State (see paragraphs 1617-1621 below).

772. The Court accordingly finds the Russian Federation responsible for an administrative practice of military attacks in Ukraine in the context of the conduct of hostilities in the period between 11 May 2014 and 16 September 2022 which violated Articles 2 and 3 of the Convention and Article 1 of Protocol No. 1 to the Convention and, from 24 February 2022, also violated Article 8 of the Convention.

XIV. ALLEGED ADMINISTRATIVE PRACTICES IN VIOLATION OF ARTICLES 2, 3, 4 § 2 AND 5 OF THE CONVENTION

773. The applicant Ukrainian Government have alleged that the respondent State is responsible for administrative practices in occupied territory in breach of, respectively, Articles 2, 3, 4 § 2 and 5 of the Convention. Although the Court is satisfied that it should examine each of these alleged administrative practices separately, it considers it appropriate to summarise the relevant evidence together in a single section since the various alleged violations frequently occurred within the same factual context.

A. Summary of relevant evidence

1. The period from spring 2014 to January 2022

774. In reports based on monitoring observations by the HRMMU, the OHCHR stated that in the late spring of 2014 armed groups were increasingly committing grave human rights abuses, including abductions, unlawful detentions and harassment, in particular of journalists, as well as killings, torture and ill-treatment, and that the "DPR" and "LPR" were accountable for human rights violations committed in the territories under their control (A691). The OHCHR subsequently regularly reported that it continued to receive and verify allegations of summary executions, disappearances, unlawful and arbitrary detention and torture and ill-treatment of Ukrainian soldiers, civilians and individuals associated with armed groups (A818).

775. The OSCE SMM reported a number of incidents of deprivation of liberty in its regular updates in spring 2014. For example, on 23 April 2014 in Luhansk, the SMM had met with representatives of an NGO who had declared that they had been held captive for six hours in the SBU building on 21 April and that approximately 100 men in unmarked uniforms armed with machine guns had been occupying the building (A815). On 28 April 2014 the SMM's Luhansk team had received information that a local activist and supporter of the Ukrainian government had been captured in the town of Shchastia by opponents of the government and had been taken to the SBU building in Luhansk (A816). On 14 May 2014 the SMM had been informed of the abduction of a schoolteacher by unknown uniformed armed men. Reportedly, the teacher had been abducted from his office in the presence of pupils and other teachers, taken into a car and held at the SBU building which had been occupied by the "South-Eastern Army". The teacher had been released after two hours. On the same day, the self-declared mayor of Sloviansk, Vyacheslav Ponomaryov, had informed the SMM that there were 40 detainees in the city (A817). The SMM had also obtained information that a local Maidan activist had been beaten by armed separatists after being abducted from his home on 23 May 2014. He was believed to have been held incommunicado in Luhansk (A819). The SMM reported the abduction by separatists of two Ukrainian journalists and their driver on 25 May 2014 at a checkpoint in Shchastia (A820).

776. According to the OHCHR, in June 2014 "[v]iolence and lawlessness ha[d] spread in the regions of Donetsk and Luhansk". Its reports of June and July 2014 referred to increasing abductions and killings of people not involved in any fighting and grave human rights abuses committed by the armed groups in eastern Ukraine (B524 and 529). On 23 May 2014 a woman who had allegedly failed to stop at a checkpoint manned by the armed groups in the Luhansk region had died when heavy gun fire was directed at her car (B524). A motorist had been killed when armed groups had stolen the car he had been driving in Novyi Svit in the Donetsk region (B529). The SMM reported that on 15 June 2014 a Maidan activist, who had been held by the "South Eastern Army" in Luhansk had died in hospital shortly after being released (B799).

777. In June 2014 the OHCHR reported an escalation of violence and violations of international law, including, *inter alia*, intimidation, harassment and torture, by armed groups in the regions of Donetsk and Luhansk. Several interviews conducted with persons who had been abducted provided vivid accounts of human rights abuses committed by representatives of the separatist entities, including beatings, psychological torture and mock executions (A821). Having gained access to depots of weapons, the armed groups had become increasingly violent. By June 2014 the HRMMU had also become aware of allegations of summary executions of people in the captivity of the armed groups. In its report of 15 June 2014, the OHCHR expressed

concerns about reports of summary executions by representatives of the "DPR". According to the report, some of the allegations were supported by witness testimony, forensic examinations and photographic material. The examples set out in the report included that of an elderly farmer, living in a village near Sloviansk, who had been accused on 18 May 2014 of bringing food to the Ukrainian forces. He had been taken into his garden where a "sentence" had been read out in the name of the "DPR" and he had been shot dead in front of his family and neighbours. In the same report, the OHCHR referred to several reports of killings at checkpoints controlled by armed groups, including the killing of an Orthodox priest, and to the discovery, the day after his abduction by armed groups, of the burned body of a pro-Maidan activist (A702). According to the OHCHR, the illegal "Sloviansk self-defence unit" appeared to be responsible for controlling some of the illegal activities, including unlawful and arbitrary detention. Information on unlawfully detained persons had from time to time been confirmed by the self-proclaimed mayor of Sloviansk, Mr Ponomaryov (A818).

778. The OHCHR's report of 15 June 2014 also referred to abductions and acts of arbitrary detention targeting persons not involved in the fighting (A821). It stated that it was aware of 222 cases of abduction and detention by armed groups since April 2014. Of the persons concerned, 4 had been killed, 137 released and 81 remained in detention.

779. The HRMMU interviewed a woman who had been abducted on 22 May 2014 and deprived of liberty for five days by the armed groups of the "DPR" for assisting the Ukrainian armed forces. She reported to the HRMMU that she had been blindfolded and beaten on the head and the legs every two hours, including with a blunt object. During her interrogation, she had been tied to a chair, with her arms twisted behind the back of the chair. Her captors had beaten another detainee to death in her presence and had subjected her to a mock execution twice: once she had been shot with a blank cartridge; another time, shots had been fired above her head while she stood against a wall; and she had been forced to play "Russian roulette". She also reported an attempted rape by a group of men (B558).

780. The OHCHR reported that on 31 May 2014, near Luhansk, two civilian men had been abducted and detained by five members of an armed group. They had been taken to a tent camp and separated. One victim, known for his pro-Ukrainian views, had been beaten and subjected to a mock execution before being interrogated. The interrogator had kicked the victim in his testicles, which had been extremely painful and had resulted in residual injury. The victim had also been beaten by different individuals with a metal rod wrapped in a rag. The perpetrators had forced the victim to open his social network accounts, which was followed by more beatings on different parts of his body, including his kidneys and the back of his head. The perpetrators had threatened the second victim that his younger sister "may not come back home tonight"; they knew where she studied and what time she returned

home. The victims had also heard a man armed with a pistol ask the guards whether his friends could rape the detainees (A777).

781. In its report of 15 July 2014, the OHCHR confirmed that it was following up on the cases of 400 people abducted since mid-April, and that 185 had been released with 211 still detained (B529). It explained:

> "41. Examples of the 400 cases that the HRMMU has been following include the following: in Donetsk, a free-lance cameraman was reportedly abducted in Slovyansk. In Soledar (Donetsk region) the chairman of a Trade Union organization at the Artyomsol Company was abducted. A professor at the Luhansk National University was abducted. A resident of Pionerske village in the Luhansk region was reported missing. The Head of a company called Agrovostok in Malarovo (Luhansk region) was abducted. According to unconfirmed reports, the police chief of Severodonetsk (Luhansk region) was detained by armed persons. Two university students were abducted in Donetsk allegedly for breaking the curfew ... A university professor was abducted by armed persons 'for questioning' for allegedly taking photos and videos of the movements of armed groups and posting them online. Two senior managers of a private company were abducted at a checkpoint while driving at night near Karlivka (Donetsk region). A protestant pastor and his wife were abducted and held in Druzhkivka (Donetsk region) by the 'Donbas People's Militia'. Three drunk people driving a car in Luhansk were reported missing; two others who were drinking with friends outside a café in downtown Luhansk were 'arrested' by armed men after a fight broke out. An assistant of the Donetsk Regional Governor was abducted on 26 June and the chief of the Artemivsk pre-trial detention centre was abducted on the same day, when armed groups robbed the centre's armoury ...
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> 42. The length of period for those detained varies considerably – some are held for a few hours, others for several months. In the majority of cases, release depends on factors such as whether there is an exchange of some sort, e.g. money. However, there have also been occasions in the past month of a number of detainees being released without any particular 'exchange'. Between 7-13 June, some 32 people were released by the armed groups. However, a pattern emerged that no sooner were some people released than others were detained, reinforcing the opportunistic and resource providing element to the abductions and detentions.
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> 43. In addition to the abductions and detentions of local citizens, there were the cases of the eight monitors (in two separate teams) from the OSCE Special Monitoring Mission who were abducted by armed groups in May. All eight were released over a period of a few days in early July.
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> 44. Other cases of detention include the former Mayor of Slovyansk, the current mayor of Mykytivka (a village near Slovyansk), and the head of the Artyomivsk city department of the Ministry of the Interior (MoI), all of whom were detained by armed groups."

782. The same report confirmed that of those abducted, four had been found dead with visible signs of torture. Following their release, many detainees who had been held by armed groups had reported that they had been subjected to beatings, ill-treatment, sleep deprivation and very poor conditions while in detention. As an "alternative" to torture and ill-treatment, it had been suggested that detainees should join the ranks of those fighting for the armed groups (A822 and B529).

783. The OHCHR also referred in June 2014 to reports of the execution on 26 May 2014 of two commanders of separatist armed groups, "sentenced" to death under an "order" of Mr Girkin which had been widely circulated and posted in the streets in Sloviansk (B524). The OHCHR further referred in its July 2014 report to written records, found by a journalist in Sloviansk on 7 July of "execution orders" authorised and signed personally by Mr Girkin as well as to the records of "hearings" of a "military tribunal" sentencing people to death. The "sentences" in question had concerned a number of people associated with the separatist armed groups and an ordinary criminal (B529). The UN Special Rapporteur on extrajudicial, summary or arbitrary executions (B1439) likewise noted that there were:

> "...allegations of executions in quasi-judicial circumstances, both in the context of 'military justice' and in more civilian, 'criminal justice' contexts. For example, it is alleged that in May 2014 the 'minister of defence' of the self-proclaimed 'Donetsk people's republic', Igor Strelkov (Girkin), sentenced two local commanders to death by firing squad for looting, armed robbery, kidnapping and desertion ... Summary executions may have been carried out under the pretext of 'criminal legal authority'. In July 2014, when the Government of Ukraine regained control of Sloviansk, documents were found in the Security Service of Ukraine Building, which had been used as a detention facility by armed groups of the self-proclaimed 'Donetsk people's republic', that seemed to indicate that armed groups had given death sentences and carried out executions of at least three persons, reportedly based on legislation dating back to 1941."

784. An HRW news item, published on 28 August 2014, referred to three "death sentences" against civilians which had apparently been issued by the Sloviansk separatists' summary "war tribunal", two of which were marked "executed." (A2112). The executions were also discussed in Amnesty International's report "Summary killings during the conflict in eastern Ukraine" (B1798-99). The researchers had gathered testimonies of local residents in the Luhansk and Donetsk regions in late August and late September 2014, including victims, members of their families, eyewitnesses, local officials, medical personnel, a Ukrainian battalion commander, pro-Russian combatants and journalists. The report states:

> "There are also reports of execution-style killings by insurgent groups in eastern Ukraine that have been widely reported in the media and not contested by the alleged perpetrators. In late May, for example, the Russian media reported that the 'DNR's' self-proclaimed 'Minister of Defence', Igor Strelkov (Girkin), had ordered the execution of two local commanders by a firing squad – for looting, armed robbery, kidnapping and desertion – and that the two had been put to death. Strelkov was quoted in the media as confirming the account, and copies of his written order for the killings, dated 26 May 2014, were circulated.
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> ...
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> Amnesty International is concerned that summary executions may be carried out under the pretext of legal authority..."

785. A witness who worked as a private entrepreneur in the city of Druzhkivka made a statement describing how Russians and Caucasus natives (Chechens) had arrived in the city on or around 10 June 2014. The witness claimed that a torture chamber had been arranged by separatists in the yard of the local council building where people who did not agree with the events were sent to be tortured and killed (A1335-36). Another witness who worked as a warden at the penal colony no. 32 in Makiivka explained that, on 21 June 2014, he had been taken to a place of detention in Makiivka where he had been severely beaten and questioned. Subsequently he had been taken to "Mr Bezler at Huboz in Horlivka" and placed in a basement with other captives and mutilated dead bodies with their hands tied behind their backs. On several occasions he had been forced to help move away the corpses of people who had been executed. On an unknown date he had been transferred to another basement where he had witnessed Chechen fighters executing nine to fifteen people every night, in the courtyard of their compound.

786. On 28 June 2014, in a village controlled by the "LPR", a woman and her four-year-old daughter had been outside their house when six armed men had driven up and ordered her to open the garage. When she had refused, one of the men had threatened to rape her with his machine gun. He had poked at her daughter's buttocks with the gun, threatening to rape her together with her daughter. He had also fired several shot into the ground near the woman's legs, injuring her toe. On the same day, the victim's husband had reported the case to the commander of the armed group. A month later, he had been detained by the same armed group and severely beaten for six days (B622).

787. In its 15 July 2014 report, the OHCHR referred to numerous reports that armed groups were using detainees to dig trenches or to fight on the front lines. Two university students had been abducted in Donetsk and had been told that they would be drafted into the "DPR" army. They had later been found in an occupied public building and had been forced to work (A880). Many people had been detained by separatists because they were drug users or were HIV positive, and had been forced to "work off their guilt" through forced labour or to fight on the front lines for fifteen days (A881). A witness living in Pervomaisk at the time alleged that in June 2014 the separatists had begun to organise the construction of fortifications in and around the city and that the work had been forcibly carried out by local drug addicts, alcoholics and other marginalised people (A1323). In its daily report for 11 July 2014, the SMM reported that it had been told by the acting chief of police that some people detained by the separatists in Sloviansk had been forced to join the "DPR" armed forces (A832).

788. The report of the UN Special Rapporteur on extrajudicial, summary or arbitrary executions noted that there were allegations of the killing of detainees held by the "LPR" forces in Sievierodonetsk as the forces were retreating from the city in July 2014 (B1439). The report explained that "LPR" forces had taken over the police temporary detention facility next to

the police headquarters. On the day of the "LPR" retreat, the police had reported hearing shots fired from within the facility. Several hours later, after the Ukrainian forces had arrived, the police had re-entered the facility and had discovered and documented two corpses in separate cells; each had been shot either in the neck or in the head. On 22 July 2014 the SMM reported that a number of bodies had been discovered in the SBU building in Sievierodonetsk, after the retaking of the town from the separatists. The SMM had observed two bodies, both with gunshot wounds, in the building (A705-06). The same incident was documented by Amnesty International, their report including statements by a police officer and a description of the photographs of the scene taken by the police on 22 July 2014 (B1800).

789. The HRMMU interviewed a woman who had been held by the armed groups of the "LPR" from July to October 2014. She had been detained together with three men at a checkpoint manned by the "Cossacks' Union of the All-Great Don Army". During her first two weeks of detention, she and others had been interrogated and tortured. The woman had been severely beaten with rifle butts and bullet proof vests until she had lost consciousness. As a result, four ribs had been fractured, and her nose and most of her teeth had been broken. During interrogation, the perpetrators had reportedly extinguished cigarette butts against her wrist and threatened the life of her child and mother. She had also reportedly survived an attempted gang rape. She had witnessed the summary execution of two Ukrainian soldiers – one who had been shot and a second who had been beaten to death. During the first two weeks of her captivity, she and other detainees had received no food and almost no water. She had only received medical care and food after having been transferred to the "military commandant's office" in Luhansk city. There, she had not been ill-treated but had witnessed the beatings of male detainees (A840 and B566).

790. On 10 July 2014 the acting chief of police told the SMM that 40-50 people had been detained in Sloviansk by "DPR" forces (A832). On 22 July 2014 the SMM reported that two people had been held by separatist forces until the arrival of Ukrainian military in Sievierodonetsk (A823).

791. In an HRMMU interview, a Donetsk resident who had been detained on 6 August 2014 by an armed group explained that he had been taken to the former Donetsk regional SBU building. He said he had been heavily beaten, for two days, with wooden bats and rubber sticks, and threatened with shooting. His abductors had started cutting off his ear. He had been kept in a very small cell with three Ukrainian servicemen before being transferred to another place where he had been beaten again and imprisoned in an iron box already containing one man, with barely the capacity to hold one person. They had been left there for a day under the sun, which had caused him to lose consciousness. After the detainees had begun banging the box, they had eventually been let out for a short while and had received pain killing injections and some water. They had later been put back in the box. They had

subsequently been taken to a garage, handcuffed and beaten for ten days (B541). In August 2014 a resident of the city of Donetsk, suspected of being a gun-spotter for the Ukrainian forces, had been taken to the basement of a former police academy building and beaten all over his body with truncheons and five litre plastic bottles filled with water. One of the perpetrators had burnt his shoulder, hand and back with a cigarette (B600).

792. In its report of 17 August 2014 the OHCHR estimated that at least 468 people were still being detained by the armed groups. It had directly monitored the cases of 510 people who had been abducted or detained by armed groups since mid-April, of whom over 300 were still in detention at the time of the report (A822).

793. The OHCHR reported killings of civilians and other protected persons, unlawful detentions, enforced disappearances and torture which had occurred in August 2014 in Ilovaisk. Three Ukrainian soldiers had allegedly been killed after they had surrendered on 29 August 2014. There had also been allegations that some Ukrainian soldiers wounded in combat had subsequently been killed despite being *hors de combat.* The OHCHR documented the enforced disappearance of a male military doctor (A717 and 720; and B586). According to the eyewitness testimony of two Ukrainian soldiers collected by the HRMMU in October 2015, four members of their unit, namely Pavlo Kalynovskyi, Andrii Malashniak, Andrii Norenko and Dmytro Vlasenko, had been captured alive by armed groups after the unit had been defeated on 5 September 2014 and they were retreating through the corn fields around the villages of Kruta Hora, Raivka and Shyshkove in Slovianoserbskyi district of Luhansk region (B589). The OHCHR reported:

> "On 4 June 2015, the bodies of four men were recovered from a mass grave located some 500 metres to the east from the village of Kruta Hora, on the road to the village of Raivka. They were transferred to the Government-controlled territory and underwent forensic examination in Dnipropetrovsk. According to DNA tests, the bodies of Malashniak and Vlasenko were identified. To date, the other two bodies have not been identified. In March 2016, HRMMU obtained a video footage showing the bodies of four killed Ukrainian soldiers. The video was made by members of the armed groups, allegedly in the morning of 6 September 2014. One of the witnesses in the case identified the bodies as belonging to Kalynovskyi, Malashniak, Norenko and Vlasenko."

794. A witness, who served in the Ukrainian Armed Forces and had been posted to the villages of Heorhiivka and Lutuhyne in the Luhansk region, stated that during the fighting on 20 August 2014, and while observing an enemy checkpoint from a higher position, he had seen the enemy executing Ukrainian POWs (A1439). Another Ukrainian soldier stated that while withdrawing from Amvrosiivka in the Donetsk region on 24 August 2014, he had been captured together with 47 other members of his military unit. They had been taken to a pre-trial detention facility in Snizhne. The soldier said that people with Russian accents and wearing Russian uniforms "with white bands" had applied physical and psychological violence to the captives. He

testified that another serviceman, M.B., had been killed after they had already been captured (B2834). A doctor, who had served in a Ukrainian battalion and had participated in the events near Ilovaisk from 23 August 2014, stated that on 29 August 2014 his unit had moved out in a column to withdraw through a previously agreed "green corridor", but they had then come under Russian fire. Having separated from the column, the witness had seen a number of "green men" without insignia executing Ukrainian wounded soldiers (A1455). A witness, who served in the "Svitiaz" police squadron of the Ministry of Internal Affairs of Ukraine, stated that he had been captured by the armed forces of the Russian Federation near Ilovaisk on 29 August 2014. The witness claimed that while in captivity he had witnessed the killing of two injured Ukrainian servicemen (B2835).

795. In its report of 17 August 2014, the OHCHR stated that the HRMMU had interviewed the father of an adult man from the Sloviansk district who had said that, on around 30 June 2014, his son had been detained by armed groups for being drunk and had been sent to dig trenches near a checkpoint about 2.5 kilometres from his house. He had dug trenches for four days, after which he had been allowed to return home (A882). In a witness statement submitted to the Court, one witness claimed that he had been detained by the "DPR" from 25 July until 24 September 2014 and had been forced to load and unload trucks with ammunition (A133. See also A1457). A former Ukrainian soldier reported having been detained by separatists for six months from August 2014, where he had been subjected to beatings and forced labour. Another man reported to the HRMMU that he had been deprived of his liberty for more than four months by the "LPR" from July 2014. He had been detained with up to 40 other individuals, who had all been forced to work at the training ground and in various localities where they had discharged munitions and dug trenches. In witness statements provided to the Court, Ukrainian soldiers captured at Ilovaisk also complained that they had been subjected to forced labour (A1405, 1413,1418, 1420 and 1426).

796. The OHCHR reported that by the beginning of September 2014, at least 1,000 Ukrainian servicemen and "pro-unity" civilians were being held by the armed groups (B550). In its report of 19 September 2014, it indicated that following the September 2014 ceasefire, armed groups had continued to terrorise the population in areas under their control, carrying out serious human rights abuses including killings, abductions, torture and ill-treatment (A694). On 3 September 2014 the SMM visited the Starobilsk Detention Centre in the Luhansk region, where the director told them that the number of detainees, most of whom were accused of "terrorism", was continuously increasing (A826).

797. According to the OHCHR, on 25 September 2014, in a village in the Donetsk region, a woman and two of her colleagues (a man and a woman) were abducted at their workplace by armed men from the "Bezler group". They had been taken to the seized administrative building of a coal mine in

Horlivka. After being "registered" in a journal, the three individuals had been informed they were "arrested". They had been taken to another room which was covered in blood. The man had been violently beaten in front of the women until he had fainted. Both women had been raped by at least seven men and beaten, while interrogated about the whereabouts of their money and valuables. One of the victims had been subjected to electroshocks with wires attached to her breast, after which she had lost consciousness. She had awoken from an injection into her arm. Through the open door, she had seen a room full of valuables, among which she had recognised some of her belongings. She had later found out that while she and her colleagues were being tortured, the armed groups had robbed their houses. For the following ten days, she had been taken for "interrogation" almost every night, and had been raped by intoxicated armed group members. For the following months she had been forced to cook meals for the armed group and for other people deprived of liberty (both civilians and Ukrainian army soldiers). On 7 November 2014 she had been released (B616).

798. In their report entitled "Religious Persecution in Eastern Ukraine and Crimea 2014", Mission Eurasia reproduced statements which had been drawn up by them on the basis of their interviews with alleged victims of religious persecution in Ukraine. According to the findings set out in the report, between April and September 2014 hundreds of believers had been abducted in territories controlled by pro-Russian separatists in eastern Ukraine. Four evangelical ministers had been killed in Sloviansk and more than forty believers were still listed as missing. In her eyewitness testimony, the wife of one of those killed explained how armed separatists had turned up at the church and abducted the four parishioners. The charred bodies of the parishioners had subsequently been found in a mass grave after control of the city had been recovered by the Ukrainian armed forces on 6 July 2014 (A2161-62 and 2182-84).

799. The OHCHR described the case of a Ukrainian serviceman who had been released by armed groups on 27 September 2014, after having been wounded and detained in an ambush on 26 September. He reported that he had been beaten and that his right arm, marked with a tattoo of the Ukrainian coat of arms and "Glory to Ukraine", had been cut off with an axe. The HRMMU also interviewed a man who had been detained for forty-eight days by the "DPR" for "espionage", and had been released on 27 September 2014. The man reported having seen several dozens of people at a detention facility managed by the "ministry of state security", most of whom had been beaten. He reported that there had been no separation between men and women and that detainees had been poorly fed, with limited or no access to water, humiliating sanitation arrangements, extremely limited access to medical care and no opportunity to communicate with relatives (B541). The OHCHR reported that a civil activist and deputy of Novoazovsk district council, who had provided assistance to internally displaced people (IDPs) and had

previously been detained by armed groups in August 2014, had again been deprived of his liberty by armed groups on 29 September 2014. At the time of the OHCHR's report of 15 November 2014, his whereabouts were still unknown (B540).

800. According to the OHCHR, on 8 October 2014 the head of the commission on issues of POWs and refugees of the "DPR" had publicly declared that about 600 Ukrainians were being held by the "DPR" (ibid.). On the same day, the HRMMU had been informed that the head of a trade union and his two sons had been deprived of their liberty, after his home had been stormed by eight men who had introduced themselves as the "DPR police". The men had reportedly claimed to have received a complaint that an "enemy of the republic" was living in the apartment, and had claimed that they needed to detain the trade union head to "clarify circumstances" (ibid.). No information had been provided on their whereabouts. The OHCHR reported that in October 2014 a resident of Antratsyt, in the "LPR", had been summoned to the office of the local "commandant" where he had reportedly been beaten to death. His body had been found in a coal mine a year later (B627). As of 31 October 2014, the OHCHR was aware of at least six more journalists and media workers who remained in the custody of armed groups of the "LPR". Five journalists had been recently released by armed groups (B542).

801. The OHCHR reported that on 14 October 2014 the HRMMU had been informed by an NGO that a couple had been detained by armed groups at an opioid-replacement-therapy site on the grounds of being former drug users. While the man had been forced to dig trenches, the woman had reportedly been forced to cook meals for members of a '"DPR" unit and to provide sexual services to them. Both had later been released (B547).

802. The OHCHR stated in its report of November 2014 (A844 and B539):

> "In territories under the control of both 'republics', cases of serious human rights abuses by the armed groups continued to be reported, including torture, arbitrary and incommunicado detention, summary executions, forced labour, sexual violence, as well as the destruction and illegal seizure of property. These violations are of a systematic nature and may amount to crimes against humanity."

803. Based on an interview with a "DPR" armed member, the SMM reported in November 2014 that the "DPR" were holding sixty-six members from the Ukrainian Donbas battalion hostage and had tasked them with the reconstruction of buildings (A883). Mission Eurasia's report on "Religious persecution in Eastern Ukraine and Crimea 2014" referred to an incident where a pastor for the Word of Life Church in Pryvillia, in the Luhansk region, had been beaten by separatists and then forced to clean up an abandoned factory (A2173).

804. In December 2014 the OHCHR reported that "[t]he break-down of law and order in the conflict zone has resulted in killings, abductions, torture,

ill-treatment, sexual violence, forced labour, ransom demands and extortion of money by the armed groups which have been reported during the whole conflict period". Persecution and intimidation of people who had been suspected of supporting Ukrainian forces or holding pro-Ukrainian sympathies remained widespread and included deprivation of liberty and mock executions (B550).

805. The OHCHR reported that on 30 December 2014 the prosecutor general's office of the "LPR" had initiated a criminal case against armed group commander Aleksandr Biednov (call sign "Batman") and his subordinates for illegal detention and torture resulting in the death of a detainee. On 2 January 2015 videos had been released showing members of Biednov's group confessing to running a facility in the basement of a university library in Luhansk and taking part in the ill-treatment of captives. The head of the facility (call sign "Maniac") had allegedly used a hammer to torture prisoners and surgery kit to scare and extract confessions from prisoners (A839 and B553).

806. A 2015 report, "Surviving hell – testimonies of victims on places of illegal detention in Donbas", published by the Coalition of public organisations and initiatives "Justice for Peace in Donbas", found that there was a practice of forced labour in unofficial places of detention in the "LPR" and the "DPR". Only some of the individuals interviewed for the report had stated that they had not been forced to perform coercive labour (A2238 and B1866-67). Captives had performed various types of work, including digging trenches, rebuilding houses, cleaning streets, moving cargo and unloading weapons from the so-called "Russian humanitarian convoys". The report authors had also recorded a case of coercion of people lacking the relevant skills to do demining. Prisoners had also been forced to conduct exhumations, unearth and bury the dead. According to the report, the frequency and number of hours of forced labour depended on the place of detention. The attitude towards prisoners depended largely on the security guards. The report cited statements from detainees who had subsequently been released, and included the following (B1867):

> "Usually, it was hard physical work, including construction (repairs of houses of local population and as shop), collecting metal scrap for one of the security guards and taking it to a reception point. On Sundays, captives were usually forced to unload the 'humanitarian load' from white trucks – shells for 'Grad' systems. On one day, we could unload 10-15 tons of 'humanitarian aid' – shells."

> "They regularly took us for community work to Ilovaysk (cleaning trash, digging graves at Ilovaysk cemetery for deceased separatists, construction work). In addition, there were domestic tasks upon requests of people in Ilovaysk (they promised to feed us for work). Locals could submit a request to Ilovaysk commandant indicating the type of work and necessary number of people. They would send us there with a convoy."

> "There was always supervision over the working captives, but strictness of control depended on the guard's personality. At first, they were watching everything very carefully, and then when they realized there were no escape attempts they loosened

> control, i.e. the guard did not always have his finger on the trigger pointing at the workers, but could move few meters away and rest while watching prisoners. The captives were not trying to escape since they had been informed that 10 prisoners would be executed for one fugitive. This had happened in the neighbouring Torez, so they could not take such responsibility for the lives of their friends."
>
> "Several time, there was work at the border with Russia in Maryinka. It looked like a show since many prisoners were doing pointless tasks like carrying bricks for 10-20 meters but in a way that military and civilians entering Ukraine from Russia could see the humiliation of captives for their battle spirit to rise."

807. In July 2016 the OHCHR published its thematic report "Accountability for killings in Ukraine from January 2014 to May 2016". The findings in the report were based on information which the HRMMU had collected through interviews with witnesses, relatives of victims and their lawyers; analysis of corroborating material confidentially shared with the HRMMU; official records; open-source documents and video, photo and audio material (including some produced by the alleged perpetrators); forensic reports; criminal investigation materials; court documents; and other relevant and reliable materials. The report stated (B558):

> "[T]he armed groups started resorting to summary executions and killings as early as in April 2014. They mainly executed individuals, who had vocal pro-unity views or were believed to have such views, or provided or were believed to have provided support to Ukrainian forces. Some of the executions were allegedly carried out upon the imposition of a death sentence following the semblance of a judicial process."

808. The OHCHR recorded executions of members of Ukrainian forces who had surrendered or were otherwise *hors de combat*. These had taken place mainly in 2014 and during the first half of 2015 (B586). It also recorded a considerable number of alleged summary executions and killings of civilians who were not taking part in hostilities, for the most part in 2014 and in early 2015. The following description of killings of civilians/persons *hors de combat* not in the immediate vicinity of the armed conflict were documented and listed in an annex to the report: use of force by means of firearms (dozens of deaths); execution of those who had surrendered or were *hors de combat*, including for ideological reasons (dozens of incidents, particularly between June 2014 and February 2015); arbitrary or summary executions of civilians, mostly for pro-Ukraine views (a considerable number, mostly in 2014 and early 2015); and deaths during deprivation of liberty, which had reached an unprecedented scale (thousands of detained people) in the territories controlled by armed groups (A748-50).

809. The report included the following details (B589):

> "39. On 8 June 2014, in the town of Sloviansk then controlled by armed groups, the parishioners of the evangelical church 'Transfiguration of Christ' were holding the Sunday worship. By the end of the worship, armed men arrived at the church yard, designated four cars, and ordered their owners to come forward and have a talk with them. The deacons, Mr Viktor Bradarskyi and Mr Volodymyr Velichko, and two sons

of the church's Head – Mr Albert Pavenko and Mr Ruvim Pavenko – came forward. The armed men forced them to get into their own cars and drove away.

40. In the morning of 9 June, local residents found a badly burnt body, allegedly that of Velichko, near a burnt car. The bodies of the Pavenko brothers were found next to the car on the same side, unburnt. Bradarskyi's body was found in the reeds, about 20 metres away from the car. Those who found the bodies did not know the victims and took them to the local morgue, where they were stored until 10 June 2014, when electricity supply was cut. The bodies (allegedly together with some other bodies then stored in the morgue) were buried in a mass grave in the old Jewish cemetery of Sloviansk.

41. On 5 July 2014, Ukrainian armed forces regained control of the town. On 24 July 2014, 14 bodies (13 men and one woman) were exhumed from the mass grave and transferred to the town morgue where photos of the bodies were taken and handed out to the local police department. The bodies of Viktor Bradarskyi, Albert Pavenko and Ruvim Pavenko were identified by their relatives. The body of Volodymyr Velichko could not be identified on the spot and was taken to Kharkiv forensic examination bureau. The bodies of Viktor Bradarskyi, Albert Pavenko and Ruvim Pavenko displayed multiple gunshot wounds and signs of torture. The other bodies belonged to victims of executions ordered by the 'martial court' of the 'Donetsk people's republic' in Sloviansk and individuals who either died or were killed during the armed hostilities in the town."

810. The OHCHR reported that between December 2014 and February 2015, several hundred people were thought to have been detained at any given time. On 22 January 2015 the head of the "DPR" had declared that up to five Ukrainian "subversives" aged 18-35 were being detained every day. The OHCHR noted that a Donetsk-based journalist had been abducted on 8 January 2015 while observing a "humanitarian convoy" from the Russian Federation and had been released on 7 February 2015 (A838 and B553).

811. In its report of 15 February 2015, the OHCHR referred to a number of media reports and social media postings of videos regarding possible incidents of summary, extrajudicial or arbitrary executions. On 24 January 2015 armed groups had claimed control over the settlement of Krasnyi Partyzan. Video footage made by the armed groups soon after the fight for the settlement and disseminated through social media had given grounds to suspect that up to three Ukrainian servicemen taken captive in Krasnyi Partyzan had been executed. Following fighting for Donetsk airport in January 2015 and the subsequent taking of the airport by armed groups of the "DPR", media reports had suggested that bodies of Ukrainian military personnel had been found in the airport with their hands tied with electrical cable (A744).

812. The case of a Ukrainian soldier, executed on 21 January 2015 by the commander of the "Sparta" battalion of the "DPR", was reported by several sources (B601, 1805 and 1807; for "Sparta battalion" see *Ukraine and the Netherlands v. Russia* (dec.), cited above, § 136). In an April 2015 report, Amnesty International referred to footage it had reviewed which showed a Ukrainian soldier who had fought at Donetsk airport, Ihor Branovytskyy,

being taken captive and interrogated (B1802-06). The video, which had been posted on YouTube, showed signs that he had been hit in the face. He had remained in captivity until he was killed. A number of witnesses had come forward claiming to have seen him being shot and killed point-blank by a separatist commander. In its May 2015 report (B1806-13), Amnesty International stated that Mr Branovytskyy had been killed on 21 January 2015 by Arseniy Pavlov (see *Ukraine and the Netherlands v. Russia* (dec.), cited above, § 120), while in the custody of the "Sparta Battalion". It referred to witness accounts that Mr Pavlov had shot Mr Branovytskyy twice in the head after severe beatings and added that there was video evidence supporting these accounts.

813. Amnesty International had also obtained videos and images documenting the captivity and apparent execution-style killings of at least three other members of the Ukrainian armed forces. The bodies of the soldiers, with signs of bullet wounds to their heads and upper bodies, had reportedly been held in a morgue in Donetsk (B1804). Amnesty International's report referred to an article by newspaper *Kyiv Post* following a telephone interview allegedly conducted with Mr Pavlov. According to that article, Mr Pavlov confessed to having killed fifteen captured Ukrainian soldiers, including Mr Branovytskyy (B1805).

814. In its 22 May 2015 report, Amnesty International referred to a case involving a Ukrainian soldier whose legs had been crushed during fighting at Donetsk airport. He had allegedly been shot in the head by separatist fighters while lying injured in the ruins of the airport. Amnesty International had also received testimonies alleging the summary execution of at least three Ukrainian soldiers in the village of Krasnyi Partyzan (see paragraph 811 above). Witnesses had described soldiers lined up against a wall, and three of them lying on the ground. According to the witnesses, a separatist fighter with a white ribbon on his arm had been shouting at the soldiers "If you move, I shoot!". There was publicly available video footage of these same captives lined up against the wall. Amnesty International reported that, in the footage, one of the soldiers appeared to have been hit in the head with a blunt instrument. Two were lying injured against the wall and two others were dead. One of the injured soldiers was identified as having been brought to the wall after being taken captive during the battle. In another case, three Ukrainian soldiers captured by separatist militia near Debaltseve had later been found dead with gunshot wounds, raising concerns of summary executions (B1809-10).

815. The OHCHR reported that a photojournalist had been detained by the "LPR" on 9 January 2015 and released on 3 March 2016. She had been deprived of her liberty after taking photos of residential houses used by the "Vostok battalion" as their base. She reported having been beaten and held in poor conditions while in custody, naming the individuals responsible (B591).

816. A Ukrainian soldier arrested on 18 January 2015 claimed that he had been forced to work while detained in the basement of the SBU building in Donetsk and that other prisoners had been made to clear rubble and dead bodies (A1449. See also A1462).

817. The HRMMU interviewed a man who had been detained in the "base" of a "Cossack" armed group in Donetsk from 1 to 28 February 2015. He had reportedly witnessed other captives being beaten, including with rifle butts. His cellmate had told him that he had been tortured with electric current and had had his ears cut. The victim had spent ten days in an isolated cell with a temperature of approximately five degrees Celsius (B558).

818. According to the OHCHR, in February 2015 an Orthodox priest, who was delivering food to Ukrainian soldiers and civilians in the Ukrainian-controlled town of Artemivsk (Donetsk region), had mistakenly driven to a checkpoint controlled by armed groups. He had been forced to lie on the ground and several fighters had started jumping on his body. They had fired shots at the asphalt near his head. He had then been transferred to a nearby village for interrogation which had lasted several hours and during which he had been beaten. He had been detained for fifty days in various places, along with approximately 70 other detainees (B566).

819. The OHCHR reported that in territory controlled by the armed groups, a family had been subjected to harassment, threats and a mock execution because their son was a soldier in the Ukrainian army. On 2 February 2015, some 20 armed people had surrounded their house, burst in and put a gun to the forehead of the father. The family had been forced outdoors and told they would be shot dead. An armed man had loaded his gun several times, shouting at the family and insulting them with derogatory names. The adults had been taken to a commandant's base but released soon afterwards (B575).

820. The HRMMU interviewed the mother of a man with a mental disability who had been in detention since 26 February 2015. Before being placed in the Donetsk pre-trial detention facility ("SIZO"), he had spent some time in a temporary detention centre where he had reportedly been beaten for three days. He had allegedly been forced to sign a paper stating he had hit himself against the wall. His parents had reported that, while in the SIZO, his health had deteriorated and he had not received adequate medical treatment (B571).

821. The OHCHR reported that in February 2015 around 13 Ukrainian soldiers had been captured by armed groups near Debaltseve. The victims had been struck on the head with rifle butts, forced to remove their jackets despite the very low temperatures and ordered to kneel for four hours in the snow, causing their legs to go numb. Some members of the armed groups had put knives to their faces and threatened: "What do you want me to cut off, an eye or an ear?" All the victims had subsequently been transferred to a building in Luhansk. During interrogations the soldiers had been severely beaten. One

soldier had been held in a cell with a civilian whose body had been completely blue, ostensibly as a result of severe beatings. The civilian had told the soldier that he had been accused by the armed groups of being a spotter and had been tortured until he had "confessed" (B621).

822. The OHCHR interviewed a Ukrainian soldier who had been captured by members of an armed group in February 2015 during hostilities around Debaltseve. During interrogation, he had had some of his teeth knocked out. According to him, several other Ukrainian soldiers had been subjected to beatings, both during their capture and while in detention, and one soldier had reportedly had his jaw fractured. He had also reported that some soldiers had been forced to ingest their insignia and any item bearing Ukrainian symbols (B609).

823. The OHCHR also reported on the alleged execution of an injured *hors de combat* Ukrainian soldier by members of armed groups on 17 February 2015 and the alleged execution of several *hors de combat* Ukrainian soldiers after their vehicle had been ambushed on the road near the village of Lohvynove (Donetsk region) on 9 February 2015 (A904 and B608).

824. In his witness statement to the Court, one witness stated that he had been taken prisoner in Makiivka on 27 February 2015 on the orders of the "DPR" leader Alexander Zakharchenko (see *Ukraine and the Netherlands v. Russia* (dec.), cited above, § 131) by a team of twenty armed men. He claimed that he had been detained until 4 March 2015 in the basement of the Donetsk television centre and had witnessed the extrajudicial execution of a Ukrainian Army serviceman (seized at Donetsk airport) in the courtyard of the "DPR ministry of state security prison". The execution, he said, had been carried out by shooting by "MSS Major" O.S. Vialykhhe (A1378-79).

825. The OHCHR documented the case of a man who had been detained at a checkpoint run by an armed group in March 2015 and taken to Dokuchaievsk. He had been tortured by armed men in "DPR" uniforms, beaten with truncheons, subjected to electric shocks and smashed in the head. He had been taken to a hospital and then transferred to the seized former SBU building in Donetsk city, where he had been tortured again in the same manner. Later, the victim had been tied to a chair, interrogated and beaten with a plastic pipe. One of the perpetrators had fastened a belt around his neck and had tightened it until the victim had lost consciousness. Electric shocks had been used repeatedly. The perpetrators had also threatened that he would be forced to blow himself up. The victim had been released in April 2016 (B621).

826. On 11 March 2015 a journalist from Donetsk region had reportedly been abducted by armed groups. After his mother had filed a complaint to local police, armed groups had conducted a search of her house and intimidated her. The journalist had been released on 10 May 2015 (B559).

827. The OHCHR reported that between 1 and 15 April 2015, in the town of Dokuchaievsk, members of the "DPR" had allegedly summarily executed

a man whom they had accused of attacking one of their checkpoints. The victim's wife had identified his body and had noted signs of torture (B575).

828. According to the OHCHR, in April 2015 armed groups had captured a citizen of the Russian Federation on the street in Luhansk. He had been taken to a basement, where he had been blindfolded and forced to sit handcuffed with his legs tightened around a pipe. He had been beaten in the head and groin and subjected to three mock executions. He had been poorly fed and only been allowed to go to the toilet once a day. After one month, he had been taken out and left on the street, blindfolded, handcuffed and with his legs tied tight. Shortly thereafter, he had been abducted by other armed group members and taken to the "Lenin" factory. There, over a period of a month, he had been subjected to psychological pressure and mock executions. After a month, he had been taken to the "ministry of state security", where he had been accused of being a Maidan protestor who had come to the "LPR" to overthrow the armed groups. During the last five months of his illegal detention, he had been malnourished and had only been allowed to use the toilet once every few days. He had only been provided with medical care on one occasion. He had been released at the end of December 2015 (B575).

829. The OHCHR reported that in May 2015 a woman from Donetsk had been apprehended by the "Vostok battalion" for allegedly having violated the curfew. She had been intimidated, forced into a car and brought to a place occupied by armed groups. She had been beaten with metal sticks for three hours and raped by several men from the "Vostok battalion". She had been released the next day (B616).

830. According to the OHCHR, on 12 June 2015 three armed men in civilian clothes who had presented themselves as agents of the "ministry of state security" of the "DPR" had detained a 22-year-old woman with a disability and her mother at their home. The two women had been brought into the seized building of the Donetsk Administrative Appeal Court. The young woman had been accused of being a "Ukrainian sniper" and subjected to over six hours of questioning. Although the victim had been five-months pregnant, she had been transferred to the premises of the "Izoliatsiia" art exhibition space and museum – seized and used for military purposes by the armed groups – to be detained until she had been "re-educated and started loving the ['DPR']". She had been kept there for almost a month, in a small (1m by 0.8m) room without windows, with a two-deck shelf instead of a bed. The perpetrators had switched the light on and off at will. She had been disoriented and had not known the time of day. She had been given neither water nor food for a few days. One night the guards had taken her outside while it was raining, saying that they would kill her. They had started kicking her, including on her stomach so that her "Ukrop [derogatory term used for Ukrainians] baby would not be born". During that night she had survived five such beatings. She had also reported that her guards had been trying to rape

her; however she had persuaded them not to, claiming she had a sexually transmittable disease (B566 and 619).

831. In June 2015 the OHCHR reported that the pattern of abductions consisted of groups of armed men taking people away and detaining them in one of the buildings they occupied on the grounds that they were members of "Right Sector" and "spies". Some detainees had been released after a few hours, some after a few days, and there were numerous accounts of allegations of ill-treatment and torture (A831). The OHCHR documented the case of a man from Vuhledar and his son who, on 12 June 2015, had been abducted by unknown armed people while driving in the Donetsk region. They had reportedly been held in an unknown location where they had been tortured and ill-treated. After a few days, the son had been released but the whereabouts and fate of the father remained unknown three years later (B654).

832. A report by a coalition of NGOs assessed that by 22 July 2015 there had been 2,763 persons released from places of detention in the "DPR" and the "LPR" and identified 61 places of detention either by address or by a detailed description provided by former detainees. The information collected in interviews with former detainees in facilities in eastern Ukraine and from open sources suggested that the separatists used the premises of law-enforcement agencies, administrative buildings of local authorities, military enlistment offices and military bases, offices, private residences, hotels and dormitories, public catering enterprises, industrial enterprises and several other auxiliary buildings, such as hangars, cages or vehicle sheds, as places of detention. Almost half of the detainees had stayed in basements and many of them had been held in places that lacked even minimum conditions for accommodation. The report explained that militants of separatist armed groups had manifested particular cruelty during the illegal detention of civilians. Detained persons had been subjected to lengthy beatings with the use of hands, feet and weapons with blows to all body parts, including the head. They had been handcuffed, tied with ropes or rubber straps and had bags put over their heads and several methods of torture and cruel treatment had been used such as assaults, the use of pneumatic weapons, suffocation, mock executions, threats, humiliations and psychological pressure, sleep deprivation, and food and water deprivation. There was a widespread practice of torture and cruel treatment. The report concluded that these were systemic and large-scale phenomena proving the existence of a deliberate policy of torture and ill-treatment of detainees (A2234-38).

833. The OHCHR reported that a serviceman of the Ukrainian armed forces had been captured on 10 August 2015 near the village of Verkhniotoretske (Donetsk region) by four members of the "Vostok battalion" of the "DPR". They had put a plastic bag on his head, handcuffed him and driven him to a private house. He had then been tied to a tree with wristbands, severely beaten, threatened and tortured with electrical shocks.

He had lost consciousness on several occasions. After three hours of torture had been inflicted by some 10 men wearing masks and camouflage with the insignia of the "DPR", he had been interrogated. No medical aid had been provided to him. He had then been transferred to a military base in the centre of Makiivka. In October 2015 he had been taken to a sports hall not far from the military base in Makiivka and had been placed in a cell with two local civilians and two members of the armed groups. Within a month, he had been taken to a basement of an office centre in Makiivka where he had been held until his transfer to government-controlled territory on 20 February 2016 as part of a simultaneous release of detainees (B580).

834. In its report covering the period between 16 February to 15 May 2015, the OHCHR referred to "new allegations of ... forced labour ... on the territories controlled by the armed groups" (A885). In the reporting period of 16 May to 15 August 2015, it reported that it continued to receive and verify allegations of forced labour on the territories controlled by the "DPR" and the "LPR" (A886).

835. In November 2015, the OHCHR reported, a woman who had been travelling with her children from Donetsk city to government-controlled territory had been stopped at a checkpoint controlled by the "DPR". Members of the armed group had demanded to know why she was taking her children to government-controlled territory, stating, "we need children in the republic". They had extorted money from her and had taken all of her personal jewellery. They had then taken her away from the checkpoint and had forced her to perform oral sex and subjected her to gang rape. Her children had been kept apart from her during that time. After several hours of violence, she had been allowed to pass the checkpoint (B616).

836. A man, who had spent a year in the armed groups' captivity, described in detail the conditions in the former SBU premises in Donetsk when later interviewed by the HRMMU. According to the OHCHR's report, he had referred to overcrowding, insufficient nutrition and lack of adequate medical treatment as well as ill-treatment, torture and forced labour. He had described the conditions as particularly bad in 2014 and had noted some improvement in 2015. He had also reported numerous incidents when he and other detainees, including women, had been tortured through mock executions, beatings and electrocution. Another former detainee had reported poor nutrition and lack of medical aid in a detention facility in Donetsk in the summer of 2015. A man released from penal colony no. 97 in Makiivka had spoken of a room called by inmates the "tram" because it looked like a very small and narrow metal tram carriage, with a metal tube in it. He had explained that when an inmate was considered to have misbehaved, he was suspended from the tube, wrapped in a sticky tape, sometimes for three to five hours but often for a whole night. The witness had also described cases of repeated negligence in providing medical assistance to inmates and had

reported that, in January 2015, one inmate had died as a result of not receiving timely medical assistance (B571).

837. In January 2016, the OHCHR separately and confidentially interviewed two men who had been convicted prior to the conflict but had served time in penal colonies under the control of armed groups. Both had complained about the poor living and medical conditions in detention. The prison had reportedly been deprived of hot water and, in January and February 2015, of electricity. Prisoners had reportedly only been allowed to have a cold shower once a month and had had to pay for food or got only a piece of bread and porridge. Access to medical assistance had reportedly been denied and inmates with tuberculosis had been kept with others. One prisoner had complained about the frequent use of physical abuse as a disciplinary measure (B575).

838. The OHCHR interviewed a coal miner who had explained that in December 2015 mine workers had organised a protest, but the "DPR ministry of security" had threatened the protestors and seven of them had been deprived of their liberty (B582).

839. The OHCHR reported that in January 2016 in "DPR"-controlled Maiorsk, a group of armed men headed by a Cossack had detained two Jehovah's Witnesses and had threatened that they would have their legs shot through. In Horlivka, three armed men had entered the Jehovah Witness house of worship and abducted three parishioners. After the abduction had been reported to the "police", the "Counter Organised Crime Unit" in Donetsk had informed the families that the three men had been detained for participating in an extremist organisation banned by the head of the "DPR" (B576).

840. A witness arrested by the "DPR" on 26 April 2016 described being initially detained at "Izoliatsiia". He alleged that he had been forced to move fuel and weapons while in detention (A1389).

841. The OHCHR reported in June 2016 that the "DPR" and "LPR" had imposed an arbitrary system of rules and had established a network of places of deprivation of liberty where detainees were tortured and ill-treated. It said that deprivation of liberty had "reached an unprecedented scale" in territory controlled by the armed groups, with a broad network of unrecognised detention facilities. Thousands of people had gone through these places of deprivation of liberty, subjected to inhuman conditions of detention (B578). The "ministry of state security" of the "DPR" had emerged as the main entity responsible for carrying out repressive house searches, arrests and detentions (ibid.). In August 2016 the OHCHR noted that members of the "ministry of state security of the DPR" continued to deprive individuals of their liberty and to keep them incommunicado (A842). Such deprivations of liberty were often accompanied by torture and other cruel, inhuman or degrading treatment or punishment and, according to the OHCHR, could in themselves constitute such treatment (A843). In a statement, one witness claimed that he

had been arrested by the Russian Federal Security Service ("FSB") after having crossed into Russia at the Novoshakhtynske crossing point. He said that he had been detained from 15 to 24 April 2016 at the FSB directorate in Rostov and that during his detention he had heard Ukrainian Army servicemen being tortured and killed in the neighbouring cells (A1381).

842. According to OHCHR reporting, in June 2016 two men had been abducted by armed members of the "LPR" and had been beaten, kicked and tortured by men wearing camouflage, who had accused them of espionage; one man had died as a result of the injuries (B600). On 21 July 2016 a co-founder of a humanitarian organisation in Donetsk had been deprived of her liberty for the second time after her release at the end of February 2016 by people who had identified themselves as members of the "security ministry". On 9 August 2016 the OHCHR was informed of her release (B593). In July 2016 a man had been found shot dead near his house in a village of the Luhansk region controlled by armed groups. Neighbours had heard three shots on the preceding evening and there had been a checkpoint nearby, manned by the separatists from the "Brianka-USSR battalion". The victim's family had later been notified that a suspect had been "arrested" by "police" (A777). In August 2016 a woman had been accused of "espionage", and detained by armed groups in the Luhansk SIZO together with those who had committed criminal offences. One evening the guards had brought her to the new officer on duty upon his demand. He had told her that the "conditions in cells can be very different", which she had perceived as a threat of violence. Then he had raped her. From then on, he had called her to his office nearly once a week forcing her to perform oral sex. She had not complained to anyone for fear of retaliation. She had been released several months later (B616).

843. The OHCHR reported that on 26 August 2016, a man had been detained by two armed men in military uniform near the "LPR"-controlled town of Rovenky. He had been taken to a mining facility, where he had not been provided with water or food and had not been allowed to use the restroom. A few days later he had been taken to the "ministry of state security" building in Luhansk, where he had been detained for several weeks alone in a cell with the lights on all day and night. He had been pushed down the stairs, thrown against a wall and forced to wear a plastic bag over his head whenever he was moved from his cell. Members of the "ministry of state security" had threatened further violence against him and against his family if he did not confess to preparing a terrorist attack. During his interrogations the men had slapped and kicked him, and had knocked a chair from under him, throwing him to the floor. On 22 September 2016 "ministry of state security" personnel had put a plastic bag over his head and had taken him across the border into the Russian Federation, where they had handed him over to the FSB. Between 23 and 27 September he had been interrogated in Morozovsk by FSB officers who had tortured and ill-treated him with

beatings and electroshocks, causing him to lose consciousness several times. On 27 September he had agreed to confess to preparing a terrorist attack, after which he had been held in SIZOs in Rostov-on-Don and in Samara in the Russian Federation (B685).

844. In September 2016 the OHCHR visited four children deprived of their liberty in Donetsk city. The OHCHR understood that the children had been detained in August 2016 and held in separate cells in the "ministry of security". The detainees had had no contact with their family for over two weeks. They had been transferred to a pre-trial detention facility in Donetsk in October 2016 (B600). The OHCHR also referred to the case of a man who had been detained in September 2016 at a checkpoint between "DPR" territory and the Russian Federation. His whereabouts had been unknown for ten days before he had been transferred to the "ministry of security" and then to a SIZO in Donetsk, where he had been charged with espionage (ibid.).

845. The OHCHR reported that in October 2016 a man had been detained at a checkpoint controlled by armed groups in the Donetsk region and had been taken to a "police unit" in Donetsk. He had been interrogated on three occasions and severely kicked and beaten with fists and a truncheon while handcuffed. Three or four times, a plastic bag had been put over his head causing him to suffocate. One of the interrogators had threatened to cut off one of his fingers and had made him believe this act was imminent. Another perpetrator had threatened him with a gun, saying that his body would be found in the river. The victim had also been subjected to electric shocks to his back, head and the flank of his body. He had been released in December 2016 (B621).

846. Having been detained at the Stanytsia Luhanska checkpoint in October 2016, a judge of the court of appeal of Luhansk region had been held incommunicado by the "LPR ministry of state security" according to the OHCHR. He had spent forty-eight days in solitary confinement. The conditions of detention had been poor, including insufficient food, cold temperatures, limited space and poor sanitary conditions. During his detention the victim had heard other detainees being taken for interrogation, where they had apparently been subjected to beatings and electric shocks. He had been released on 14 July 2017 (B628).

847. The OHCHR reported that in November 2016 the head of a government-controlled village had been detained at a "DPR"-controlled checkpoint and released after having been held for thirty days in a temporary detention facility. In the same month, a man who had worked in Luhansk before the conflict and who had recently returned from government-controlled territory had been questioned for three hours and later detained from 23 November to 18 December 2016, when he had been released and "strongly advised" to leave "LPR" territory (B609). Also in November 2016 two journalists had been detained and expelled from "DPR"-controlled territory after having been accused of illegal journalistic activity (B611).

848. In December 2016 the OHCHR reported that a number of individuals had been deprived of their liberty in the "DPR" and the "LPR" between 16 August and 15 November 2016 for being "Ukrainian spies and subversives". It further reported that the "LPR" "ministry of state security" had claimed to have detected, proved and stopped the "intelligence activity of 70 agents and trusted persons of special services of Ukraine" in a period of nine months in 2016. The "DPR", for its part, had maintained that it had 42 such detainees (B600).

849. In its report on conflict based sexual violence for 14 March 2014 to 31 January 2017, the OHCHR explained that its monitoring work indicated that cases of conflict-related sexual violence remained under-reported mainly due to the stigma and shame survivors felt, the lack of pertinent services on both sides of the contact line and the weak capacity of law enforcement to investigate crimes of a sexual nature (B616).

850. In its report covering the period between 16 November 2016 and 15 February 2017 the OHCHR reported that separatist armed groups had continued to detain individuals whom they suspected of affiliation with the Ukrainian armed forces or law-enforcement institutions, or for having "pro-Ukrainian" views. Current and former civil servants, including justice officials and representatives of local administrations from territory controlled by the government, had often been targeted. With the establishment of a database of "pro-Ukrainian" individuals, the number of individuals who had been detained at checkpoints staffed by armed groups known to OHCHR had increased during the reporting period (A848).

851. The report further explained (B609):

> "47. Patterns of detention by the armed groups differ. The 'Donetsk people's republic' armed groups initially hold some individuals for 10 to 30 days in so-called 'administrative detention' in ITT [a temporary detention facility] and release them after finding them 'non-complicit', while others are detained for longer, often indefinite, periods of time and placed either in ITT, SIZOs, or other places of detention. The 'Luhansk people's republic' 'ministry of state security' holds individuals for an initial period, prior to transferring them to SIZOs ..."

852. The OHCHR reported that in January 2017 a 16-year-old girl had been detained at a checkpoint with her father and interrogated for seven hours without her parents or a lawyer. She had been searched by a man despite insisting on a woman conducting the search. She had been released the same day (B620). In February 2017 armed men had broken into a man's house and had arrested him in front of his family; the "DPR ministry of state security" had confirmed that he was under thirty-day "administrative arrest". In March 2017 his family had been told that the detention would be prolonged for thirty days. In April 2017 the family had been informed that he had been charged with espionage. As at 15 May 2017, his place of detention had remained unknown and his lawyer had not had unimpeded access to him (ibid.).

853. In its report of February 2017 on conflict-related sexual violence, the OHCHR noted that in a number of cases it had documented, victims had reported surviving and evading attempted rapes largely due to sudden extraneous circumstances. It observed, "While this may have been the case, it also may be a sign that they were unwilling to provide detailed accounts of what had happened due to stigma, shame, humiliation, trauma and fear of possible reprisals". It explained that, as underscored by the OHCHR Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol), sexual torture often makes survivors feel irredeemably stigmatised and tainted in their moral, religious, social or psychological integrity (B616).

854. The OHCHR stated in its report covering the period of 16 February to 15 May 2017 that it had received information about the case of two residents of Horlivka who had gone missing in October 2016. Their bodies had reportedly been found on 20 March 2017, buried in Horlivka. They had allegedly been shot dead by members of armed groups in October 2016. The OHCHR had also continued to receive recent testimonies concerning individuals unlawfully or arbitrarily deprived of their liberty in territory controlled by the armed groups, which it said indicated "that such practices were persisting" (B620). It continued to document cases of torture in the "DPR" and the "LPR", noting that "[d]ue to limited access to places of deprivation of liberty, OHCHR is often able to document such cases only after the release of the individuals when they move to government-controlled territory and are able to speak more freely about their experiences" (B621).

855. In June 2017 the OHCHR documented a case in which a man who had made his living carrying luggage for people travelling across the contact line in Stanytsia Luhanska left for work on 27 April 2017 and had never returned. Several days later his family discovered that his body had been found by an ambulance in Luhansk city that same day. The death certificate had recorded that death had resulted from a haemorrhagic shock linked to a complex trauma to the head. The Luhansk police had provided no information about the circumstances of his death (B627).

856. In its report covering the period between 16 August and 15 November 2017, the OHCHR stated that it had continued to receive and verify allegations of summary executions and wilful killings of civilians, Ukrainian servicemen, and individuals associated with armed groups. These allegations had mostly concerned 2014, but also 2015 through to 2017, indicating the prevailing impunity for grave violations and abuses of international human rights law and violations of international humanitarian law in the conflict zone. Often the victims' relatives and witnesses interviewed by the HRMMU had not given consent to public reporting on such cases out of fear of retaliation or persecution (B635).

857. According to the OHCHR, on 29 April 2017 two men travelling to Dokuchaievsk had been detained by border guards at an

armed-group-controlled checkpoint and had been taken to the department of combating organised crime in Donetsk. They had been detained for a few days and then brought to a temporary detention facility administered by the police and had been held incommunicado under administrative arrest. Their families had not been notified of their arrests and had learned of their whereabouts from other sources. The lawyer hired by their relatives had been denied access to the detainees. Since April, the men had been released every thirty days, given a moment to talk to relatives, and then immediately rearrested on different charges and placed under administrative arrest for another thirty days (B636).

858. The OHCHR reported that in July 2017 a woman who had publicly criticised the "LPR" on social media had been detained at a checkpoint controlled by armed groups in Stanytsia Luhanska. She had been held incommunicado for sixteen days by the "ministry of state security of the LPR", who had denied to her family that she was being detained. She had been interrogated four times without legal representation. On 28 July 2017 she had been brought back to the same checkpoint and told to cross to the Ukrainian-controlled side (A852 and B628).

859. In its report covering the period between 16 May and 15 August 2017 the OHCHR documented new cases in which individuals had been subjected to enforced disappearance in territory controlled by armed groups. In many cases, individuals had been held incommunicado for at least a month. One interlocutor had told the HRMMU that this had been an established practice used by the "ministry of state security" in the "LPR" in order to hold a suspect until there was enough evidence to bring a charge (A850-52). In August 2017 a man had gone missing while walking along the Stanytsia Luhanska crossing route. He had been stopped at the "LPR"-controlled checkpoint and had had his passport taken away. His whereabouts had remained unknown. Another man had been taken from his home to a police station by the "ministry of security" where he had been held for at least two days. His family had been informed that he was under "administrative arrest" and had not been permitted to speak or meet with him. It was believed that his arrest had been in retaliation for his political opinion as he had openly expressed pro-unity views and criticism of the "DPR" (B636).

860. The OHCHR's report covering the period of 16 May to 15 August 2017 referred to meetings in July and August 2017 with pre-conflict prisoners detained in the "DPR". During those meetings some prisoners had stated they were being subjected to forced labour (A887). The report for the period of 16 August to 15 November 2017 explained that in one "DPR" detention facility, "[t]o keep detainees in a state of exhaustion, the guards forced them to constantly perform physical work" (A888). A number of witness statements provided by former detainees, who had been detained by separatists in the period between 2017 and 2019 and had been released in a prisoner exchange, also referred to having been forced to work while in

detention (A1332, 1348, 1371, 1384 and 1438). For example, one witness, arrested on 20 July 2017, had been detained in "Izoliatsiia", and said he had been forced to work every day without holidays from 6 a.m. to 8 or 9 p.m. He said that the work had included cleaning of the territory, the militants' cars and military equipment; work on a prison farm; and cleaning a recreation centre of the "DPR" "ministry of state security" (A1358).

861. The OHCHR reported the case of a Russian blogger, who had been detained with his wife by armed men dressed in camouflage at their home in Donetsk city on 27 September 2017. The blogger had been physically assaulted by the perpetrators, resulting in a fractured leg. One of the perpetrators had also attempted to suffocate him. The victims had then been taken to the "UBOP" office ("department to combat organised crime of the DPR ministry of internal affairs"), and had been interrogated separately for a few hours. During this time, no medical aid had been provided. The blogger's wife had been released that same evening but he had been forced to sign a "notice" that he had been detained under "administrative arrest" on charges of participating in a terrorist organisation. He had been released on 2 November 2017 (B640).

862. According to the OHCHR, in December 2017 armed groups released 41 civilians from detention. Two had been detained since December 2014, 13 since 2015, 17 since 2016 and 9 since February-March 2017. For at least a month, each detainee had been held incommunicado and denied access to a lawyer or communication with relatives. The majority of detainees had been kept in basements of "security ministry" buildings or in premises not intended for detention and had regularly been brought before "security ministry" officers for interrogations and ill-treated (B644). At least 5 of the released detainees had been detained for critical publications on social media (B645).

863. On 1 March 2018 the OHCHR reported the recent announcement of the "ministry of security of the DPR" that in 2017 they had detained a total of 246 individuals on suspicion of espionage and state treason (B644). The 1 March report referred to a "rising number of cases of civilians arbitrarily deprived of their liberty by armed groups – a trend observed since summer 2017" (ibid.).

864. Between 16 February and 15 May 2018, the HRMMU documented 93 cases, involving 149 credible allegations of arbitrary detention, torture, ill-treatment, sexual violence and/or threats to physical integrity committed on both sides of the contact line. In 15 of these cases, the incidents had occurred during the reporting period and armed groups had been responsible (A860). The OHCHR also reported information provided by former detainees who had been released on 27 December 2017 which it said indicated that persons held in detention facilities of the "DPR" and "LPR" had frequently been subjected to torture and ill-treatment (B649).

865. In the period from 16 February to 15 May 2018 the OHCHR reported the cases of 11 victims who had been detained while attempting to cross the

contact line and 3 individuals detained in 2018 either at their homes or near their workplace, whose families had not been able to receive information about their whereabouts (B649). The OHCHR also documented four cases where civilians had been detained after expressing pro-Ukrainian views or being critical towards the authorities (B650).

866. The OHCHR said that it remained concerned about "preventive arrest" which had been introduced in the "LPR" in February 2018 and which enabled a person to be detained for up to sixty days without access to lawyers or relatives (B649). Between 16 May and 15 August 2018, it had received information about two people who had been detained for thirty and sixty-four days respectively under "preventive arrest" by the "ministry of the interior" and "ministry of security". One man had been detained by the "ministry of security" on 28 March 2018 while crossing the Stanytsia Luhanska checkpoint. His mother had not been informed until 19 April 2018 that her son had been put under "preventive arrest". The man had reportedly been severely beaten. The beatings had stopped when, being unable to take the torture any more, he had "agreed" with the accusations. He had been released after sixty-four days of detention (B654).

867. The OHCHR documented several cases of individuals who had been arbitrarily arrested by the "DPR" "ministry of security" and held incommunicado in "Izoliatsiia" under "administrative arrest" during which they had been tortured. Based on interviews, the OHCHR was able to confirm that at least forty individuals had been held in "Izoliatsiia" in the first half of 2018 (A861). A witness detained on 7 April 2018 by the "DPR" and, from 17 April 2018, held in "Izoliatsiia" stated that he and other prisoners had been made to engage in forced labour at the prison and at the Russian army base, as well as on building grounds for military manoeuvres (A1404).

868. From June 2018 the OHCHR reported that its operations in the "DPR" and the "LPR" had been substantively restricted despite ongoing discussions through regular meetings with representatives of both self-proclaimed "republics" (A876; and B655, 658, 681, 688 and 691). The OHCHR continued to document human rights violations based on interviews with people released from detention.

869. Over the period 16 August to 15 November 2018 the OHCHR documented 25 human rights violations involving unlawful or arbitrary detention, torture, ill-treatment sexual violence and/or threats to physical integrity, attributable to the armed groups. Six violations affecting two victims had occurred during the reporting period and had been attributable to the armed groups (B659). The OHCHR said it "remain[ed] concerned that in territory controlled by 'Donetsk people's republic' and 'Luhansk people's republic', the practice of 30-day 'preventive arrest' and 'administrative arrest' prevails, which amounts to arbitrary incommunicado detention". It was aware of at least four cases of "preventive arrest" that had occurred in "LPR"-controlled territory and at least one case of alleged arbitrary arrest that

had occurred in "DPR"-controlled territory during the period under review. It referred to the case of a man detained at a checkpoint in August 2018 by the "LPR ministry of security" on suspicion of drug smuggling, as he had been carrying drugs for substitution maintenance therapy which he had received at hospital. He had been held incommunicado at the "ministry of security" building in Luhansk for nearly two months before his detention had been formalised by a "measure of restraint" of custodial detention imposed by a "court". He had remained in detention as at November 2018 (B660).

870. According to the OHCHR, on 17 December 2018 a man had been detained by the "ministry of state security" of the "DPR" at the Uspenka border crossing point with the Russian Federation in territory controlled by "DPR". He had been detained incommunicado for sixty days. During his detention, he had been tortured, including with electricity, until he had confessed to having cooperated with the SBU. On 18 February 2019 the "ministry of state security" agents had taken the man to the border crossing point with the Russian Federation, where he had been forced to cross and had immediately been apprehended by the FSB (B685).

871. During the period from 16 November 2018 to 15 February 2019, OHCHR documented at least 154 human rights violations involving unlawful or arbitrary detention, torture, ill-treatment and/or threats to physical integrity, attributable to the "DPR" and the "LPR", many of which had occurred during the reporting period (§44, B665). It repeated its "serious concerns" regarding the treatment of detainees and conditions of detention in view of its lack of access to places of deprivation of liberty, observing that "[f]irst-hand information from pre-conflict prisoners transferred to serve their sentence in government-controlled territory supports OHCHR concerns" (B665). It further observed that individuals continued to be subjected to "administrative arrest" and "preventive arrest" in the "DPR" and the "LPR", respectively, which amounted to "arbitrarily incommunicado detention and may constitute enforced disappearance". The OHCHR had documented some such cases (ibid.). Moreover, in interviews with prisoners transferred to government-controlled territory, the OHCHR had received allegations of forced labour in most penal colonies of the "LPR". In Sukhodilsk penal colony no. 36, prisoners had reported being forced to work in shifts between 6.30 a.m. and 9 p.m., often without days off on weekends and for meagre or no compensation. Those who did not want to work were beaten and put in then isolation ward (B666). In its subsequent report, the OHCHR documented reports of forced labour in a number of penal colonies in territory controlled by the "LPR" (A889). The report for the period of 16 May to 15 August 2019 referred to concerns, arising from interviews with prisoners transferred from separatist-held territory, that forced labour continued to be used in Sukhodilsk penal colony no. 36, where those who refused to work were punished through beatings or solitary confinement (B680).

872. According to the OHCHR, prisoners transferred from the "DPR" and the "LPR" had reported a deterioration of detention conditions and prisoner treatment after the outbreak of the armed conflict in 2014. In particular, they had reported insufficient food supply and a lack of electricity during the power outages in 2014-2015, lasting from a couple of hours to several months, prisoners having had to burn furniture to heat their barracks. They had told the OHCHR that the situation had improved from 2016 but ill-treatment by prison staff, the absence of adequate medical treatment, including specialised doctors such as gynaecologists, and forced labour had remained a concern. Prisoners had also reported difficulties in maintaining contacts with relatives living in government-controlled territory (B666).

873. During the period from 16 February to 15 May 2019 the OHCHR continued to document cases of arbitrary and incommunicado detention, torture and ill-treatment in "DPR" and "LPR", although the prevalence of such cases continued to be considerably lower than in 2014, 2015 and 2016. The OHCHR documented 54 human rights violations and abuses involving arbitrary detention, torture, ill-treatment and/or threats to physical integrity, which had occurred within the reporting period and had been attributed either to the "DPR" or the "LPR" (B672).

874. According to the OHCHR, in February 2019 a mother had finally learnt that her two sons had been transferred to the Donetsk SIZO and had been charged with espionage after they had disappeared in 2018. In November 2018 the two brothers had travelled to "DPR"-controlled territory to visit relatives but contact had subsequently been lost. In November 2018 and January 2019 their mother had received replies from the "ministry of security" and the "ombudsperson office" of the "DPR" stating that they had no information about her sons' location, before the "general prosecutor's" office had confirmed their whereabouts in February 2019. In February 2019, in "LPR"-controlled territory, a civilian had been detained at Stanytsia Luhanska checkpoint by the "ministry of security". His mother had been told by the "ministry of security" that they had no information about him, and it was only on 19 March 2019 that she had been informed that he had been put under "preventive arrest". In April 2019, he had been released (ibid.).

875. The OHCHR reported that in May 2019, in "LPR"-controlled territory, a man had been detained by "police". When his wife had requested information on his whereabouts, they had responded that he had been arrested by the "LPR" and would be detained without access to the outside world for thirty days. In July 2019, a "police" representative had informed the victim's wife that he had been held in the premises of the police department, and the next day a "court" had reportedly formalised his detention (B679).

876. According to the OHCHR's report covering the period between 16 August and 15 November 2019, eight soldiers from the Ukrainian armed forces had been apprehended by armed groups near the Olenivka checkpoint on 22 May 2019. One soldier, who had reportedly been sentenced by a "court"

of the "DPR" and held in Makiivka penal colony no. 97, had been found dead in his cell on 14 October 2019 in circumstances which suggested that his death had been violent (A805). The HRMMU had also documented cases of arbitrary detention, torture and ill-treatment occurring in territory controlled by the separatists and in the Russian Federation following detainees' transfer from the self-proclaimed "republics" (A864-65).

877. In its report covering the period from 16 November 2019 to 15 February 2020, the OHCHR stated that it remained "gravely concerned" by continued arbitrary detention, torture and ill-treatment of conflict-related detainees in the "DPR" and "LPR". Though individual testimonies varied, the OHCHR had identified and further confirmed a "consistent pattern of arbitrary detention, often amounting to enforced disappearance, torture and ill-treatment of conflict-related detainees in both self-proclaimed 'republics'". The torture and ill-treatment of detainees had been systematic during the initial stage of detention (which could last up to a year) but the risk of detainees being subjected to torture and ill-treatment had considerably decreased after a "confession" and especially after completion of "pretrial investigations". Some detainees had not been informed of the reasons of their detention for a prolonged period, and relatives of those detained had not been provided with any information as to their whereabouts. Interrogations had included threats of violence or rape and blows to the body and face. In "LPR"- and "DPR"-controlled territory, individuals were being detained for publications, including information shared on social media. In the "LPR", the list of administrative offences had been expanded to include dissemination, including online, of information offending human dignity, public morals and explicit disrespect towards the authorities (A866 and B689-90).

878. Fifty-two of the 56 people released by the "DPR" and the "LPR" and interviewed by the OHCHR had described having been subjected to torture and/or ill-treatment. The majority of individuals interviewed had explained to the OHCHR that they had been apprehended by armed men wearing no insignia and in balaclavas who had not identified themselves. In most cases, the detainees had not been told why they had been detained. Upon apprehension or while being transported to their first place of detention, many detainees had been blindfolded and/or handcuffed. Some had been beaten or threatened with violence. The first place of detention had usually been either the premises of the "ministry of state security" (in Donetsk or Luhansk) or the "Izoliatsiia" detention facility (in Donetsk). Most detainees had initially been detained under "administrative arrest" (in the "DPR") or "preventive arrest" (in the "LPR"), and held incommunicado without access to a lawyer. Interrogations had been carried out either at the "ministry of state security" or in the "Izoliatsiia" detention facility in Donetsk or at the "ministry of state security" in Luhansk by individuals who had presented themselves as "officers" of that "ministry" or had not identified themselves at all. Several detainees had believed that Russian "FSB officers" had taken part in the

interrogations, and some had perceived them to be in a position of authority. The frequency, intensity and length of the torture and ill-treatment had varied considerably; however, they had usually continued until a detainee agreed to confess (orally, in writing or on video) or to provide information. The methods of torture and ill-treatment had included beatings, electric shocks, asphyxiation (wet and dry), sexual violence, positional torture, removal of body parts (nails and teeth), deprivation of water, food, sleep and access to a toilet, mock executions, threats of violence or death and threats of harm to family (B689). Torture and/or ill-treatment, including in some cases sexual violence, had been inflicted mostly during the interrogations and with a view to extracting confessions or information, in most cases, about working for the SBU. Testimonies of those released detainees had indicated that torture and ill-treatment had also been carried out, including by personnel of some of the detention facilities, for punitive purposes and to humiliate and intimidate. The OHCHR identified a continuum of torture and ill-treatment that was often exacerbated by inhumane detention conditions, in particular in the "Izoliatsiia" detention facility (A866-69 and B689).

879. The OHCHR reported that on 16 January 2020 an officer of the "ministry of state security" had detained a woman at Stanytsia Luhanska EECP. She had been taken with a bag over her head to the premises of "ministry of state security" in Luhansk, where she had spent a night handcuffed to a chair. Her captors had threatened to harm her family, had interrogated her about her alleged cooperation with the SBU and had submitted her to a polygraph test. On 21 January 2020, after signing papers acknowledging the risks of spying on the "LPR", she had been released (B689).

880. In its report for the period from 16 February and 31 July 2020 the OHCHR stated that arbitrary detention, torture and ill-treatment remained a systemic problem in the "DPR" and the "LPR", given the widespread and credible allegations of torture and ill-treatment in a number of facilities as well as of detention conditions that did not meet international standards (B694). The OHCHR interviewed 8 detainees released by the "DPR" and the "LPR" and reported that their testimonies confirmed patterns of arbitrary and incommunicado detention, and torture and ill-treatment of conflict-related detainees that had been previously identified by OHCHR (A870). Seven of those interviewed had informed the OHCHR that they had been tortured or and ill-treated, with incidents having place from 2015 to 2018 in the self-proclaimed "republics". The methods of torture and ill-treatment had included beatings on different parts of the body, dry asphyxiation, electric shocks, sexual violence, including blows and electric shocks to the genitals, positional torture, prolonged solitary confinement, deprivation of water, food, sleep and access to toilets and threats of physical violence to detainees and their families. The report refers to specific examples of the treatment alleged. (A870-71 and B694).

881. In a report covering the first six years of the conflict, the OHCHR expressed concern about the practice of "administrative detention", outside the criminal law context, "widely applied through the use of 'administrative arrest' in territory controlled by 'Donetsk people's republic' and 'preventive detention' in territory controlled by 'Luhansk people's republic'" (B698). The report explained that in territory controlled by the "DPR", a practice of "administrative arrest" was applied in accordance with a "decree" of the "DPR council of ministers" of 28 August 2014. That "decree" had been cancelled upon the adoption of the "criminal procedure code" in August 2018 on the ground that it contradicted the "constitution" of the "republic". However, the OHCHR explained, "DPR" investigative bodies" continued to apply "administrative arrest" in accordance with another "order" of the "DPR council of ministers", which had not been officially published. "Preventive arrest" in the "LPR" had been introduced by amendments to the "martial law" dated 2 February 2018. However, the OHCHR had documented cases where arbitrary detention on grounds similar to administrative detention had been applied in the "LPR" before the adoption of these amendments. The OHCHR considered these practices to be contrary to requirements for administrative detention laid out in international human rights law and international humanitarian law, in particular in relation to independent and impartial review, and to amount to a violation of the rights to liberty and a fair trial (ibid.).

882. The report provided details of the administrative detention procedures. In both the "DPR" and the "LPR", administrative detention could be unilaterally ordered by an "investigator" or "prosecutor". It allowed for the arrest of individuals for up to thirty days, during which the detainee did not see a judge and courts exercised no judicial control over the detention. The OHCHR's research suggested that detainees were rarely informed that they were being administratively detained. Moreover, OHCHR findings in respect of the "DPR" indicated that "administrative arrest" was often, sometimes repeatedly, reapplied on new grounds after the expiration of the initial thirty days (ibid).

883. The OHCHR further noted that in both the "DPR" and the "LPR", individuals could be held under "administrative detention" to verify their involvement in crimes against national security. OHCHR monitoring had found that administrative detention was widely used as a replacement for pre-trial detention in criminal proceedings. During administrative detention, investigative bodies conducted investigations against detainees without formally launching them. They collected evidence and testimony, including from detainees, which were eventually used to indict those detained. The OHCHR noted that international human rights standards prohibited the application of administrative detention to replace pre-trial detention within the criminal justice system as it violated fair trial rights. Moreover, those under administrative detention were held incommunicado. In most cases,

relatives were not provided with information about the detention during the initial period (ibid.).

884. In its 2020 report, the OHCHR also expressed concern that since the adoption of the "DPR" "criminal procedure code" on 24 August 2018, "prosecutors" could order pre-trial detention without court orders or judicial review. This, the OHCHR said, amounted to a violation of the right of persons arrested to be brought before a judicial body and constituted arbitrary detention (ibid.).

885. From 1 August to 31 October 2020 the HRMMU documented six more cases of arbitrary detention, ill-treatment and torture which had occurred between 2019 and 2020 at the hands of the "ministry of security" or the "ministry of interior" of the self-proclaimed "republics". Not all persons had been explained the reason for the arrest and no one had provided the victims' family members with information about their whereabouts, sometimes for months. From 1 August 2020 to 31 January 2021 the OHCHR documented twelve cases of conflict-related arbitrary detention having been carried out on the territory controlled by the "DPR", mostly by the "ministry of state security", and eight cases of arbitrary incommunicado detention having taken place in the "LPR" having been carried out by the "ministry of state security" or the "police", including "shocking testimonies of torture and ill-treatment" in the "Izoliatsiia" detention centre (B701).

886. On 15 January 2021 the "DPR ministry of internal affairs" had reported that since the start of 2020, more than 350 people suspected of crimes had been detained and taken to the police. For the violation of curfew in 2020, the police had detained more than 3,900 individuals who had been taken to "police stations". With reference to this statement, the OHCHR stated that it had reasons to believe that those detainees had been at risk of ill-treatment, as well as of other violations of their rights (ibid.).

887. Between 1 February to 31 July 2021 the OHCHR documented 13 cases of conflict-related arbitrary detention in the "DPR" and the "LPR": 1 from 2014, 1 from 2017, 6 from 2020 and 5 from February-July 2021. In April 2021 a woman had been arbitrarily detained by "ministry of security" officers and held incommunicado at a temporary detention facility in Shakhtarsk. In May 2021 she had been told that she would be banned from "DPR" territory for five years, and when she had asked for a written decision an "ministry of security" officer had told her that she would not receive anything as she had no rights. In May 2021 a pregnant woman had been arbitrarily detained by "ministry of security" officers of the "DPR" at a border crossing point where she had been held for four hours before being taken to "ministry of security" premises in Donetsk. She had been accused of espionage and transferred to a temporary detention facility before being transferred to the Donetsk SIZO in June 2021, where she had continued to be detained (B711).

888. In its thematic report of 2 July 2021 on "Arbitrary detention, torture and ill-treatment in the context of armed conflict in eastern Ukraine, 2014-2021" the OHCHR estimated the total number of conflict-related detentions by armed groups in Ukraine from April 2014 to April 2021 at between 4,300-4,700, mostly persons *hors de combat* and civilians accused of supporting the Ukrainian Government. By April 2021, an estimated 300-400 individuals remained in detention and an estimated 200-300 individuals had been killed or died while in detention. Of the 532 cases documented by the OHCHR a large majority amounted to arbitrary detention, which remained a "daily occurrence" in "DPR" and "LPR" territory. Between 2014 and 2015 armed groups used more than 50 improvised detention facilities to hold detainees, before the practice was stopped and detainees were held in specially designated facilities. In some of these facilities, such as the "ministries of security" in Donetsk and Luhansk and the "Izoliatsiia" detention facility, torture and ill-treatment had been carried out "systematically". 82.2% of individuals detained by the "DPR" and 85.7% of individuals detained by the "LPR" had been subjected to torture and ill-treatment in 2014-2015, including deplorable detention conditions in often improvised detention facilities such as basements, garages, vehicles and open pits. The OHCHR estimated that 2,500 conflict-related detainees had been subjected to torture and ill-treatment in 2014-2021. The report found that torture and ill-treatment had become less common after 2016. Despite this, torture and ill-treatment had continued to occur and had been carried out systematically in some places of detention within the territory controlled by the "DPR" and the "LPR". Torture and ill-treatment, including conflict-related sexual violence, had been used to extract confessions or information, or to otherwise force detainees to cooperate, as well as for punitive purposes, to humiliate and intimidate, and to extort money and property. The main perpetrators of arbitrary detention, torture and ill-treatment at the initial stages of the conflict had been various armed groups, and later, members of the "ministries of state security". The methods of torture and ill-treatment had included beatings, dry and wet asphyxiation, electrocution, sexual violence on men and women (such as rape, forced nudity and violence to the genitals), positional torture, water, food, sleep or toilet deprivation, isolation, mock executions, prolonged use of handcuffs, hooding, and threats of death or further torture or sexual violence, or harm to family members. The report highlighted the prevailing impunity for perpetrators due to a lack of effective investigations into allegations of arbitrary detention, torture and ill-treatment, including conflict-related sexual violence (A878 and B707).

889. During the initial stages of the conflict, detentions had lacked any semblance of legal process, while a more formalised approach had been observed since 2015, with the introduction of "administrative arrest" (in the "DPR") and "preventive detention" (in the "LPR"). According to the

"legislation" of the self-proclaimed "republics", individuals could be held under "administrative arrest" or "preventive detention" upon the unilateral decision of an "investigator" or "prosecutor" to verify their involvement in "crimes against national security". The "legislation" had provided for arrest for up to thirty days (which could be extended to sixty days), during which an "investigation" was conducted. The detainee was held incommunicado, with no entity exercising any form of judicial control over the detention. The OHCHR found that in most cases relatives had not been provided with information about the detention (B707-08).

890. In the 532 documented cases of conflict-related detention, the OHCHR noted the absence of appropriate procedures for administrative detention or lack of respect for fair trial guarantees in criminal "cases" and found that a large majority of those cases amounted to arbitrary detention. The report highlighted the prevailing impunity for perpetrators due to a lack of effective investigations into allegations of arbitrary detention. The detainees had mostly been persons *hors de combat* (captured members of UAF or volunteer battalions or other individuals who were taking part in hostilities on the side of Government forces); civilians accused of supporting the Ukrainian Government or of pro-Ukraine views; and other individuals detained in the context of the armed conflict. The most common charges against conflict-related detainees had been espionage, incitement of hatred, storage of explosives, terrorist act, assistance to terrorist activity, and public calls for extremist activities in territory controlled by the "DPR", and creation of a criminal organisation, illegal acquisition and storage of weapons or ammunition, state treason, and illegal acquisition of information comprising state secrets in territory controlled by the "LPR" (A878 and B707).

891. A number of witness statements obtained by the Ukrainian authorities from witnesses and victims provide first-hand and detailed information about the ill-treatment to which they had been subjected (A1313-464).

892. Between 1 August to 31 October 2021 the OHCHR documented ten cases of arbitrary and incommunicado detention in "DPR" and "LPR" controlled territory, most often in the form of "administrative arrest" and "preventive detention". Families had faced weeks and months of uncertainty over the whereabouts of detainees (B715). During 1 August 2021 to 31 January 2022 the OHCHR documented twelve further cases of arbitrary detention in the "DPR" and the "LPR" (two in 2018, nine in 2019 and one in 2021), some of which had been tantamount to enforced disappearances (B723).

2. The period from 24 February 2022

(a) Reports of the Commission of Inquiry

893. There are extensive reports covering the period following the Russian invasion on 24 February 2022, notably from the Commission of Inquiry (see paragraphs 194-196 above and Annex C). In its reports of October 2022, March and October 2023, March and October 2024 and March 2025, and its conference room paper published in August 2023, the Commission of Inquiry outlined its findings in respect of the allegations of various human rights violations, including wilful killings, unlawful deprivation of liberty, ill-treatment and torture and forced labour, reported to it.

(i) Summary executions

894. The Commission of Inquiry reported that its investigations in the regions of Kyiv, Chernihiv, Kharkiv and Sumy had revealed a pattern of summary executions in areas temporarily occupied by Russian armed forces in February and March 2022 (C.II.65). Many of those summary executions had occurred in Bucha, in the Kyiv region. The summary executions verified by the Commission of Inquiry had occurred in places where Russian armed forces had taken positions for an extended period of time, close to the front lines. This was the case in settlements situated north of Kyiv, where Russian armed forces had been forced to halt their advance; to the south of Chernihiv, while Russian armed forces had been launching offensives to capture the city; and close to the separation line between Russian armed forces and Ukrainian armed forces in the Sumy region. The Commission of Inquiry noted that, according to witnesses and survivors, some of the perpetrators had accused the victims of transmitting information to Ukrainian armed forces, of collaborating with the Ukrainian armed forces or of other contributions to the fight against the Russian armed forces (C.II.68 and 70).

895. In the cases investigated by the Commission of Inquiry, several elements, often in combination, had indicated that the victims had been executed. A common element was that the victims had last been seen in the custody or the presence of Russian armed forces. The bodies of the victims had been exhumed from separate or mass graves or recovered from houses or basements that the Russian armed forces had occupied. Some victims' bodies had been found with their hands tied behind their backs, a clear indication that the victim had been in custody and posed no threat at the time of death (C.II.69). The Commission of Inquiry's investigations had also shown that the cause of death of the victims was consistent with methods typically used during executions: gunshot wounds to the heads, blunt trauma or slit throats. In some cases, there was also evidence of torture on the bodies, such as bruises, wounds and fractures. While summary executions had mainly been perpetrated following unlawful detention, the Commission of Inquiry had

also documented cases in which victims had been executed in public places (C.II.71 and 73).

896. By way of specific examples, the Commission of Inquiry set out the following in their report (C.II):

> "66. ... The Commission interviewed a local official who was among the first on the scene after Russian armed forces withdrew [from Bucha, in Kyiv region]. He told the Commission that he saw eight dead bodies in the backyard of the house where the soldiers had established their base. Some of them had their hands tied behind their backs and presented signs of torture. He also saw more than 10 dead bodies of civilians lying on the street. In another incident, five bodies were found in a basement, with their hands behind their backs and gunshot wounds. A woman confirmed that her adult son was among the five bodies.
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> 67. Summary executions took place in numerous other localities. The Commission is investigating credible allegations of similar executions in 16 other towns and settlements, involving 49 victims. The majority are men of fighting age, but the total includes two women and one 14-year-old boy. The cases are located in all four provinces under the Commission's initial focus, suggesting a wide geographical pattern.
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> ...
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> 70. ... In a case documented in the village of Vyshneve, in Chernihiv Province, which was occupied by Russian armed forces from 28 February to 4 April 2022, witnesses reported that, on 18 March 2022, as they searched for individuals behind an attack on one of their convoys, Russian armed forces arrested three adult brothers. They tied the victims' hands behind their backs, blindfolded them and beat them severely for three days, after which they shot and buried them in a shallow grave. Two of the brothers died and the third was injured but survived.
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> ...
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> 72. ... Witnesses detailed how Russian armed forces apprehended several local residents on 27 February 2022, the day they took control of the village [of Staryi Bykiv, in Chernihiv region] as they were searching for people who had operated a drone that killed one of their soldiers. The perpetrators took the men to their base. Relatives heard screams and gunshots from where the soldiers had detained the victims. The next day, they saw the bodies of six men lying on the street where the incident took place, but were not permitted to access the location until nine days later, when Russian armed forces finally allowed them to pick up the bodies. The bodies had multiple gunshot wounds, stab wounds and broken ribs, and one had a slit throat.
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> 73. ... In the village of Vesele, in Kharkiv Province, two witnesses reported that soldiers of the Russian armed forces beat and shot dead a person whom they dragged off a bus that was transporting people to the Russian Federation. After the execution, the perpetrators told the other passengers that the victim had been shot and killed because he had been transmitting information to the Ukrainian armed forces."

897. The Commission of Inquiry also detailed numerous cases in which Russian armed forces had shot at civilians trying to flee to safety and obtain food or other necessities, which resulted in the killing or injury of the victims. In the cases documented, the victims were wearing civilian clothes, driving civilian cars and were unarmed. Most of the incidents had taken place during daylight, which meant that their civilian appearance should have been clear

to the attackers. Several of the attacks had taken place as civilians had come across Russian military convoys that were on the move. Soldiers had shot civilians using assault rifles or, in some cases, vehicle-mounted weapons (C.II.56-57). The Commission of Inquiry noted (C.II):

> "58. Several incidents took place along the E40 highway in Kyiv Province, also referred to as the Zhytomyr highway, as Russian armed forces established control over sections of it in late February and March 2022. On 28 February 2022, around noon, soldiers in a military convoy on the highway opened fire at four civilians who were attempting to flee through the fields. One woman was injured in the leg. On 1 March 2022, at approximately 10 a.m., soldiers opened fire on a civilian car near Kopyliv. The couple in the car, both in their sixties, managed to escape uninjured. On 3 March 2022, also around 10 a.m., a married couple and their two children came under attack near the village of Motyzhyn. The two adults died in the attack. A 9-year-old girl survived, while her sister, aged 15, was wounded and is still missing. Other organizations have documented additional similar incidents in the same area, demonstrating that these cases were not isolated.
>
> 59. The Commission has received reports of such incidents in multiple locations in all four provinces covered in the present report, suggesting a clear pattern. For example, a Russian military convoy attacked a civilian car in the village of Shevchenkove, in Kyiv Province, killing two civilians, one man and one woman, on 8 March. A military convoy opened fire on a civilian car near the village of Vyrivka, in Sumy Province, on 27 February, killing a man and injuring his adult son. Soldiers of the Russian armed forces allegedly shot at two civilian cars as people were trying to leave in the village of Stepanky, in Kharkiv Province, on 27 March, killing a woman and a girl. One of the cars was marked with a sign saying 'children'."

898. According to the Commission of Inquiry's report of 16 March 2023, the evidence it had collected showed a widespread pattern of summary executions in areas that the armed forces of the Russian Federation had controlled in seventeen localities of Chernihiv, Kharkiv, Kyiv and Sumy regions, with the highest number in the Kyiv region, including in the city of Bucha. It had confirmed the executions of 68 victims, mostly during the first few months of the armed conflict (C.III.53). It observed:

> "54. In more than half of the executions investigated, witnesses had last seen the victims in the custody of the armed forces of the Russian Federation. In a few cases, eyewitnesses had seen the armed forces of the Russian Federation carry out the executions. The Commission concluded that the armed forces of the Russian Federation were responsible in those cases. In the remaining cases, the victims' bodies were found at or near locations that the armed forces of the Russian Federation had used as bases. The Commission also concluded that the armed forces of the Russian Federation were likely responsible in those cases.
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> 55. Detention, interrogation, torture or ill-treatment often preceded execution. Some victims had been found with their hands or feet tied. According to medical records and photographs, the most common method of killing was a gunshot to the head at close range."

899. The Commission of Inquiry concluded that armed forces of the Russian Federation had committed wilful killings of civilians or persons *hors*

de combat in areas that had come under their control. It considered that these actions constituted war crimes and violations of the right to life (C.III.56).

900. The Commission of Inquiry also found a "pattern of attacks" against civilians on the move in Kharkiv, Kyiv and Sumy regions when they were under the control of the armed forces of the Russian Federation (C.III.57). It had documented 18 such cases in February and March 2022, in which 14 men, 8 women, 3 boys and 1 girl had been killed and 6 other civilians injured. Most of the attacks had been committed in the Kyiv region. In many of these instances, the Commission of Inquiry had found enough evidence to conclude that the armed forces of the Russian Federation had been responsible for these attacks. It continued:

> "58. The attacks occurred while civilians were trying to evacuate or were carrying out routine activities. In all the cases, the victims were wearing civilian clothes, were unarmed and were driving civilian cars, some with signs on the windows indicating that children were on board. Several attacks occurred in or around the same location, such as the E40 highway in Kyiv and Kharkiv Provinces. The Commission interviewed survivors of attacks and witnesses and relatives of those killed, and reviewed video footage showing yet more damaged cars on the highway where the attacks had taken place. The attacks were thus not isolated, suggesting that some military units were responsible for multiple incidents. Some of the attacks seem to have been deliberate, such as when soldiers opened fire on civilian cars that posed no risk because they had stopped or were driving away. In other cases, there were no indications that the attackers had taken steps to verify whether the target was a military objective."

901. In its conference room paper of 29 August 2023, the Commission of Inquiry examined 84 credible allegations of the summary executions of at least 142 men, 8 women, and 1 boy in 43 localities in six regions of Ukraine (C.IV.298). The highest number of allegations had come from the Kyiv region, including from the town of Bucha, which had become notorious because of the high number of civilians killed and executed there. Most of the executions documented in the areas visited by the Commission of Inquiry had taken place during the first months after 24 February 2022. As explained in its 16 March 2023 report, the Commission of Inquiry had verified and corroborated the executions of 68 people in 17 localities (C.III.53 and C.IV.303). All the summary executions described in the paper had taken place in areas that had been under the control of the Russian armed forces at the relevant times in Chernihiv, Kharkiv, Kyiv and Sumy regions. In more than half of the cases documented, witnesses had last seen the victims in the custody of the Russian armed forces before their death. In a few cases, eyewitnesses had observed Russian soldiers carry out the executions. In both situations, there were reasonable grounds to conclude that the Russian armed forces were responsible for these executions. In the remaining cases, the victims' bodies had been found at or near locations that Russian armed forces had used as bases; such as farms, forests, basements or courtyards of private houses and public buildings, and a basement of a children's camp. In these

cases, the Commission of Inquiry had concluded that Russian armed forces were likely responsible, based on the location where the bodies had been found (C.IV.305). In reaching their conclusions, the Commission of Inquiry had reviewed multiple medical documents and photos of bodies which showed that the most common method of killing was a gunshot to the head from close range. Other victims had died of multiple gunshot injuries to the torso, or their throats had been slit. In a number of cases investigated, one or several of the victims had had their hands tied behind their backs, or their feet tied. The materials used were zip ties, nylon rope, plastic cord and other types of improvised textiles (C.IV.311).

902. In the cases investigated by the Commission of Inquiry, accounts of survivors, witnesses, relatives and, in one case, a Russian soldier had suggested that perpetrators had mostly pursued victims for real or perceived support of the Ukrainian armed forces. They had targeted victims for being members of or for helping the Ukrainian armed forces or the Ukrainian Territorial Defence Forces, on suspicion of passing information about the movement of Russian armed forces to the Ukrainian armed forces, for any other type of association with current or former military personnel, or for any behaviour that might have been deemed suspicious at the time (C.IV.306). Many of the executions had occurred in towns and villages that were close to the frontlines where Russian armed forces had come into frequent contact with local residents. Most of the executions had taken place within the first couple of weeks after the Russian armed forces had assumed control over a location. Executions had also been carried out after the Russian armed forces stationed in a given location had come under attack (C.IV.307).

903. Perpetrators had intercepted some of the victims on the street, as they had been seemingly carrying out routine activities. In a number of cases, the executions had been carried out in the context of house-to-house searches or house visits, during which the Russian armed forces had looked for individuals cooperating with Ukrainian armed forces or who possessed weapons or military attire (C.IV.308).

904. The paper included details of a large number of summary executions carried out between February and April 2022, noting that these were only a sample of the cases which they had examined in detail, among the multiple allegations of killings of civilians and persons protected under international humanitarian law (C.IV.317). As examples from various regions, the relevant passages stated:

> "***Bucha town, Kyiv region***
>
> 323. On 3 March 2022, after several failed attempts, Russian armed forces entered Bucha. They remained in control of the town until their withdrawal on 31 March 2022. Information collected by the Commission indicates that forces from several Russian armed forces units were located in the town, including the 234th Guards Airborne Assault Regiment and the 104th Guards Airborne Assault Regiment of the 76th Guards Airborne Assault Division; the 5th Separate Guards Tank Brigade of the 36th Combined

Arms Army; and the 147th Guards Self-Propelled Artillery Regiment of the 2nd Guards Motor Rifle Division.

Executions at Yablunska Street

324. In a well-documented case, eight men were found bearing signs of execution in an administrative building at Yablunska Street 144 after Russian armed forces left the town.

325. According to media reports, Russian soldiers detained nine men, eight of them members of the Ukrainian Territorial Defence during a house-to-house search on 4 March 2022. The soldiers looked for certain tattoos and forced the men to take off their winter jackets and shoes, after which they brought them to the administration building. The soldiers eventually brought the men to the courtyard, where they shot dead seven of them. The body of one more man was already lying in the courtyard with a gunshot wound to the head.

326. The media reports were based on interviews with one man who was wounded but survived the killing, closed circuit television footage of the soldiers bringing the men to their base, drone footage showing the presence of Russian soldiers, military vehicles, the bodies of the killed men at Yablunska Street 144, and photos and videos of the bodies in the courtyard.

327. In addition, the Commission interviewed a witness who was one of the first to enter Bucha after Russian forces withdrew. He confirmed seeing eight bodies in the courtyard of Yablunska Street 144. The witness shared with the Commission a video and several photos from the crime scene, which shows the bodies of eight men dressed in civilian clothes, missing jackets and shoes. At least two men have their hands visibly tied behind their backs, and at least five victims have obvious gunshot injuries, three of them in the head, which is consistent with the general pattern identified by the Commission.

328. Based on an analysis of the calls made by Russian soldiers on 4 March 2022 from two of the victims' mobile phones, as well as of the items left behind by soldiers stationed at Yablunska Street 144, journalists found strong indications that the perpetrators of the crime were from the 234th Guards Airborne Assault Regiment. The Commission has independently confirmed that forces from the 234th Regiment were stationed in Bucha during the occupation.

Executions at children's camp

329. Family members last spoke with Volodymyr Leonidovych Boichenko (born 1987) on 8 March 2022 and with Dmytro Vasylovych Shulmeister (born 1968) and Serhii Viktorovych Matyoshko (born 1981) on 12 March 2022. At the time, all three men were in Hostomel town, about three kilometres from Bucha. Then the men's mobile phones stopped working.

330. On 4 April 2022, the bodies of Boichenko, Shulmeister and Matyoshko, together with two other identified men, were found in the basement of a building in a children's camp called 'Promenystyi' or 'Radiant' at Vokzalna Street 123 in Bucha.

331. Photos from the basement reviewed by the Commission show the bodies of five men in civilian clothes on their knees while facing a wall; four of them have their hands tied behind their backs with a plastic zip tie. Bloodstains are visible on the ground and on the wall, and there are several bullet casings noticeable on the ground, indicating that the men were shot. The injuries suggest that the victims were shot dead at close range, with at least two types of firearms.

332. Medical documents reviewed by the Commission show that Boichenko, Shulmeister and one of the two identified men died of multiple gunshot and shrapnel injuries to the torso, while the cause of death of Matyoshko were perforating gunshot injuries to the limbs and torso with injury of internal organs. Photos from the morgue of two of the victims obtained by the Commission also show signs of repetitive blunt force trauma on the head and on the torso, suggesting ill-treatment prior to death.

333. A witness told family members of two of the victims that Russian soldiers attacked and then detained the men as they were helping to evacuate residents. The Commission has not been able to verify this information.

334. Items found at the camp by Ukrainian authorities and others corroborate the allegations that the children's camp was used by Russian armed forces: discarded Russian uniforms, positions for military vehicles dug into the ground, boxes from Russian military rations, as well as civilian cars with white letter 'V' sprayed on them. In an interview with a news outlet, a man claimed that Russian soldiers had held and tortured him in this camp in early March 2022, further corroborating the fact that Russian soldiers were using the premises at the time when the five men were killed.

Mass grave between Myrotske and Vorzel

335. When many civilians evacuated from Bucha, Artur Oleksiiovych Rudenko (born 1995) decided to stay to take care of his grandfather. On 11 March 2022, Rudenko told a family member on the phone that he was heading to his grandfather's, about a kilometre away, with some food. That was the last time Rudenko's family member spoke with him.

336. Rudenko's body was found three months later, on 13 June 2022, in a forest area between villages Vorzel and Myrotske, a few kilometres from Bucha, in a mass grave together with six other bodies. Bucha, Vorzel and Myrotske were all under occupation by Russian armed forces at the time of Rudenko's disappearance.

337. The six other victims found in the mass grave were all men, aged between 20 and 50 according to the police, but at the time of writing, only one other man had been identified. The police told Rudenko's family member that his hands were tied behind his back. Photos of the body reviewed by the Commission show presence of a nylon rope fastened at the wrist area of each hand.

338. The authorities were not able to establish Rudenko's cause of death due to the decomposition of the body. The photos of the body reviewed by the Commission suggest blunt force injury to the upper arm and chest regions.

339. The photos of the body also show that Rudenko had a tattoo of an owl which, according to his family member, might have been the reason why he was targeted by the Russian armed forces, since an owl is used in insignia of Ukraine's Defence Intelligence.

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Ivanivka village, Chernihiv region

387. Russian armed forces entered the village of Ivanivka on 5 March 2022 and controlled it until 30 March 2022. The Commission collected information indicating that forces from the 74th Separate Guards Motorized Rifle Brigade were located in the village.

Executions at an agricultural complex

388. Russian armed forces established one of their bases in the area of an agricultural complex on the outskirts of Ivanivka village. After they withdrew from the area, bodies of four men were found in the area of the complex. Two were identified as Serhii Yevheniiovych Korinev (born 1988) and Maksym Volodymyrovych Ternov (born 1981); the identity of the remaining two victims is not known.

389. Serhii Korinev disappeared on 9 March 2022, after stepping out of his family's house on Shcherbyny Street to smoke. His body was found on 31 March 2022 in a small building in the agricultural complex. The hands were tied with a zip tie; his head was wrapped in a dirty bandana, which, when removed, revealed a gunshot wound to the head. According to one witness who saw Korinev's body when it was found, his face was purple and so swollen that his mother had to recognize him by his shoes. He had bruises on his face and body and injuries on his hands. A copy of the medical report obtained by the Commission indicates perforating gunshot wound to the head with skull fracture as Korinev's cause of death.

390. Maksym Ternov left his home in Cherkasy on 13 March 2022 with the plan to drive to Chernihiv. The following morning, his family heard from him for the last time. One resident of the village Yahidne saw Ternov as he was brought by Russian soldiers to the basement of a school where 365 civilians were confined by Russian forces for several weeks ... The witness reported that Ternov spent one night in the school basement and was seen standing outside the following morning. Ternov's body was found at the beginning of April 2022, about 300 m from that of Korinev, in a small building of the same agricultural complex in Ivanivka. Ternov's hands and feet were tied, his face was covered with bruises and blood. From the photos reviewed by the Commission, including from the morgue, Ternov's body bore multiple blunt force traumas on his head and torso, suggesting ill-treatment or torture prior to his death. A witness who saw Ternov's body when it was found spoke of a visible gunshot injury to his head. Indeed, 'gunshot wound to the head with cranial bone injury' was the main cause of his death based on the copy of the medical report which the Commission has obtained.

391. The body of one of the unknown men was found about 200 m from the body of Korinev, and the body of the other unknown man was found nearby the building where the body of Ternov was uncovered. Those who discovered the first body described it as that of a man with his hands tied with the same type of zip tie as Korinev, his face covered in blood, with bruises on both his face and body. There was no obvious cause of death. The body of the second man appeared naked and was in an advanced state of decomposition. The Commission reviewed a photo of the body and assessed that it might have been set afire after the death and exposed to stray animals.

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Bilka village, Sumy region

404. A large contingent of Russian armed forces arrived in Bilka village on 2 March 2022 and set up base at a farm located on a small hill on the western outskirts. They left the farm on 16 March 2022.

Executions at a farm

405. Oleg Volodymyrovych Malenko (born 1977) left from nearby Oleksyne village, to return to his house in Bilka in the early evening of 3 March 2022. He never arrived. On 17 March 2022, the day after Russian armed forces vacated the farm, residents discovered Malenko's body in a nearby field. Photos and witness descriptions of the body show that his hands and feet were tied together with a green rope. He had a gunshot wound to the head behind the ear and three oval bruises on the anterior neck. A relative

who washed the body noticed further bruises on his legs, ribs, and groin. An analysis of the available photographs suggests manual strangulation and that death was then caused by a gunshot wound to the head.

406. Mykola Ivanovych Savchenko (born 1976) left his house in Bilka in the morning of 3 March 2022. He never returned. One resident who spoke with Savchenko on the phone that morning, said that he was planning to go to the farm. On 20 March 2022, Ukrainian armed forces, who had taken over the farm when the Russian armed forces left, guided residents to an adjacent field where they had discovered Savchenko's body. According to photos and witness descriptions of the body, he was lying face down with a woollen hat pulled over his eyes. There were significant traces of blood on his face. There were two gunshot wounds to the chest. Two spent bullet cases were lying on the ground near the body, suggesting that he was shot at close range.

...

Husarivka village, Kharkiv region

411. Russian armed forces entered Husarivka village sometime in early March 2022, and a group of soldiers set up base in the first four houses on Oksana Petrusenko Street. They remained in control of the village until 26 March 2022. The Commission collected information indicating that forces from the 18th Guards Motor Rifle Division of the 11th Army Corps were located there.

Executions on Oksana Petrusenko Street

412. On 13 March 2022, Russian soldiers stationed at Oksana Petrusenko Street asked a group of farm workers, including Yehor Volodymyrovych Zhyrovkin (born 1985) and Oleksandr Volodymyrovych Tarusin (born 1982), to feed cattle at a nearby milk farm. The Russian armed forces came under shelling while the men were tending to the animals. They accused them of having directed the fire and detained them. Not long thereafter, a witness accompanied by Russian soldiers near that location heard a series of gunshots. As he entered the first house on Oksana Petrusenko Street, he saw five men whom he recognized as the said farm workers, lying on the ground in the yard, screaming with pain from gunshot wounds in their legs. Soldiers placed the witness in a cellar, from where he subsequently heard more gunshots. When the soldiers took him out shortly afterwards, he saw five lifeless bodies lying in the yard.

413. Two days after the above events, on 15 March 2022, Mykola Mykhailovych Pisarev (born 1965) and Oleksandr Oleksiiovych Pokhodenko (born 1978) left their apartment in the centre of the village and walked to the house of a relative, which was located about 200 m from the milk farm. They did not return.

414. On 7 April 2022, three bodies burned beyond recognition were found in an outdoor cellar of the second house on Oksana Petrusenko Street. As of January 2023, they had not been identified. Two weeks later, on 22 April 2022, less than 200 m away, two more burned bodies were found in a similar outdoor cellar of another house. The forensic analysis showed that they were the bodies of Pisarev and Pokhodenko. The Commission reviewed medical documents which show that Pisarev died of stab wounds to the neck and subsequent blood loss whereas Pokhodenko was shot in the chest.

...

421. The incidents described above are only a sample of the cases which the Commission examined in detail, among the multiple allegations of killings of civilians and persons protected under the international humanitarian law. The killings were committed in areas that came under the control of Russian armed forces; at the time they were in control. The victims were intercepted in the street or during house searches

> and visits. The executions were often preceded by confinement, ill-treatment, or torture. The hands of some of the victims were tied and a recurring cause of death was a gunshot to the head. The Commission has found that Russian armed forces were the perpetrators or the likely perpetrators. In many of the described cases, the victims were last seen in their presence, and in other cases, the bodies of the victims were found in locations used by them. Based on all the examined circumstances, the Commission has concluded that Russian armed forces have perpetrated wilful killings, which is a war crime."

905. In its report published of 19 October 2023, the Commission of Inquiry further detailed the fatal shooting of a married couple in May 2022 by three Russian soldiers after the couple had reported to the Russian armed forces commander that the soldiers had raped the woman. The Commission found that the shooting amounted to the war crime of wilful killing (C.V.85).

(ii) Attacks against civilians on the move

906. The Commission of Inquiry also set out, in the conference room paper, its detailed findings regarding attacks committed against civilians on the move (C.IV.435-81). It reiterated that there had been a "pattern of attacks" committed against civilians on the move in towns, villages or on highways, in some of the areas that had come under Russian armed forces control. It had recorded credible allegations concerning at least 46 incidents in which soldiers had fired with small arms upon civilian vehicles in 27 locations across Ukraine.

907. The Commission of Inquiry had documented 18 cases in which soldiers had fired on civilian vehicles, killing 26 civilians and injuring six. These incidents had taken place in February and March 2022, in or around ten towns and villages of the Kyiv, Kharkiv and Sumy regions, with a majority in the Kyiv region. The actual number of attacks on civilian cars and resulting casualties was likely much higher, including in other regions. The evidence gathered indicated that Russian armed forces had carried out the attacks or had likely carried out the attacks (C.IV.426-27).

908. The Commission of Inquiry provided details of the specific situations in which civilians on the move were attacked. According to victims' and witness' testimonies, some of the attacks had been perpetrated by Russian military convoys, as they entered new localities or encountered civilians on their way. Other attacks had come from Russian armed forces positions or temporary deployments. The persons impacted were civilians trying to evacuate or carrying out daily life activities, such as driving to their homes, looking for food and other necessities, and visiting relatives. Soldiers had mainly used small arms and light weapons. Several of the attacks investigated had taken place in the same locations, suggesting that some military units were responsible for multiple incidents. Some of them had occurred on the E40 highway, in the Kyiv and Kharkiv regions. In all the cases investigated, the victims had been wearing civilian clothes, had not been armed and had been driving civilian vehicles. All but one attack had

occurred in daylight when the civilian status of the victims and of their vehicles should have been apparent to the attackers. In two cases, the cars had signs with the word "children" taped to the windows. In two situations, soldiers had stopped shooting only after the victims had shouted repeatedly that they were civilians. Some of the attacks had seemed deliberate, for example when soldiers had opened fire on civilian cars that posed no risk to them because they had stopped, turned around or were driving away from them. In some instances, the attackers had shot regardless of the fact that the civilians had left the cars and sought shelter or had been attempting to flee. In the cases investigated, there were no indications that the attackers had taken steps to verify that the target was a military objective. This was illustrated by the fact that on some occasions the soldiers had opened fire as soon as they had seen the civilian vehicles, which had given them no time to verify the target. In the vast majority of cases, attacks had taken place without warning, and when a warning had been given, it had immediately been followed by the attack, rendering the warning moot (C.IV.427-34).

909. The conference room paper provided illustrations of the attacks on civilians on the move that it had documented in a section of the paper on case descriptions (C.IV.436-81). By way of example, it reported:

> "431. In one of the documented cases, on 5 March 2022, five adults and two boys were attempting to flee from the town of Bucha in two cars, after Russian armed forces took control of the area. When the families saw a military vehicle with the letter 'V' painted on it stationed ahead of them, they parked the cars on the side of the road. Without warning, the military vehicle opened fire on them, killing one woman, one man, and the two boys. In another case, on 28 February 2022, as four civilians were driving in a car on the E40 highway, in Kyiv region, they saw a military convoy with the letter 'V' painted in white on vehicles driving towards them. They turned around and parked their car at a gas station. After hearing shelling, they ran out of the vehicles to a nearby field. Soldiers from within the convoy fired at them for about 10 minutes, injuring one of the women, and threw a grenade in their direction.
>
> ...
>
> *Bucha town, Kyiv region, 6 March 2022*
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> 441. On 6 March 2022, at around 10 a.m., three neighbours in civilian clothes were driving in a black Dacia Lodgy with a big 'Uber' sign along Zhovtneva Street, in Bucha town. The man and the woman in the front seats, both in their 50s, were going to a store, hoping to find some food. Their 60-year-old neighbour caught a ride with them to join his wife who was taking shelter in a school basement.
>
> 442. As they were approaching the intersection of Zhovtneva and Vokzalna Streets, they suddenly heard gunfire, and the car was hit without warning. The man who was driving was shot in the right side of his hip and the woman was injured in her eye by glass from the broken windshield. The driver stopped at the intersection of Zhovtneva and Dymytrova Streets. All three civilians got out of the car and hid behind it. The victims saw two Russian soldiers who continued to shoot in their direction as they approached the car. One of the victims shouted at them repeatedly that they were civilians and that two persons were injured. The soldiers eventually stopped shooting. They interrogated the civilians, verified their identity documents and their phones, and finally allowed them to drive to the hospital to seek medical help. As they were leaving,

the civilians noticed several Russian military vehicles parked about 100-150 m from where the car was attacked.

443. The Commission interviewed all three persons who were in the car, two of them still recovering from the injuries they suffered. The video of the car after the attack, which the Commission has reviewed, shows damage that is suggestive of an attack by small arms from the front and left side, which is consistent with the description of the events by the three survivors.

...

Katiuzhanka village, Kyiv region, 28 February 2022

449. On 28 February 2022, at around 5 p.m., a family of four, composed of two men, one woman and a 13-year-old girl, left their relatives' house on Poshtova Street to drive home on Vyshhorodska Street. They were driving a white Hyundai Sonata with a big "Bolt" sign on the side. As they approached the intersection with Taras Shevchenko Street, they encountered a convoy of Russian military vehicles. When the driver stopped the car and tried to turn it around, the convoy opened fire on them without warning. The man in the driver's seat and the woman on the passenger's seat were killed. The 13 year-old girl, although injured, managed to get out of the car together with the second man who was unharmed. The car subsequently caught fire.

450. The Commission interviewed the relatives of the victims who confirmed hearing the sound of gunfire and were the first to arrive to the place of the incident. A short video they shared with the Commission shows a civilian vehicle on fire, with two bodies lying on the ground, one partly burned and still burning. This is consistent with the account of the events by the surviving man, who pulled the bodies out of the car and unsuccessfully tried to extinguish the flames on the other man's body. Medical documents reviewed by the Commission indicate that the woman died of gunshot injury to the chest, and that the 13-year-old girl was hospitalized on 1 March 2022, with injury to her right arm and hip.

Peremoha village, Kyiv region, 11 March 2022

451. On 11 March 2022, at around noon, 17 civilians, including children, fled from their homes in the village of Peremoha, which was occupied by Russian armed forces since 28 February 2022. They drove to the south, towards the village of Hostroluchchia, which at the time was under the control of Ukrainian armed forces. The convoy consisted of five civilian cars: an old Moskvitch, a black Opel Astra, a dark red Dacia Logan, a silver Kia, and a white Volkswagen. All cars had a white cloth wrapped around the side mirrors, to indicate that they had civilians on board.

452. As they exited Peremoha, they passed a Russian armed forces checkpoint, where soldiers advised them to keep the windows open, so that everyone could see they were civilians. After about a five to 10 minutes' drive on a road surrounded by open fields, the convoy was attacked from several directions, including from the back. At least four civilians were killed: Tetiana Makarivna Scherbyna (born 1970), Petro Petrovych Scherbyna (born 1957), Elisei Yevhenovych Riabokon, a 14-year-old boy, all three in the second car, and an unidentified 18-year-old young man, in the fifth car.

453. The Commission interviewed survivors of the attack and reviewed documents, as well as photo and video evidence. Medical documents for three of the killed civilians indicate that they died of multiple gunshot injuries to the chest, head, and torso. Photos and a video of the black Opel Astra, in which three of the victims were killed, show multiple bullet holes on the left rear door and signs of the use of explosive weapons in the back of the car.

...

E40 highway, Kyiv region

462. The Commission has documented three incidents on or in the vicinity of E40 highway, also known as the Zhytomyr highway, in the Kyiv region. The highway connects Kyiv with Western Ukraine and was used by many civilians from the parts of the Kyiv region, which were then occupied by Russian armed forces, to flee to safety. The Commission has recorded credible allegations of at least five additional similar incidents, that took place close to Kyiv.

463. In January 2023, Ukrainian authorities publicly identified the 5th Separate Tank Brigade of the 36th Combined Arms Army of the Russian armed forces as responsible for attacks on ten civilian cars on Zhytomyr highway between 4 and 25 March 2022, which killed 13 civilians and injured six. According to the authorities, Russian soldiers were based in the village of Berezivka and near the village of Myla. The Commission has corroborated that the 5th Tank Brigade was stationed in the area.

...

E40 highway, Kharkiv region

474. The Commission has documented four separate attacks on civilian vehicles in which three men and one woman were killed on the E40 highway, in the Kharkiv region, near a Sun Oil gas station, in the vicinity of Rohan village.

475. At the time of the attacks, Russian armed forces were stationed on a hill south of neighbouring Mala Rohan village, about 1.5 km north of the highway, and about 3.5 km from the Sun Oil gas station. They withdrew from the area after heavy fighting between 25 and 27 March 2022 ..."

(iii) Deprivation of liberty

910. The Commission of Inquiry documented multiple cases of deprivation of liberty. In late February and March 2022, the Russian armed forces had unlawfully confined large numbers of civilians in areas which they controlled. Victims included local authority personnel, Government personnel, veterans of the Ukrainian armed forces, volunteers evacuating civilians and civilians who appeared to have been randomly arrested. While the majority had been young or middle-aged men, women, children and older persons had also been confined. The Russian armed forces had detained individuals in makeshift facilities established in buildings they occupied, such as the basement of a school, an industrial facility, an agricultural facility, a train station, an airport and various dwellings. Victims had often not been informed of the reasons for their detention and these acts had not been reviewed by a judicial authority (C.II.75-76).

911. During the initial period of the control by the armed forces of the Russian Federation of localities in Ukraine, many of the cases of unlawful confinement had been committed in the context of house-to-house searches aimed at locating supporters of the Ukrainian armed forces or finding weapons. When the authorities of the Russian Federation had controlled areas for longer periods of time, they had established dedicated detention facilities,

used more diverse methods of torture and targeted persons who had refused to cooperate. According to victims and witnesses, a wider array of perpetrators had been involved in the commission of unlawful confinement, torture and sexual and gender-based violence, including perpetrators from the FSB, the National Guard of the Russian Federation and its subordinate units, and from armed groups from the "DPR" and the "LPR" (C.III.51-52). The Commission of Inquiry identified detention facilities in the Chernihiv, Donetsk, Kharkiv, Kherson, Kyiv and Zaporizhzhia regions of Ukraine and in the Russian Federation where the authorities of the Russian Federation had detained large numbers of people for long periods of time. It focused its investigation on fourteen such places. Procedural requirements for detention had not been met. In numerous cases, the confinement had been prolonged, with the longest having been for over nine months. Relatives had not been informed and the reasons for confinement had not been properly communicated (C.III.60).

912. Unlawful confinement had started at checkpoints or filtration points staffed by the armed forces of the Russian Federation, or on the street. The authorities of the Russian Federation had also detained people during house-to-house searches or at their workplaces (C.III.62).

913. The Commission of Inquiry found a pattern of widespread unlawful confinement in areas controlled by Russian armed forces. Wide categories of persons of different ages and occupations had been detained, at times in groups. In the cases examined, lawful reasons for the confinement of civilians often appeared to have been lacking. In all situations, procedural requirements for detention had not been met, which had also rendered detentions unlawful, and conditions had consistently been inhuman. The Commission of Inquiry noted that many people were still reported as missing (C.IV.482 and 484).

914. The Commission of Inquiry investigated cases in which Russian armed forces had detained persons who were influential in their communities in order to coerce them and the local residents to cooperate. In this regard, one emblematic case had been the detention of the mayor of Melitopol at the Palace of Culture of Melitopol, in the Zaporizhzhia region, in March 2022. In another situation, the head of a rural community in the Kherson region had been detained by Russian soldiers who had broken into her home in August 2022. The Commission of Inquiry had obtained the names of twenty-seven heads of territorial communities of Kherson region who had reportedly been detained by Russian authorities (C.IV.496).

915. The Commission of Inquiry found that in areas under their control, the Russian armed forces had established a filtration system, mainly at checkpoints and border points, to screen persons by verifying their documents and mobile phones and, at times, interrogating them. In some areas, the Russian armed forces had set up filtration points in the premises of schools, cultural houses or police stations. The overall procedure of filtration,

including the waiting time, could take up to several days. If during the process suspicions were aroused that a person maintained connections with Ukrainian armed forces or Ukrainian officials, filtration could lead to detention. This could also be the case if the person had a certain type of tattoos (C.IV.499).

916. In most of the documented cases, perpetrators had accused the detainees of assisting the Ukrainian armed forces, participating in the Territorial Defence Forces or being members of the local resistance against the occupation. In many cases, however, according to information available to the Commission of Inquiry, the victims had not or no longer been engaged in such activities at the relevant times. Hence, they had retained their civilian status and their confinement, without valid reasons, had been unlawful. Some family members of detained persons had told the Commission of Inquiry that the Russian authorities had given civilians the status of POWs where there was no evidence that the detainees had been combatants or had directly participated in hostilities at the relevant times. This had led them to lose their protected status (C.IV.500). The Commission of Inquiry had in addition documented numerous cases in which the Russian authorities had confined civilians based on information or indications that did not appear to amount to lawful grounds for detention. Some people had been detained because they had relatives in the SBU, Ukrainian law enforcement agencies or the former ATO. Other reasons invoked by the Russian authorities had included refusing to cooperate with the occupying Power, for example teachers and school principals who had refused to work under the occupying authorities' measures, protesting against the occupation, posting on social media, holding pro-Ukrainian positions, refusing to vote in so-called referenda, their religious affiliation or having certain types of tattoos (C.IV.502).

917. In one case, Russian soldiers had confined 365 people, including 70 children, for twenty days in the basement of a school in Yahidne village, Chernihiv region, in inhuman conditions. The soldiers had claimed that they were carrying out the confinement for the safety of the larger civilian group. However, such a claim had been meritless given that Russian armed forces had established a military base in the same school, transforming it into a military objective, and therefore had endangered the civilians detained in the basement, in violation of international humanitarian law. Victims had reported that soldiers had threatened to shoot them if they did not assemble in the basement (C.II.78 and C.IV.503).

918. The Commission of Inquiry found that Russian authorities had consistently violated procedural requirements relating to confinement. Documented detentions had lasted from three days to over nine months. In none of the examined cases had a judicial or administrative body reviewed the detention, as far as the Commission of Inquiry had been able to establish. At times, perpetrators had not communicated the reasons for the detention. In some cases, they had applied torture or psychological pressure to force those detained to acknowledge the allegations levelled against them. A local

businessman who had been detained in Balakliia, in the Kharkiv region, had told the Commission of Inquiry that for fifteen days, he had not known the reasons for his detention (C.IV.504).

919. Numerous people detained in areas that had been under Russian occupation were still missing several months after they had been taken into detention. Family members who had reached out to Russian authorities regarding the whereabouts of missing persons had reported that they had not received a response. For example, in Dymer town, Kyiv region, the Commission of Inquiry had received a list of 58 people from different places in the region who had not returned after having last been seen in the custody of the Russian armed forces. Relatives had received confirmation that some of these people were in detention in the Russian Federation, but the fate of many had remained unknown for long periods of time. In the Kharkiv region, interlocutors had told the Commission of Inquiry that their attempts to acquire information from the Russian authorities in occupied territory on the whereabouts of their family members had not yielded results, and that after the withdrawal of the Russian armed forces from certain areas, they still had no information about the fate of their family members. In the Kherson region, after the Russian Federation had relocated the local population and had retreated from the right bank to the left bank of the Dnipro river, they had also transferred people who were in detention. Family members had told the Commission of Inquiry that, as a consequence, they had lost contact with relatives who had been in detention facilities. Their searches mostly led to incomplete information received months or years after the initial detention, or no information at all. They sent letters and parcels, often without knowing if they reached their loved ones. Some family members had received information that their detained relatives were in the Russian Federation, but had been unable to ascertain their exact whereabouts. In other cases, people had received letters from their family members months after they had gone missing. Although the letters had not contained any return address or location, they had been stamped with “Russian Post – Free of Charge”, indicating that the senders were being held in the Russian Federation. Many families described the anguish of seeing their loved ones being taken away and not receiving even basic information about them. They described this uncertainty as unbearable. The wife of a man who had been missing for over two years, stated, “The despair is killing me. I don’t know what to do or how to help my husband. There are so many other civilians detained ... I don’t understand why the Russians keep them there” (C.III.66; C.IV.519-20; and C.VIII.10, 16 and 30).

920. The Commission of Inquiry corroborated a sample amounting to almost 100 cases in which Russian authorities had committed enforced disappearances, on a widespread scale, in all areas that came under their control in Ukraine. Many persons had been missing for months, or years. The Commission of Inquiry documented cases in which victims of enforced

disappearances have been executed, had died or were presumed dead. The Commission of Inquiry concluded that Russian authorities committed enforced disappearances as crimes against humanity (C.VIII.8).

921. The Commission of Inquiry found that the Russian authorities had maintained a makeshift detention facility at the Alians-Service metal plant, often referred to as "Viknaland", in the southern part of Dymer town, Kyiv region, when they had controlled the area between 5 and 28 March 2022. According to former detainees, women and men, sometimes more than forty at a time, had been held in a room of about 20 square metres making the space overcrowded (C.IV.536-37). The Russian authorities had also established a makeshift detention facility at the abandoned Railway Polyclinic located at Zavodska Street 35b in Izium, Kharkiv region. It had visited the facility and had documented inhuman conditions, ill-treatment and torture there, based on testimonies of 5 people who had been held there for up to fourteen days in June-July 2022. According to former detainees, they had been held in several garages of about 16 square metres in size, with up to 16 people in one garage. (C.IV.544-45). The Commission of Inquiry further found that the Russian authorities had maintained a detention facility at the police department in Izium. It had documented detentions that had lasted from five to fifty days (C.IV.548). The Russian authorities had also maintained a detention facility at the police department in Balakliia town, Kharkiv region. It had documented, based on accounts from 13 former detainees, that most detentions there had lasted about two weeks, while one man had been held there for ninety-five days (C.IV.552). Finally, the Russian authorities maintained a detention facility at the police department in Enerhodar city, Zaporizhzhia region. Four detainees who had been confined in this facility between March and August 2022 had been interviewed; their periods of confinement had lasted from one to fifty-three days (C.IV.557).

922. The Commission of Inquiry found that the Russian authorities had transferred and held detainees from Ukraine in SIZO-1, in the city of Kursk in the Russian Federation. The facility fell under the Federal Penitentiary Service Directorate for the Kursk region. The Commission of Inquiry had documented ill-treatment and torture at this facility based on testimonies of 11 former detainees who had been confined there between March and October 2022 (C.IV.561). The Russian authorities had also transferred and held Ukrainian detainees in SIZO-2, in Novozybkov city in the Russian Federation. The facility fell under the Federal Penitentiary Service Directorate for the Bryansk region. The Commission of Inquiry had documented ill-treatment and torture in this facility, based on testimonies of 7 former detainees who had been confined there between March and September 2022, for a duration of up to forty-two days. Former detainees had said that they had seen several hundred detainees from Ukraine in the facility, both men and women (C.IV.564).

(iv) Ill-treatment in detention and conditions of detention

923. The Commission of Inquiry found evidence that the Russian authorities had deployed specific services and security forces from the Russian Federation to various detention facilities in areas they controlled in Ukraine. Locally recruited personnel worked under their authority. The Commission of Inquiry found that those services and forces had acted in a coordinated manner, and according to a specific division of labour, in the commission of torture (C.VII.76).

924. The Commission of Inquiry concluded that torture had been systematic on the basis of the following indications. First, while unlawful confinement had affected broad categories of persons, the victims of torture seemed to have been selected deliberately: they were those suspected of sharing information with the Ukrainian forces or supporting Ukrainian military efforts; and those who had a family member affiliated with the Ukrainian forces. Second, there had been an underlying motivation to punish, intimidate, coerce or obtain information from those perceived to be supporting the Ukrainian armed forces and authorities. Perpetrators had also called some of these particular victims "nazis", "fascists" or "terrorists", thereby providing additional pretexts and motivation to torture them. Third and most importantly, in areas under prolonged Russian control, torture methods had been present and applied which required advance preparation or planning, such as electric shocks including the method of the so-called "call to Lenin" (the application of electric shocks with a military field phone connected to an electricity cable, or with clips on feet or fingers or men's genitals) (C.IV.489 and 521-33). Other common elements concerned the recurrent use of sexual violence as a form of torture in all types of detention facilities investigated and the general absence or denial of medical assistance in a context in which torture had been committed (C.VII.75). The Commission of Inquiry concluded that, based on the combination of these elements, it had sufficient evidence to determine that the Russian authorities had acted pursuant to a coordinated state policy of torturing Ukrainian civilians and POWs (C.VII.78).

925. The victims were women and men, civilians and POWs; the majority were civilians. Victims of torture included local officials, Government personnel, veterans of the Ukrainian armed forces, Ukrainian law enforcement personnel, employees of the Zaporizhzhia nuclear power plant, and volunteers evacuating civilians (C.IV.524).

926. The Commission of Inquiry had documented cases of torture in all nine regions in Ukraine where areas had been under Russian control, as well as in seven regions and one republic of the Russian Federation (C.VII.38). An enumeration of the detention facilities where the Commission of Inquiry had confirmed the use of torture was annexed to the Commission of Inquiry's October 2024 report. Torture was mainly committed in the context of detention and in conjunction with other crimes and human rights violations,

such as unlawful confinement, wilful killings and sexual violence. In the cases investigated, the Commission of Inquiry found that the torture inflicted amounted to war crimes and to corresponding human rights violations (C.III.77; C.IV.489 and 532; and C.VI.58 and 79-80). Torture was particularly severe against current or former members of the Ukrainian armed forces and associated persons and their relatives (C.IV.524).

927. The Commission of Inquiry found that Russian authorities had mostly used torture against civilians and POWs during confinement, including in improvised facilities at the location of military deployments, in seized buildings, medium-sized detention facilities in police stations or filtration points, and in well-established official penal colonies or pre-trial detention centres (C.VII.37). In October 2024 the Commission of Inquiry published a list of 30 detention facilities (of which 21 were in occupied territory in Ukraine) held by Russian authorities where the Commission of Inquiry had confirmed the use of torture through investigations since its appointment (see the list in the annex to C.VII).

928. Former detainees explained that in Ukraine, torture had been perpetrated by the Russian armed forces. In the Russian Federation, members of the special purpose units of the Federal Penitentiary Service of the Russian Federation and regular personnel of that Service, referred to as prison guards, had committed torture. The victims stated that interrogations had been led, in addition, by members of the FSB (C.VI.63). According to the victims and witnesses, the perpetrators had included members of the FSB; the armed forces, as well as the National Guard of the Russian Federation and its subordinate units; armed groups aligned with the Russian Federation from the so-called "DPR" and "LPR"; and personnel of the Wagner Group, at that time a private military company (see *Ukraine and the Netherlands v. Russia* (dec.), cited above, § 200).

929. In most cases investigated, Russian armed forces had confined large groups of Ukrainian POWs as they seized control of localities in Ukraine. They had transferred and detained them for periods spanning from nine to fifteen and a half months, in up to seven different locations in the Russian Federation and in Ukraine (C.IV.561-63 and C.VI.62). Former detainees had consistently described the same harsh practices used in those facilities and in the same sequence, designed to scare, break, humiliate, coerce and punish. Interlocutors had stated that civilians and POWs had generally been subjected to similar treatment (C.VII.40-41).

930. Testimonies described a brutal so-called "admission procedure" applied upon the arrival of new detainees, with methods designed to instil fear and exert physical and psychological pressure. Detainees had generally been rushed into the premises and forced to run through a corridor lined with personnel from the detention facilities or in the yard while being beaten. Some had been beaten again if they fell. Beatings had been inflicted on various parts of detainees' bodies, at times accompanied by electric shocks. Detainees had

received orders to undress and to remain naked, for time periods going beyond possible security requirements. Some of them had already sustained serious injuries during this initial process (C.IV.562, 565-66 and 617). Harsh practices had been used routinely throughout the detention period. These had mainly consisted of beating sessions in the corridors or yards of the premises, in the showers or during regular searches of the cells. In many cases, special purpose units and regular personnel of detention facilities had beaten detainees after lining them up in corridors in a "stretch position", with feet and hands apart. Some practices had included the use of sexual violence and the administering of electric shocks. (C.VII.44 and 49). Personnel of detention facilities had imposed a series of rules, such as a prohibition to sit or even lean against the wall during long periods, in some facilities also during the night. They had ordered detainees to squat, at times hundreds of times per day, or to remain in squat position for hours. Detainees had been made to walk hunched, with heads down at all times, to avoid looking at detention facility personnel. According to former detainees, personnel had imposed severe collective punishment against all detainees from the same cell in case of a perceived failure to respect the rules and orders, for instance if a detainee had not exercised correctly, had fallen or had attempted to sit. Punishment had often consisted of beating detainees lined up in the corridor (C.VII.45).

931. Interrogations had been accompanied by some of the most violent treatment documented, including severe beatings, sessions of electric shocks with tasers or wires attached to various body parts, at times in combination with water to amplify the effects, and burns to parts of the body. In addition to extracting information, interrogations had been aimed at eliciting false declarations implicating the detainees or persons they knew in crimes, particularly in alleged killings of civilians in Mariupol (C.VII.46). In most of the cases, long interrogation sessions had taken place, sometimes lasting for days, which had been combined with torture, ill-treatment, threats and sexual and, in some cases, gender-based violence. Victims had often been brought to the places of detention or interrogation and their hands kept tied together or handcuffed, legs tied together and eyes blindfolded, and had had clothes or bags placed on their heads. Former detainees had reported that they had been asked about the movement, positions and supporters of the Ukrainian armed forces and locations of the Territorial Defence Forces and their numbers. Witnesses had described hearing the loud and "unbearable" screams of their co-detainees during interrogation sessions. Former detainees had reported that during interrogation and torture sessions, the Russian armed forces had referred to them as "fascists", "nazis", "livestock", "terrorists", or "supporters of terrorists preventing the liberation process". On several occasions, they had forced the detainees to say "glory to Russia" and "glory to Putin". One victim who had been in the Olenivka penal colony had reported that perpetrators held "denazification sessions", during which they had forced

the victims to lie down, stepped on their heads and legs and beaten them. (C.IV.526).

932. The methods of torture and other ill-treatment had included prolonged beatings with rifle butts or batons; electric shocks; rape; threats of execution or mock executions; tying of hands or handcuffing and tying of legs; blindfolding with cloth, tape or bags placed over heads; placing a victim's head in a barrel of water, called "drowning"; slashing various parts of the body; prolonged exposure to cold; and depriving detainees of sleep. Survivors had sustained short-term and long-term injuries and trauma such as broken facial bones, ribs, knees and fingers, and bruises or injuries leading to the inability to walk. In some instances the ill-treatment had been so severe that it had led to death. In some cases ill-treatment had been followed by execution (C.III.75; C.IV.527-28, 538 and 604; C.V.66; and C.VI.66-67).

933. The Commission of Inquiry also collected testimonies concerning acts that amounted to sexual violence as a form of torture committed in 41 detention facilities of various types, in the Russian Federation and in areas of Ukraine under Russian control. Such acts included rape and attempted rape, sometimes with the use of objects, beatings, electric shocks, burns or other attacks on genital organs, forced nudity going beyond possible security requirements, threats of sexual mutilation and castration and intrusive body searches. According to testimonies, in each detention facility maintained by Russian authorities documented so far, perpetrators had used at least one or a combination of several of the above-mentioned methods. Some forms of sexual violence had been recurrent in certain detention facilities. The victims had been men and women, civilians and POWs. While in its initial reports the Commission of Inquiry described the systematic use of sexual violence as a form of torture by Russian authorities in detention facilities mostly against men, additional investigation of cases of rape and forced nudity from March, April and May 2022 revealed further actions aimed at humiliating and degrading women in detention. The acts perpetrated were so brutal that many victims needed surgery afterwards. Most POWs who had been detained by the Russian authorities had reported having been subjected to sexual violence. There were victims who had stated that perpetrators had acted as if they had expertise in inflicting suffering (C.VII.47 and 80; and C.VIII.48-55).

934. In addition to rape, the methods had included electric shocks on genitals, traction on the penis using a rope and emasculation. According to the survivors, the perpetrators had aimed to extract information or confessions, force cooperation, punish, intimidate or humiliate victims as individuals or as a group (C.III.81). In carrying out their investigations the Commission of Inquiry had examined the testimonies of victims and authenticated open-source videos and photographs of the bodies of deceased victims.

935. By way of specific examples concerning sexual attacks on detainees and POWs, the Commission of Inquiry had analysed three sets of video

footage which had emerged in July 2022 and which showed four members of the armed forces of the Russian Federation emasculating and then shooting dead a wounded Ukrainian POW. After analysing all the information at their disposal, the Commission of Inquiry had identified two of the suspected perpetrators on the video and the unit to which they belonged, namely the "Akhmat-Special Rapid Response Unit" of the Russian armed forces (C.IV.608).

936. A former POW, who had been detained in the Olenivka penal colony in the Donetsk region, had reported that the Russian armed forces had used methods such as electric shocks on men's genitals or lifting them with a rope tied to their genitals in order to force them to sign self-incriminating statements. Another man, who had been detained at the Izium Railway Hospital in the Kharkiv region, had told the Commission of Inquiry that Russian authorities had attempted to put clips on his genitals in order to administer electroshocks but had had to discontinue as he had lost consciousness. In SIZO-5 in Donetsk city, electric shocks on genitals had reportedly also been used (C.IV.604).

937. Other evidence examined by the Commission of Inquiry had included photographs showing the bodies of two members of the Ukrainian Territorial Defence Forces who had been detained and then killed in March 2022. One of the bodies had borne signs consistent with sexual violence. Video footage which had emerged in April 2022 and which had been examined by the Commission of Inquiry showed the bodies of seven men in Ukrainian military uniforms. One of the bodies, lying on his belly, had his trousers pulled down to his ankles and underwear pulled down to his knees and presented signs highly suggestive of sexual violence. Another example involved a priest who had been detained by Russian forces in March 2022 in Kherson city. During his detention soldiers had tied the priest's hands and hooded him, beaten and strangled him, undressed him, threatened to rape him using a baton and, according to the victim, attempted to penetrate his anus; all in order to force him to make statements agreeing to cooperate with the Russian-appointed authorities (C.IV.605-07). Similar cases were documented to have occurred in the Olenivka colony in May 2022 and in Kherson city in August and September 2022 (C.VII.81-84).

938. A number of women held by Russian soldiers in various detention centres in Balakliia and Izium in the Kharkiv region in June and July 2022 had also been raped, forced to carry out oral sex and threatened with rape. A woman told the Commission of Inquiry that in June 2022 Russian soldiers had detained her together with her 16-year-old daughter in the Printing House of Balakliia, Kharkiv region. During interrogation, after the perpetrators disliked her answers, they had stated that "now the real interrogation has started" and had asked her if she wanted to see how her daughter was raped. The woman, who had a heart condition, collapsed and required hospitalisation. A Ukrainian woman reported to the Commission of Inquiry

how, at the end of March 2022, Russian armed forces had detained her after searching her home, confined her first in Ukraine, deported her to the Russian Federation and detained her again in SIZO-1, in Kursk city. There, the Russian authorities had placed her in a room with male detainees. They had commented how they could easily have killed her, that no one would have been looking for her, how they could have raped her and no-one would have been punished for that, adding that they could have disposed of her body at the border and everyone would have thought that she had been raped and killed by Ukrainians (C.IV.609-11).

939. In nearly all the detention facilities investigated by the Commission of Inquiry, the conditions had been lacking in basic protection and requirements. Detention had often occurred in cramped and overcrowded cells, with detainees forced to share small spaces, to sleep on the floor or to take turns to sleep. On some occasions, men, women and children had been held together. In one instance, 10 older detainees had died during confinement in a school basement because of inhumane conditions, and other detainees, including children, had had to share the same space with the bodies of the deceased. In numerous detention facilities, there had been a lack of light and ventilation, and victims had described having had difficulties breathing. Absence of heating in freezing temperatures had been reported. Some detainees had been confined in metal cellars or placed outside in cold temperatures. In many of the facilities, sanitary provisions had been lacking and buckets had been used as toilets. Detainees had had to seek permission to take out the excrement from the cell. There had been limited or no possibility to wash. Access to food, water and medical care for some had been limited or non-existent. Victims had described receiving spoiled soup, leftovers, porridge or pieces of bread and dirty water in bottles. In some detention facilities, food had been brought by family members (C.IV.510-12). The food had been poor and scarce and, in some places, only two to seven minutes had been allowed for eating. Victims had reported deep suffering from hunger and had resorted to eating worms, soap, paper and remnants of dog food, leading to a sharp decline in body weight (C.VI.68).

940. The Commission of Inquiry found that in detention facilities maintained by the Russian authorities, there had been a general absence or denial of medical assistance to detainees who had been injured or ill, or who had suffered traumas after torture. According to testimonies, in some detention facilities medical personnel had been involved in the violent treatment of detainees or negligent acts. In rare instances where medical assistance had been provided, it had often appeared insufficient or inadequate. Victims and witnesses had reported deterioration of the health of those affected, at times coupled with severe complications, and even death (C.VII.50-57).

(v) Ill-treatment outside detention facilities

941. Outside detention facilities, the Commission of Inquiry documented numerous cases of ill-treatment and torture before execution or death (C.IV.314-15, 322, 363-64, 384, 390 and 421). For example, in a widely reported case from 23 March 2022, the head of Motyzhyn village, in the Kyiv region, had been detained and subsequently executed alongside with her family. A witness who had participated in the exhumation of the bodies had reported that the husband of the head of the village had broken hands, while her adult son had a gunshot wound in his knee (C.IV.313).

942. The Commission of Inquiry had also documented cases in which victims had been subjected to rape and sexual violence when Russian armed forces had broken into their homes in areas under their control. Sexual violence had been carried out during house-to-house searches for persons collaborating or sympathising with the Ukrainian authorities. The perpetrators had been Russian soldiers, who had identified women in a vulnerable situation during one or several initial searches of their houses (C.VII.86).

943. The Commission of Inquiry established that sexual violence, including rape, threat of rape, sexual slavery and forced nudity involving women, men, and girls, of an age range from four to over 80, had been carried out by members of the Russian armed forces across the areas of Ukraine they controlled and also in the Russian Federation, as well as, in some cases by members of the "DPR" and the "LPR" (C.III.79). Perpetrators had raped the women and girls in their homes or had taken them and raped them in unoccupied dwellings. According to the reports, sexual violence had often been carried out at gunpoint, with extreme brutality and accompanied by others acts of torture, such as beatings and strangulations. At times, the perpetrators had threatened to kill the victim or her family if she resisted. Indeed, in a number of instances the perpetrators had tortured or executed husbands and other male relatives. Family members, including children, had sometimes been forced to watch the perpetrators rape their loved ones. If they had not been in the same room, they had been able to hear the victims' ordeal without the possibility of intervening (see, for example, C.II.88 and C.IV.586).

944. The Commission of Inquiry expressed the view that, in a number of cases, the control and power exercised over the victim had been such that the perpetrators' behaviour had amounted to sexual slavery. For example, in March 2022, in a village in the Chernihiv region, Russian soldiers had occupied the home of the victim for twenty days. Every night, the unit commander had slept with a 16-year-old girl and had raped, strangled, and beaten her. He had threatened to kill her relatives and to have soldiers of his unit gang rape her. The Commission of Inquiry received allegations regarding two other cases in which Russian soldiers had exercised their power over members of two families, requiring them to cook or do their laundry, while

regularly raping and abusing a woman and a 14-year-old-girl, respectively (C.IV.582 and 593).

945. The Commission of Inquiry provided the details of a large number of allegations reported to them and their specific findings of sexual violence carried out in the course of house-to-house searches (C.II.90-96, C.IV.586-98 and C.VII.87-89). For example, in the Kyiv region in March 2022 two Russian soldiers had entered a home, raped a 22-year-old woman several times, committed acts of sexual violence on her husband and forced the couple to have sexual intercourse in their presence. One of the soldiers had then forced their four-year-old daughter to perform oral sex on him (C.II.90). The Commission of Inquiry's further findings regarding the Kyiv region included the rape of 6 other women in five different villages in March 2022 by Russian soldiers. In four of the cases the soldiers had also killed the women's husbands who had tried to stop them. In some of the cases the victim had been raped multiple times by the same soldier, and in some others several soldiers had raped the same victim. The soldiers had also beaten them up, in one case until the victim had lost consciousness. In a village in March 2022 two Russian soldiers had raped a 42-year-old pregnant woman and the 17-year-old girlfriend of her son at gunpoint while forcing that son to watch. In another case a pregnant victim had begged the three Russian soldiers who had forced their way into her house to spare her, in vain. She had been beaten up, her teeth had been broken, she had been raped by two of the soldiers and had had a miscarriage a few days later. The Ukrainian authorities had launched an investigation into the incident and identified two of the perpetrators. (C.IV.591). Furthermore, in June 2022, the Ukrainian authorities had initiated criminal proceedings against a soldier from the 239th Regiment of the 90th Guards Tank Division of the Armed Forces of the Russian Federation for the rape of one of the above-mentioned victims and for the murder of her husband (C.IV.589).

946. In a village in the Chernihiv region in March 2022 neighbours had found the body of an 82-year-old woman in her flat, partially undressed and with blood around her genitals. At the request of the family, the authorities had not performed a full autopsy. In another instance in Chernihiv, also in March 2022, a Russian armed forces serviceman had broken into a house, threatened the inhabitants with his weapon and attempted to rape a woman in front of her three-year-old son (C.IV.593-94).

947. In mid-March 2022, in a village in the Kharkiv region which was under the control of the Russian armed forces at the time, a number of soldiers had forced their way into the basement of a school in which approximately 40 inhabitants, mostly women and girls, had taken shelter. One of the soldiers, who was armed, had ordered everyone to line up. Then he had taken one of the women into one of the empty classrooms. At gunpoint, he had ordered her to undress and had raped her several times. He had also slashed her cheek and neck and cut off some of her hair (C.IV.595.) In another case investigated by

the Commission of Inquiry in the Kharkiv region, starting in March 2022 a Russian armed forces commander had reportedly sexually abused and raped a 14-year-old girl living with her mother and her 17-year-old brother, repeatedly over a period of almost four months. In another case, at the beginning of July 2022, several drunk Russian soldiers had gone to the house of a 72-year-old woman where one of them had reportedly beaten her, undressed her, pushed her onto the bed, unsuccessfully attempted to penetrate her and forced her to perform oral sex on him (C.IV.596).

948. In another incident, in mid-March 2022 in a village of the Kherson region, two Russian soldiers had entered a home where two girls, aged 12 and 16, were present. One of the soldiers, intoxicated, had called for the 16-year-old and ordered her to undress. The attacker had then reportedly assaulted the adolescent girl, strangled her, said he would kill her, adding "either you sleep with me now or I will bring 20 more men", and raped her (C.IV.598). In another case in April 2022, a Russian army officer had beaten up and repeatedly raped a 15-year-old girl in a village in Kherson. Also in Kherson, an 83-year-old woman had been raped multiple times by a Russian armed forces serviceman in her house, where her physically disabled husband was also present (C.V.83). Further examples in the Kherson region included the rapes of three other women, aged 50, 59 and 75, by Russian soldiers between April and July 2022, and the subsequent killing of the 50-year-old victim after she had made a complaint about her rape to the Unit Commander (C.V.84-86).

949. In order to protect themselves some women had resorted to tactics to avoid attracting Russian soldiers' attention when they had to go out, such as wearing dirty and baggy clothes and not doing their hair. When Russian soldiers had checked homes or shelters, some inhabitants had hidden younger women as they feared that the soldiers would take them away and sexually abuse them (C.IV.584).

950. According to the reports' findings, sexual violence carried out by the Russian forces had severely impacted victims, their families and their communities. Victims had shared feelings of shame, anger and fear with the Commission of Inquiry. Psychologists who assisted victims had told the Commission of Inquiry that survivors believed that Russian soldiers committed rapes to humiliate the victims. Another psychologist and a lawyer supporting survivors of rape had said that Russian soldiers had used xenophobic and vulgar expressions while they raped two girls (C.IV.585). The Commission of Inquiry had received many accounts of psychological trauma resulting from sexual and gender-based violence. Some survivors of rape or relatives forced to watch someone close to them being raped had expressed that they were suffering from trauma and had had suicidal thoughts, or had even attempted suicide. One man had explained that shortly after Russian soldiers had committed sexual violence on him in public thereby humiliating him, his hair and beard had turned completely white overnight.

Another survivor, whose husband had been killed by Russian soldiers, had said that her daughter and her newborn grandson had saved her from suicide and that she was now living for them. A young girl victim of rape by a Russian soldier was now scared at the sight of persons in uniform (C.IV.639).

951. The Commission of Inquiry reported that, as of 27 January 2023, the prosecution services of Ukraine had been seized of 166 cases of sexual violence relating to the ongoing armed conflict, 11 of which concerned child victims. Some of the alleged perpetrators had been identified and proceedings against them had been initiated (C.IV.572). In its report of October 2024, the Commission of Inquiry also noted that the Ukrainian authorities had opened 872 investigations concerning cases of torture in the context of the ongoing armed conflict and had issued indictments against 125 persons. The Commission of Inquiry's request to the Russian Federation, asking whether it had conducted investigations concerning reports of torture by Russian authorities of Ukrainian nationals, both in Ukraine and in the Russian Federation, remained unanswered (C.VII.39).

952. In addition to the above, the Commission of Inquiry found that in a variety of situations, members of the Russian armed forces had ordered people to fully or partially undress, as part of detention and interrogation processes or to verify the presence of tattoos. Victims had been men, women and adolescents. The Commission of Inquiry had documented such cases in the Donetsk, Kharkiv and Kyiv regions of Ukraine, and in the Russian Federation. The Commission of Inquiry had documented situations in which Russian soldiers had ordered people to undress when stopped at filtration points, checkpoints or in the streets, and during detention. Sometimes, victims had been told to undress up to the waist, sometimes they had been ordered to remove all their clothes, except underwear, and other times they had had to fully undress. Some victims had reported that they had been forced to undress or remain naked for long periods of time, during the so-called "acceptance procedure" or during interrogations. Moreover, in detention, Russian soldiers had subjected women and men to intimate searches in a humiliating environment (C.IV.615-17). For example, at the end of March 2022 one man had gone through a filtration process as part of a group evacuating from Mariupol. The Russian armed forces had told him to remove all his clothes so they could check whether he had tattoos. They had checked his wife in a separate room; she had been allowed to keep on her underwear. Other men and women from the same group had undergone the same process. Children had not been subjected to this procedure, with the exception of a 17-year-old boy who had looked "suspicious" to the Russian armed forces (C.IV.619). Other similar cases had been reported (C.IV.618-23). According to the Commission of Inquiry, the use of forced nudity had gone beyond what would have been acceptable in the framework of a security verification and had in fact been part of a process of ill-treatment and humiliation.

953. The Commission of Inquiry found that the general feeling that violations were being committed with impunity had been an important source of fear and anxiety. For instance, the wife of a detained person had said that the fear of being shelled and killed aside, the knowledge that you could be detained and killed at any moment, or that you could live without the respect of the rule of law, was terrifying. One man had explained that when his family heard the sound of a vehicle at night, they wondered if people were "coming for them". (C.IV.799).

954. The violent death of a close family member, and especially the knowledge that this had been preceded by torture or ill-treatment, had had a profound impact on the families. Those interviewed by the Commission of Inquiry had spoken of their pain, anger and struggle to come to terms with their loss. One woman whose husband had disappeared during the occupation of their village by the Russian armed forces and whose burned body had later been found in a cellar of a private house, had told the Commission of Inquiry, "I cry every single day. I had a husband, a good man, hardworking, caring, wonderful father and grandfather ... I've lost my husband, my house, and my work. How should I go on living?" (C.IV.315).

(vi) Forced labour

955. In its conference room paper of 29 August 2023, the Commission of Inquiry reported (C.IV):

> "712. Ahead of the 24 February 2022 Russian Federation invasion of Ukraine, on 19 February 2022, Russian-backed de facto authorities of the former so-called Donetsk and Luhansk People's Republics announced a 'general mobilisation'. The mobilization concerned all men aged 18 to 55. The Commission interviewed and reviewed allegations relating to over 65 situations in which men in this age group were forcibly conscripted by Russian authorities in the former self-proclaimed 'republics'. In the majority of situations reviewed, enlistment occurred between 19 February and 1 March 2022. They were prisoners of war in Ukraine-controlled territories at the time they were interviewed.
>
> 713. Under international humanitarian law, an Occupying Power may not compel protected persons to serve in its armed or auxiliary forces, and no pressure or propaganda which aims at securing voluntary enlistment is permitted.
>
> 714. The Commission interviewed the wife of a 48-year-old Ukrainian citizen resident of so-called Luhansk People's Republic. She said that her husband was conscripted by Russian-backed de facto authorities. On 24 February 2022, he received a telephone call from the head of the village council requesting him to present himself to the conscription office. He was threatened to lose his salary and pension in case of refusal. He never received a written summons but reported for duty within two hours. Reportedly, he was sent to dig trenches in the occupied territory of Kharkiv region."

(b) OHCHR reports

(i) "The situation of human rights in Ukraine in the context of the armed attack by the Russian Federation, 24 February to 15 May 2022", report of 29 June 2022

956. The OHCHR reported that as of 15 May 2022, over 1,200 civilian bodies had been recovered in the Kyiv region alone after the Russian forces had left occupied areas. Hundreds of civilians had allegedly been killed by the Russian armed forces in situations that had not been linked to active fighting. The OHCHR explained that it was working to corroborate over 300 allegations of such killings. In Bucha alone, the OHCHR had documented that at least 50 civilians had been killed by the Russian armed forces while the city had been under Russian occupation. Most victims were men, but there were also women and children. Civilians had been shot while trying to leave the area in their vehicles; Russian soldiers had summarily executed unarmed local civilian men suspected of providing support to Ukrainian forces or otherwise considered to pose a possible future threat; others had been shot by soldiers in the streets or by snipers as they had tried to cross the road or otherwise gather essentials for life; and some civilians seemed to have been killed completely arbitrarily (B735).

957. In the same report, the OHCHR explained that it had corroborated a number of complaints of torture and ill-treatment of people in detention with a view to compelling them to confess to cooperating with the government of Ukraine as well as to provide information to or cooperate with the Russian armed forces. In particular, victims had reported that they had been kept tied and blindfolded for several days; beaten and kicked; subjected to mock executions; threatened with sexual violence; put in a closed metal box; forced to sing or shout glorifying slogans; provided with no or scarce food or water; and held in overcrowded rooms with no sanitation. When dealing with the large number of civilians whose bodies had been found in areas in Kyiv, including Bucha, the OHCHR noted that those perceived as providing support to Ukrainian forces had sometimes been tortured before being killed. At the end of May 2022, the OHCHR stated that it was aware of 108 allegations of acts of conflict-related sexual violence against women, girls, men and boys that had reportedly taken place in the Chernihiv, Dnipropetrovsk, Donetsk, Kharkiv, Kyiv, Kherson, Luhansk, Mykolaiv, Vinnytsia, Zaporizhzhia and Zhytomyr regions of Ukraine and in a detention facility in the Russian Federation. There were 78 allegations of rape, including gang rape, 7 of attempted rape, 15 of forced public stripping and eight of other forms of sexual violence, such as sexualised torture, unwanted sexual touching and threats of sexual violence. The alleged perpetrators in the vast majority of these cases had been from the ranks of the Russian armed forces and from Russian-affiliated armed groups. Out of all allegations received, 59 had allegedly occurred in the Kyiv region where Russian armed forces had been stationed. Rape, including gang rape, against civilian women was allegedly

the most common form of conflict-related sexual violence committed by the Russian armed forces. In 18 cases victims had allegedly been killed or died after being raped. Out of the 108 cases, the OHCHR had verified 23 at the time of the report's publication. They included rape, gang rape, torture, forced public stripping, threats of sexual violence and other forms of sexual violence. Nine cases of conflict-related sexual violence had been against women, 13 against men and 1 against a girl (threat of sexual violence). The OHCHR had also corroborated reports of Ukrainian POWs being subjected to so-called "admissions" on their arrival at the places of internment which included threats of sexual violence and other forms of ill-treatment (B736-38).

958. The OHCHR confirmed, through individual interviews, the allegations of forced conscription of men by Russian-affiliated armed groups at the end of February 2022. Some men had been working in the public sector, including in educational facilities, in territory controlled by the separatist armed groups and had been requested by their employer or local military commissariats to come immediately to designated assembly points. Others had been stopped on the street by representatives of local commissariats and forcefully taken to the assembly points, where they had observed hundreds of other recruits. Recruited men, mainly without military training or experience, and no training on international humanitarian law or first aid, had received uniforms with no insignia and had been sent to the front line just a few days after their recruitment (B739).

(ii) "Human rights situation in Ukraine between 1 February and 31 July 2022", report of 27 September 2022

959. The OHCHR reported that it had continued to corroborate allegations of the killings of hundreds of civilians by the Russian armed forces while they had controlled settlements in the Kyiv, Chernihiv, Sumy and Kharkiv regions in February and March 2022. As of 31 July 2022, local authorities had reported that over 1,346 civilian bodies had been recovered in the Kyiv region. This included civilians killed as a direct result of hostilities, civilians killed unlawfully, including by summary execution, and civilians who had died because of stresses on their health resulting from the hostilities or lack of access to medical aid (B745).

960. The OHCHR also reported credible information received regarding the deaths of two Ukrainian servicemen as a result of torture. The first victim had reportedly been beaten and electrocuted to death by members of the Russian armed forces on 9 May 2022 at the Melitopol airfield. Two witnesses had told the OHCHR that the victim had been brought to the classroom of a pilot school showing signs of torture and had died soon after. The second victim had reportedly sustained lethal blows when guards had beaten POWs upon their arrival at the Volnovakha penal colony near Olenivka, Donetsk region, on 17 April 2022 (B748).

961. The report referred to 407 documented cases of enforced disappearance (359 men, 47 women, 1 boy) of representatives of local authorities, journalists, civil society activists and other civilians, attributable to the Russian armed forces and affiliated armed groups. Among the victims, 17 men and 1 woman had eventually been found dead (B746).

962. The report provided details of the torture and ill-treatment of civilian detainees by Russian security forces and affiliated armed groups in most areas under Russian control. Out of the 38 civilians released from detention (34 men, 4 women) and interviewed by OHCHR, 33 had reported having been subjected to torture and ill-treatment while in detention in order to force them to confess to having cooperated with the Ukrainian armed forces, to force them to cooperate with Russian armed forces or affiliated armed groups, or simply to intimidate them. In some cases, the torture had lasted for several hours and caused severe injuries. The female interviewees had not reported any specific forms of torture or ill-treatment, but had mentioned poor conditions of detention, including overcrowded cells and lack of adequate food or water. The OHCHR had corroborated the case of three civilian men who had been tortured and then killed in March 2022 in Stoianka, Kyiv region, a village controlled by Russian armed forces. The report also documented the cases of 2 men who had been detained in March 2022 and tortured to death in Kherson by the Russian armed forces; and the torture and ill-treatment of a group of 4 civilians, including 2 priests, who had volunteered to retrieve the bodies of Ukrainian soldiers believed to have been killed on Zmiinyi island on 25 February. The OHCHR further set out the details of 43 cases of conflict-related sexual violence verified by them during that period. Thirty of them had been committed by the Russian armed forces or law enforcement personnel (B746-47).

963. The majority of cases of conflict-related sexual violence documented by the OHCHR against women and girls had occurred while Russian armed forces were stationed in residential areas, close to their military positions. In these cases, women had been subjected to rape, including gang rape, by members of Russian armed forces. The majority of conflict-related sexual violence cases against men had occurred in the context of detention by Russian armed forces. Beatings in the genital area, electric shocks to genitals, forced nudity, unjustified cavity and body searches, and threats of rape against detainees and their loved ones had been used as a method of torture and ill-treatment to intimidate, punish or extract confessions. The OHCHR had also received a number of allegations of sexual violence and harassment of women at checkpoints during filtration processes organised by Russian armed forces personnel (B747).

964. The report documented 65 cases of forced recruitment by Russian-affiliated armed groups during the reporting period of 1 February to 31 July 2022. According to information received, men between 19 and 55 years old, mainly students and employees of the public sector, were

requested by their employers, military "commissariats" or university administrations to report to designated assembly points for enlistment. Refusal to be conscripted led to criminal prosecution (B749).

(iii) "Killings of civilians: summary executions and attacks on individual civilians in Kyiv, Chernihiv, and Sumy regions in the context of the Russian Federation's armed attack against Ukraine between 24 February and 31 October 2022", thematic report of 7 December 2022

965. The OHCHR's report, which concerned the period between 24 February and 31 October 2022, covered both summary executions and attacks on individual civilians committed in parts of the Kyiv, Chernihiv and Sumy regions of Ukraine while they had been under the military control of the Russian Federation. The OHCHR reported that it had documented summary executions and attacks on individual civilians in 102 villages and towns of the three regions between 24 February and 6 April 2022. According to the OHCHR, the acts in question had been committed by the Russian armed forces in control of these areas and had led to the deaths of at least 441 civilians. It observed that the total number of summary executions and lethal attacks directed against individual civilians by the Russian armed forces in the three regions during the reporting period was likely considerably higher: at the time of publication an additional 198 alleged killings in the three regions were in the process of being corroborated by the OHCHR (B756).

966. One hundred of the documented killings were analysed in the report as illustrative examples of the suffering borne by civilians in these areas. Fifty-seven of the killings were assessed as summary executions. Thirty of those had taken place in places of detention and the remaining 27 victims had been summarily executed on the spot, shortly after coming under the control of the perpetrators. In the remaining 43 killings, civilians had been killed while moving within or between settlements on foot or by bicycle, car or van. Most victims had been targeted while commuting to work, delivering food to others, visiting neighbours or relatives or attempting to flee the hostilities. In some cases, soldiers of the Russian armed forces had opened fire on civilian households. In all documented cases, the OHCHR found that the perpetrators had made no apparent attempt to respect the principle of distinction or the obligation to take all feasible precautions to spare civilians (ibid.).

(iv) "Human rights situation in Ukraine between 1 August 2022 and 31 January 2023", report of 24 March 2023

967. The OHCHR reported that it had documented an additional 21 killings by Russian armed forces, both through summary executions and attacks on individual civilians: 17 in the Kyiv region, 5 in the Kharkiv region and 2 in the Zaporizhzhia region (B758). It underlined that the Russian Federation had not granted it access to places of internment of Ukrainian

POWs despite repeated requests. However, it had interviewed 142 Ukrainian POWs after their release and repatriation or return and had thus documented serious violations of international humanitarian law and gross violations of international human rights law, including 14 summary executions and 6 deaths of wounded POWs due to lack of medical attention (B761).

968. The OHCHR had also documented 214 cases of enforced disappearances and arbitrary detentions of civilians in territory of Ukraine that had been or remained under the occupation of the Russian Federation. The Russian armed forces had arrested victims in their homes, workplaces, in the street or at checkpoints during filtration processes. The OHCHR had documented 10 cases of enforced disappearances and arbitrary detentions of media workers and human rights defenders in territory occupied by the Russian Federation (B759 and 763).

969. The OHCHR had interviewed 89 individuals upon their release from captivity and had received additional information from relatives about their treatment in detention. Ninety-one percent of the individuals had reported acts amounting to torture and ill-treatment while deprived of their liberty. Members of the Russian armed forces and the FSB had reportedly tortured or otherwise ill-treated victims in order to force them to confess to providing assistance to the Ukrainian armed forces, to compel them to cooperate with the occupying authorities or to intimidate those with pro-Ukrainian views (B759). The OHCHR had also documented the case of a 27-year-old nurse whose body bearing marks of serious ill-treatment had been discovered in April 2022 in the Kharkiv region, and the torture and ill-treatment of POWs before or during their interrogations by so-called "prosecutors" of Russian-affiliated armed groups, either to compel them to confess, to testify against other individuals or to sign records of interrogations with statements that they had not provided (B758).

970. The OHCHR had also documented 109 cases of conflict-related sexual violence perpetrated by the Russian armed forces, law enforcement authorities or penitentiary staff, either in Russian-occupied territory of Ukraine or in the Russian Federation itself. Most of the documented cases had occurred either in the context of deprivation of liberty or in villages and communities that had been controlled by the Russian armed forces. In the majority of the cases of conflict-related sexual violence that had taken place in a context of deprivation of liberty it had been used as a form of torture or ill-treatment. It had consisted of rape, electrocution, burning, tying up and beating of genitals, forced nudity, forcing someone to watch or conduct sexual violence against another person, unjustified cavity or strip searches, homophobic insults and threats of sexual violence towards victims or their loved ones. Sexual violence had been directed mostly against male POWs, but also against detained civilian males. Sexual violence against women in detention had mainly consisted of unjustified strip searches or threats of sexual violence. Documented examples highlighted in the report included the

sexual violence against two Ukrainian POWs in July 2022 in Olenivka and Donetsk respectively by Russian-affiliated armed groups; the repeated rape of a woman by more than one perpetrator while she had been detained by the FSB in July 2022 who had also unsuccessfully sought to force her to tell them the whereabouts of her son, a SBU officer; and the rape at gunpoint of a woman in the Kyiv region in March 2022 (B760).

971. The OHCHR reported that it had documented that approximately 1,600 civilian prisoners who had been serving sentences in different penal colonies in the Kherson region before February 2022 had been transferred to the Russian Federation in early November and sent to penal colonies in the Krasnodar, Rostov and Volgograd regions. The OHCHR was able to establish the identity and general whereabouts of 75 of them. A family member of one such detainee had told the OHCHR that the man had first been transferred from where he had been serving his sentence to the Northern penal colony no. 90 in Kherson, where detainees had been forced to work repairing equipment for Russian military needs (B761).

(v) "Treatment of prisoners of war and persons hors de combat *in the context of the armed attack by the Russian Federation against Ukraine: 24 February 2022 to 23 February 2023", thematic report of 24 March 2023*

972. The OHCHR report examined, first, the treatment of Ukrainian POWs during their capture and evacuations. The OHCHR reported that it had documented the summary executions of 14 Ukrainian male POWs shortly after their capture by members of the Russian armed forces and Wagner Group military and security contractors. For example, in early April in Mariupol, Russian servicemen had tortured and then executed an officer of the National Guard of Ukraine when he had refused to provide the password to a radio station used by the Ukrainian armed forces. On 26 June members of the Wagner Group had captured six Ukrainian servicemen and had shot dead a prisoner after he stated having voluntarily joined the Ukrainian armed forces after the start of the Russian armed attack against Ukraine. On 11 September 2022 about 20 members of the Wagner Group had captured two wounded Ukrainian servicemen in the south of Bakhmut, Donetsk region. Shortly after, one of the Wagner Group contractors had executed one of the POWs because he was moaning in pain from his wounds, by shooting him three times in his chest and once in his head (B765). The OHCHR had also analysed videos widely disseminated via social media on 28 July 2022, which appeared to show a member of the Russian armed forces kicking the head of a man wearing a uniform of the Ukrainian armed forces, cutting off his testicles with a utility knife and shooting him dead. Although the OHCHR had not been able to establish the identity of the victim, it said that the incident did not appear staged (ibid.).

973. According to the interviews conducted with Ukrainian POWs who had been released by Russia from places of internment, 55 of them (52 men

and three women) had reported that, upon their capture, they had been subjected to torture or ill-treatment including sexual violence. They reported being beaten with fists, tactical gloves with knuckles, rifle butts, shovels, batons or sticks; kicked; stabbed, subjected to mock executions with the use of firearms; subjected to electric shocks; strangled; held in cold temperature without clothes and threatened with mutilation. Some of them lost their teeth or fingers, had their ribs, fingers or noses broken, or suffered from pain for extended periods of times. The OHCHR had documented six cases of torture of Ukrainian POWs at the Melitopol Air Base, where Russian armed forces had been stationed (B766). Many POWs had further reported poor and often humiliating conditions during their evacuation to transit camps and permanent places of internment, notably being packed into overcrowded vehicles, often half-naked, with hands tied behind their backs and lacking access to food, water and toilets (B768).

974. The OHCHR had, moreover, identified 48 places of internment located in Russian-occupied territory of Ukraine and the Russian Federation. Through the accounts of POWs who had spent time in these places of internment, the OHCHR had documented consistent patterns of torture and ill-treatment, poor detention conditions and lack of food, water and proper medical attention (ibid.).

975. As regards conditions of internment, 137 Ukrainian POWs (24 women and 113 men) had reported overcrowded cells, lacking beds, fresh air and adequate sanitation, as well as cold temperatures during early spring, autumn and winter in 18 places of internment. Of the 203 Ukrainian POWs interviewed by the OHCHR, 157 POWs (139 men and 18 women) had reported poor quality of food or lack of food in 20 places of internment. The POWs had told the OHCHR that their food had been undercooked, rotten or contained sand or small rocks. The OHCHR had also identified, through 77 interviews, four places of internment where POWs had suffered from a lack of or poor quality of water (ibid.). Around one third of interviewed POWs had complained about the lack of medical attention during their internment. Nineteen POWs had complained that no medical care was provided despite requests. Ten POWs had reported that guards had beaten them or other POWs when they had requested medical assistance. The OHCHR had documented the deaths of four wounded or sick POWs due to lack of proper medical attention (B769). The majority of Ukrainian POWs interviewed by the OHCHR had not been required to perform work while interned. However, the OHCHR had documented the case of eight POWs who had been forced to load artillery ammunition in the city of Alchevsk, in violation of international humanitarian law norms on appropriate labour of POWs. It had also received reports that a group of Ukrainian POWs from a penal colony near Olenivka had had to collect and load dead bodies in Mariupol in May and June 2022 (B768).

976. One hundred seventy-three Ukrainian POWs (153 men and 20 women) had been subjected to torture or other forms of ill-treatment while interned by the Russian Federation. Their accounts had revealed widespread use of torture or other ill-treatment both to extract military information or testimony for tribunals in occupied territory, and to intimidate and humiliate POWs. The most widespread forms of torture or ill-treatment had been beatings by hand (usually with tactical gloves), batons, wooden hammers or other objects, and kicks to various parts of the body, but usually avoiding the head and other vital areas. Electric shocks had also been used, both with tasers and TA-57 military telephones. Other common forms of torture or ill-treatment reported to the OHCHR had included stabbing, strangling, suffocation with a bag, applying pressure, hitting or stepping on wounded limbs, attacks or threats of attacks by dogs, threats with weapons, mock executions, placement in a hotbox or stress position, hanging from hands or legs, burning with cigarettes or lighters, exposure to cold temperatures, twisting or breaking of joints or bones, applying a tourniquet to cause pain with the POW fearing loss of limb due to constriction of blood circulation, and threats of mutilation by pressing sharp objects against POWs' body parts. The OHCHR referred to 54 accounts from POWs of various forms of sexual violence, including forced nudity to which Ukrainian POWs had been subjected during their internment by Russia. In 27 cases (against men), perpetrators had targeted the victim's genitalia during beatings or with electric shocks from a taser, or pulled them by a rope tied around their genitalia. Seventeen POWs (11 men and 6 women) had been subjected to unnecessary and humiliating cavity searches. Thirty-one POWs (18 men and 13 women) had been threatened with rape or other sexual violence in circumstances that made them believe such threats would be executed. The most common method of torture had been the so-called "admission" or "welcome beatings", which 92 POWs had experienced upon their arrival at the place of internment. This had involved prolonged beatings, threats, dog attacks, tasering, stripping and use of stress positions. The OHCHR found that members of the Russian Federal Penitentiary Services had systematically engaged in this practice against POWs in pre-trial detention facilities in the Russian Federation. It had further documented the same systematic type of mistreatment in the Donetsk pre-trial detention facility and 23 other locations in the territory of Ukraine occupied by the Russian Federation. Even though the perpetrators had not usually targeted vital areas of the body, the OHCHR had documented five cases at two facilities where male POWs had lost their lives after being tortured (B770).

977. In total, 54% of the women in facilities located in the Russian Federation had been subjected to cavity or naked searches during the "admission procedures" in the presence of men guards and to "welcome beatings". Women POWs had also been beaten in their legs and buttocks during daily checks or forced to remain in stress positions for extended

periods of time. In SIZOs in Donetsk and in Taganrog (Russian Federation), women POWs had been forced to undress, walk naked from one room to another, and shower in the presence of men guards, which they had found humiliating. They had also frequently been forced to walk in a stress position (half-bent) through the hall while being beaten by guards with batons. 70% of the women POWs interviewed who had been held in pre-trial detention facilities in the Russian Federation and Donetsk region had reported being subjected to beatings and electric shocks and threatened with sexual violence during interrogations. Most women POWs reported issues with their sexual and reproductive health while in captivity, notably termination of their menstruation, due to stress and the conditions of internment (ibid.).

978. The OHCHR reported in particular on the incident which had occurred at penal colony no. 120 near Olenivka in July 2022. It explained that in April 2022, this penal colony had become a major place of internment for POWs from Mariupol and other parts of southern and eastern Ukraine, as well as for civilians detained in the course of filtration processes. POWs had been held in ten barracks (located in five two-story buildings) and in overcrowded cells of the disciplinary isolation ward. The OHCHR had assessed that the maximum number of POWs and detained civilians held simultaneously in the colony may have reached about 4,000. Conditions in the colony had been poor, and beatings and other forms of ill-treatment had been common. During the night of 28–29 July 2022, at least 50 Ukrainian POWs had been killed and many more injured after explosive weapons had hit a building in the industrial zone of the colony where 193 male POWs were being held (B771).

979. The OHCHR had collected and analysed publicly available information on the incident, including over 20 statements by officials of the Russian Federation and representatives of the "DPR", over 70 videos and photographs related to the incident, satellite imagery of the barracks and the colony before and after the incident and other relevant contextual information. Additionally, from September 2022 to January 2023, it had interviewed 55 Ukrainian POWs who had been in the colony on the night of the attack and the next day, including 8 survivors from the affected barrack and several POWs who had taken part in bringing out dead bodies from the barracks. It had documented that the 193 POWs had been transferred on 27 July to this barrack, which had been refurbished from an industrial shed that stood separately from the other barracks in the colony. That same day, the colony management had ordered that the guard post be moved further from the barrack and that a fortified trench be dug for the guards, which had not been done for other barracks. On 28 July the guards of the barrack had worn bullet-proof vests and helmets, which they had not done before. POWs who had cleared debris and removed dead bodies on 29 July had been ordered to keep silent about what they had seen. The OHCHR found that the number of POWs who had died from the attack could have been considerably lower if those heavily injured by the explosions had been provided with prompt

medical care. Medical assistance had not been provided by personnel of the colony, and survivors had had to do what they could to try to help stop each other's bleeding without proper medical equipment. The OHCHR had documented that multiple injured POWs had died on the ground near the entrance to the colony, reportedly due to massive blood loss. The OHCHR concluded that it would continue to gather and analyse information on this incident (ibid.).

(vi) "Detention of civilians in the context of the armed attack by the Russian Federation against Ukraine between 24 February 2022 – 23 May 2023", thematic report of 27 June 2023

980. The OHCHR found that civilians had often been detained for possession of items deemed supportive of Ukraine or for having family members in the Ukrainian armed forces. Once apprehended, they had been held for several days, weeks or months in unofficial places of detention where the Russian armed forces had been stationed. Women, men and children had usually been detained together. The OHCHR had also documented cases where civilians had been detained while on the move for entirely lawful reasons – for instance, while fleeing from hostilities, commuting to work, visiting relatives or trying to evacuate family and friends from danger zones. According to those interviewed, the Russian armed forces had accused them of gathering sensitive military information or otherwise supporting the Ukrainian armed forces based solely on their presence in areas subject to hostilities or movement of Russian armed forces. The OHCHR expressed "serious concerns about the legality of these detentions" under international humanitarian law in the absence of information indicating reasonable grounds to believe that the individuals in question posed a genuine threat to the security of the Russian Federation. Several examples were provided in the report; the OHCHR observed that no procedural safeguards appeared to have been implemented in the cases described, as required by international humanitarian law and human rights law, thereby rendering the detentions arbitrary (B772).

981. The OHCHR had also documented three cases in February and March 2022 where the Russian armed forces had detained large groups of residents, seemingly to reduce possible risks to their military operations or to gain unimpeded access to the houses or apartments of those detained. It observed that mass arrests and detentions without an individualised assessment of the security threat posed by each person concerned contravened both human rights law and international humanitarian law rules protecting individuals from arbitrary detention. It further noted that in all three documented cases, the location of detainees in or near locations where Russian armed forces were stationed risked raising concerns that the civilian detainees had been used to shield military objectives from attacks on them (B774).

982. Furthermore, the OHCHR reported the cases of seven boys between 14 and 17 years old who had been "arbitrarily detained" by the Russian armed forces and affiliated armed groups in the Donetsk, Kyiv, Kherson, Mykolaiv and Zaporizhzhia regions. Some had also been "forcibly disappeared". In all cases, the boys had been ill-treated or tortured while in detention. The OHCHR also expressed concern about documented cases where 90 children had been detained and used as human shields by the Russian armed forces in the Kyiv and Chernihiv regions in February and March 2022. The OHCHR reported that it had received "numerous" further allegations of detention of children in territory controlled by Russian armed forces and was in the process of verifying them (B775).

983. As regards the lack of procedural safeguards and preventive measures, the OHCHR noted as follows (B776):

> "84. While the Russian Federal Law on Martial Law provides for the internment of foreign citizens 'in accordance with generally recognized principles and norms of international law', OHCHR has not received information that the Russian Federation has adopted procedures or practices to uphold the safeguards enshrined in the Fourth Geneva Convention, in particular the right to challenge lawfulness of or otherwise appeal internment decisions and to have them reviewed through fair procedures on a regular basis.
>
> 85. The case examples above illustrate how the practices of the Russian Federation with regard to detention of civilians, combined with the lack of procedural safeguards and preventive measures observed, have created an environment which creates a serious risk of arbitrary detention, and along with other serious human rights violations such as torture, ill-treatment and enforced disappearances."

984. The OHCHR described detention in filtration centres or camps (B773):

> "57. Starting from March 2022, Russian armed forces and affiliated armed groups subjected civilians to a so-called 'filtration' process – a system of security checks and personal data collection during which many civilians were detained for periods ranging from several days to several months. The process appeared to be carried out in order to identify their possible affiliation with or support for, the Ukrainian armed forces or authorities, and to collect information about residents in occupied territory. OHCHR documented such 'filtration' processes in Russian-occupied areas of Kharkiv, Kherson, Luhansk and Zaporizhzhia regions, with the most comprehensive system being in Donetsk region (in particular Mariupol and its surrounding areas), which included a network of so-called 'filtration camps'.
>
> 58. In some cases, such 'filtration' occurred at checkpoints, border and humanitarian crossing points, or during house searches ...
>
> 59. In other cases, 'filtration' entailed prolonged detention combined with multiple rounds of interrogation and personal data collection, including biometric data. Individuals were arrested in their homes, on the streets, at checkpoints and border crossing points, or they were called to visit police stations or military commander's offices of the occupying authorities and subsequently taken to so-called 'filtration camps'. At these camps, civilians (men, women, boys and girls) were detained for periods ranging from several days to several weeks, while Russian armed forces inspected their identity documents, conducted body examinations, photographed them

and collected their fingerprints, searched their belongings including the content stored or accessible through their electronic devices, and interrogated them about their personal background, family ties, and political views and allegiances.

60. Russian armed forces issued a certificate to individuals who were not considered a threat and allowed them to leave. Those who raised suspicion (mostly men) were transferred to various detention centres, notably to police departments in Donetsk city and Donetsk region and to a penal colony near Olenivka. These detainees were held from one to several months, and some were still in detention on 23 May 2023. OHCHR documented cases where victims were detained for more than three months. So-called 'law enforcement authorities' continued to interrogate them and to gather information about them. Upon release, some were informed that they had been held under "administrative detention", while others received no information at all regarding the grounds for their detention.

61. The documented practice of such detention of civilians in the course of 'filtration', in particular where civilians were held for weeks or months, appears to constitute an unnecessary and disproportionate measure amounting to arbitrary detention. Those detained did not enjoy procedural guarantees. Detainees were not informed about the reasons for their detention, were held incommunicado, and had no access to a judicial or administrative mechanism to review or challenge their detention. Moreover, in some cases, the Russian Federation carried out mass detention and transfer of civilians from local communities to 'filtration' sites, as well as prolonged deprivation of liberty without an individualised assessment of the security risk of each person, which is prohibited by the Fourth Geneva Convention."

985. For example, the OHCHR had documented the case of a young man from Mariupol who had been detained with his father and two other male relatives. On 13 April 2022 Russian servicemen had taken them to a nearby house where they had gathered men from the area. The men had been told that they would undergo filtration and had been taken to a school in Kozatske village, where they had been detained for forty-two days. On the second day, the young man had been taken to a tent camp in Bezimenne, where FSB and Ministry of Emergency Situations officers had interrogated, photographed and fingerprinted him, seized his passport and searched his phone, before returning him to the school. He had heard from the guards that more than 190 men had been detained at the school. The victim had never been informed about the grounds of his detention, nor provided access to procedures for its review. He told the OHCHR that he had been released on 25 May 2022. In another case in early April 2022, a 17-year-old boy had been apprehended by Russian-affiliated armed groups on a street in Mariupol. He had been stripped to his underwear and taken to a military commissariat for filtration. Despite pointing out that he was an unaccompanied child, he had been transferred twelve kilometres away, to Sartana, Donetsk region. There, he had been undressed again and questioned. Together with about 100 detained men, the boy had been taken to the "filtration camp" in Bezimenne, then transferred to the House of Culture in the same village. His identification card had been seized and no reason had been provided for his detention. He had only managed to contact his relatives three days later through his brother-in-law, who had been brought to the same facility. The boy had slept on the floor for

several weeks and had fallen sick due to cold temperatures and poor nutrition. In May 2022 he had managed to escape after he had been taken to a hospital in Novoazovsk (B773).

986. The OHCHR reported that 91 percent of the 178 interviewed civilian detainees had described being subjected to torture and ill-treatment. It said that it was "gravely concerned by widespread practices of torture or ill-treatment by Russian armed forces, law enforcement and penitentiary authorities". According to the OHCHR, torture and ill-treatment appeared to have been carried out to force victims to confess to providing assistance to Ukrainian armed forces, to compel them to cooperate with the occupying authorities or to intimidate those with pro-Ukrainian views. Methods had included punching and cutting detainees, putting sharp objects under their fingernails, hitting them with batons and rifle butts, strangling, waterboarding, electrocution, holding in stress positions for long periods of time, exposure to cold temperatures, deprivation of water and food, and mock executions. The OHCHR also documented 36 cases of sexual violence against 25 men and 11 women perpetrated by "actors" of the Russian Federation in the context of the arbitrary detentions. Forms of sexual violence had included rape, threats of rape against victims and their loved ones, electric shocks to genitals or nipples, beating of genitals, forced stripping and nudity and unjustified strip searches (B777). As regards the conditions of detention, the OHCHR noted that detainees had been kept in cold and seriously overcrowded facilities without sanitation, water, food or medical care. They had been detained incommunicado. The uncertainty about the whereabouts and fate of the detainees had increased the suffering of their family members (B778).

987. The OHCHR also expressed grave concern about the summary execution of 77 civilians (72 men and 5 women) while they were arbitrarily detained and the death of one more male detainee as a result of torture, inhumane detention conditions and denial of medical care (B772).

988. Finally, the OHCHR had documented the cases of at least 57 civilian detainees (48 men and 9 women) who had reportedly been released during prisoner exchanges between the Russian Federation and Ukraine. The OHCHR noted that the detention of civilians and assignment of POW status to them solely for the purpose of carrying out a prisoner exchange may have amounted to hostage-taking (B779).

(vii) "Human rights situation in Ukraine between 1 February to 31 July 2023", report of 4 October 2023

989. Between 1 February and 31 July 2023, the OHCHR documented 28 cases of summary executions (24 men, 3 women and 1 girl) and 31 killings through attacks on individual civilians (22 men, 6 women, 1 boy and 2 girls) that had occurred in 2022. These killings had taken place in areas of northern Ukraine controlled by the Russian armed forces until April 2022 (15 cases in

the Chernihiv region, 7 in the Kyiv region and 1 in the Sumy region) and in Russian-occupied territory over which the Ukrainian government had regained control in autumn 2022 (18 cases in the Kharkiv region, 17 in the Kherson region and 1 in the Mykolaiv region). For example, in February 2022, Russian soldiers had opened fire on a family of five in a vehicle at a checkpoint in territory under Russian control in the Kherson region. The three adults had been killed instantly and the two children (a six-year-old girl and newborn baby boy) had died from their injuries shortly afterwards. Also in February 2022, in Bazaliivka, Kharkiv region, Russian soldiers had shot at a car, instantly killing a ten-year-old girl and injuring her grandparents. The OHCHR reported that in total, since 24 February 2022, it had documented the killing of 521 civilians by Russian armed forces, either through summary executions or attacks on individual civilians (B780).

990. The OHCHR continued to document cases of conflict-related sexual violence which had taken place in 2022. In one case, two armed men had repeatedly asked a woman POW who had been captured by Russian armed forces in May 2022 to sexually "serve" the soldiers in the facility where she was being detained in Lyman, Donetsk region. On a later occasion, another member of the Russian armed forces had intervened to protect her from being beaten by his colleague, and had then asked her for sexual acts in return. On both occasions, she had dissuaded them by stating she had tuberculosis and was menstruating. After one week, she had been forcibly transferred to Valuyki penal colony no. 9 in the Russian Federation where, along with other ill-treatment, staff had forced her to do sit-ups while naked with men present, and had only allowed her to use the toilet while observed by a male guard. In another case in July 2022, members of the Russian armed forces had abducted a woman from her home in occupied areas of Donetsk region and raped her at gunpoint. One of the men had told her he would kidnap her to become his "third wife". In total, since 24 February 2022, the OHCHR had documented that members of Russian armed forces, law enforcement officials or penitentiary staff in occupied territory or in the Russian Federation had perpetrated 149 cases of conflict-related sexual violence (B785).

991. The OHCHR had also continued to document cases of arbitrary detention by the Russian armed forces and the FSB that had occurred before 1 February 2023. It had documented a total of 412 such cases and provided some examples in its report (B783). In total, since February 2022, the OHCHR had documented that Russian security forces had arbitrarily detained 996 civilians. Of the total, 448 victims had been released after various periods of detention usually lasting for several days or weeks; 80 of the victims had been found dead with signs of violence on their bodies or had died in detention; and 468 victims remained disappeared or arbitrarily detained, usually in formal places of detention in the occupied territory of Ukraine and in the Russian Federation (ibid.).

992. The OHCHR documented 6 cases of the summary execution of POWs which had occurred before 1 February 2023. It reported that on 9 March 2022, after taking control over the village of Sloboda, in the Chernihiv region, the Russian armed forces had captured two Ukrainian servicemen hiding in a civilian building. On 31 March 2022 the bodies of the two servicemen were found with gunshot wounds. In a later incident in September 2022, a member of a Russian-affiliated armed group had shot dead a Ukrainian POW whose leg had been wounded from stepping on a mine while he had been forced to perform dangerous labour near a frontline position. Another Ukrainian POW had been shot dead when he had refused to carry out the same dangerous labour. Both had been part of a group captured by separatist armed groups in the Donetsk region in August 2022. Other members of the group had reported that, for three months, they had been forced to carry heavy loads of ammunition and supplies to Russian frontline positions and to retrieve wounded Russian combatants. At least 5 of them had been injured while performing this labour. In total, since 24 February 2022, the OHCHR had documented the summary execution or torture to death of 21 Ukrainian POWs (B781).

993. The OHCHR further reported that it had observed an intimidation campaign by the Russian forces of men and their relatives residing, in particular, in occupied parts of the Donetsk and Luhansk regions to pressure the men into serving in the Russian armed forces (B784).

994. Finally, the OHCHR also provided an update on the explosions at the penal colony near Olenivka (see paragraphs 978-979 above). Based on interviews with more than 50 witnesses and survivors, as well as analysis of available video and photographic footage, the OHCHR had concluded that the explosions had not been caused by HIMARS rockets launched by the Ukrainian armed forces, which would have had a much greater destructive impact. It explained that the degree of damages to the walls, ceiling, roof and windows of the barracks, the condition of the bunk beds inside, the size of the residual crater, and the impact radius were not characteristic of impacts by HIMARS ammunition. While the precise type of weapon and its point of origin could not be determined, the pattern of structural damage appeared consistent with a projected ordnance having travelled with an east-to-west trajectory. It underlined that a detaining Power had an obligation under IHL to carry out an immediate official investigation into any death or serious injury of a POW in its captivity. However, the OHCHR had received no information that the Russian Federation had carried out an investigation. It observed that the scene of the explosions had not been preserved in order to allow for a full and proper inspection and investigation by experts. Instead, the scene was contaminated and the physical evidence disturbed. The OHCHR further noted that Russian journalists had been taken around the inside of the barracks to film and had been shown fragments of purported HIMARS ammunition displayed on a bench outside the barracks; no such

fragments had, however, been shown in situ. The Russian Investigative Committee had arrived and around one hour later had announced it had opened a criminal case against Ukraine for carrying out the strike, allegedly with HIMARS rockets (B782).

(viii) "Human rights situation during the Russian occupation of territory of Ukraine and its aftermath between 24 February 2022 – 31 December 2023", report of 19 March 2024

995. Outside the context of deprivation of liberty, civilians interviewed by the OHCHR had provided detailed accounts of the Russian armed forces' use of violence and repression during the initial stages of the occupation which had included, among others, sexual violence. The actions by the Russian armed forces in the first months of occupation had had the cumulative impact of creating a climate of fear: many residents had feared detention and torture, including sexual violence; they had feared sexual violence in residential areas (B787).

996. The report confirmed 634 cases of arbitrary detentions, including enforced disappearances, recorded by the OHCHR which had been carried out by the Russian armed forces from February to May 2022. The absence of any safeguards had led to arbitrary detention, often coupled with violence. Moreover, civilians who had posed no apparent security threat to the occupying Power had been among those detained. The majority of victims had been active or former public officials of local authorities, human rights defenders, civil society activists, journalists and media workers (B788).

(ix) "Treatment of prisoners of war and update on the human rights situation in Ukraine between 1 June 2024 and 31 August 2024", report of 1 October 2024

997. The OHCHR had verified the summary execution of three male civilians in two incidents that had occurred in March 2022 in the Chernihiv region. In one case, the Russian armed forces had detained three brothers and subjected them to torture for several days before they had shot them in the head and thrown them into a pit. One of them had survived and had managed to extract himself from the pit (B794).

998. The OHCHR had also verified the execution of 14 Ukrainian servicemen *hors de combat* in seven incidents that had taken place during previous reporting periods. In one case described in the report, the Russian armed forces had captured a group of Ukrainian servicemen near the village of Zaitseve, Donetsk region, in August 2022. During evacuation, a Russian serviceman had executed one of the captured servicemen, who appeared simply not to have been moving fast enough (ibid.).

999. The report described cases of torture and sexual violence which had occurred in 2022. Two women civilian detainees, who had been apprehended by Russian authorities in June and December 2022 and released in May 2024,

had described being subjected to punches and beatings with batons and tasers in a detention facility as punishment for alleged disciplinary violations, and not receiving adequate medical assistance during their detention. In another case, the occupying authorities in Kherson had repeatedly subjected a detained man to beatings, suffocation, waterboarding, electric shocks, including to genitals, and threats of castration after his apprehension in September 2022. They had also raped the man anally with a metal object and simultaneously administered electric shocks to his anus and genitals (ibid.).

(c) The OSCE Moscow Mechanism and ODIHR reports

1000. The OSCE Moscow Mechanism missions reported that they had received allegations of a large number of executions of civilians during the Russian occupation of settlements in the proximity of Kyiv, in particular Bucha. There were photos and videos of killed civilians, with their hands tied, in the streets and reports about a mass grave. In its 14 July 2022 report, the OSCE mission reported that it had documented "a rather large number of instances of targeted, extrajudicial killings of civilian persons and persons deprived of liberty, both prisoners of war and civilian detainees". The mission of experts also reported having received several credible reports according to which Russian forces had ill-treated civilians using methods that amounted to torture. The mission had found credible evidence suggesting that torture and ill-treatment, including rape, sexual violence and sexual harassment, had been committed, mostly in the areas under the effective control of Russia (B1319-21 and 1328).

1001. The mission of experts had also received credible reports that Russian forces had arrested civilians, including journalists, without any procedure. A number of city mayors, local pro-Ukrainian activists, journalists and volunteers had been abducted by Russian forces without respect for any of the applicable international humanitarian law norms. The mission reported a large number of Ukrainian civilians, who had been detained, abducted or kidnapped by the Russian or Russian-controlled forces (B1329-31). In its July 2022 Report, the mission relied on the figures shared by the OHCHR, according to which, by 28 May 2022, there had been 222 verified cases of conflict-related detention and enforced disappearance reportedly perpetrated by the Russian armed forces and armed groups of the "DPR" and "LPR". The mission noted that a relatively consistent pattern of behaviour on the side of the Russian Federation had been identified whereby military occupation of a certain area had been followed by abductions, interrogations, mistreatment and sometimes killings of important public figures, such as mayors or local journalists (B1361).

1002. In its report of April 2024, the mission of experts reported that although the context of ongoing international armed conflict between Ukraine and the Russian Federation made establishing the exact number of civilians arbitrarily deprived of their liberty by the Russian Federation impossible, the

number was large and could be measured in the thousands. Since the invasion on 24 February 2022, this practice had become pervasive in all the areas under the temporary occupation of the Russian Federation. Although the concrete modalities of the detention somewhat differed from one region to another, the overall scheme of the Russian Federation arbitrarily detaining large numbers of Ukrainian civilians both in the initial and prolonged stages of the temporary occupation remained constant and appeared to be a defining feature of the Russian Federation's policy in the temporarily occupied territory. The mission concluded that for the overwhelming majority of Ukrainian civilians detained by the Russian Federation, the grounds for permissible detention under international humanitarian law had not been met and their deprivation of liberty had thus been arbitrary. Although no grounds for detention had in most cases been formally communicated to the detained civilians, the most commonly indicated reasons seem to be associated with: (a) perceived support to the Ukrainian armed forces and/or affiliation with the armed forces; (b) perceived support of Ukraine and/or rejection of Russia's "special military operation"; (c) perceived involvement in or support for international terrorism and/or extremism; (d) the intention to force cooperation; and (e) the intention to spread fear in the population of the temporarily occupied territories. Some of these reasons were clearly unlawful (reasons (b), (d) and (e)). Others could be lawful (reasons (a) and (c)) but only to the extent that the strict conditions for the internment of civilians set out in Articles 43 and 78 GC IV, making such detention exceptional and temporary, were respected. The detention could never be based on other, ulterior purposes such as harassment or reprisals. That, however, seemed to be the case in many instances. The mission concluded that in the overwhelming majority of cases of Ukrainian civilians detained by the Russian Federation, detention had lacked lawful grounds and, as such, had amounted to arbitrary deprivation of liberty. Moreover, the mission concluded that Ukrainian civilians deprived of liberty by the Russian Federation had been consistently denied of all procedural guarantees, because the vast majority of detained civilians had never been informed about the grounds for their detention and had had no possibility to challenge the lawfulness of their detention either in its initial stage or at any moment thereafter, and because there did not seem to be any periodic, regular review of the lawfulness of detention carried out by the Russian authorities (B1390-94).

1003. The mission of experts noted that on numerous occasions Ukrainian civilians had been detained merely because the Russian authorities had found them to be in possession of Ukrainian symbols, such as the flag of Ukraine, patriotic literature, brochures about volunteers assisting civilians, traditional shirts with Ukrainian embroidery and other symbols associated with the Ukrainian State and cultural traditions, deemed to be "patriotic". Men in particular were asked to strip and their bodies were inspected for any tattoos perceived to bear Ukrainian symbolism. Any symbols associated with the

Ukrainian were usually called "Nazi symbols" by the detaining authority and the detainees would be called "Nazis" and accused of failing to support, or even of countering, the Russian Federation's "special military operation" in Ukraine. The detaining authorities often interpreted the presence of Ukrainian "patriotic" symbols, rejection of Russia's "special military operation" and/or actual or perceived support to the Ukrainian armed forces as evidence of "international terrorism", or "extremism", claiming this to be the reason for the detention. Ukrainian civilians suspected of involvement in or support for international terrorism and/or extremism were often subjected to criminal prosecution. The mission had gathered information and received numerous testimonies of civilians being detained to force them to collaborate with the occupying Power. Frequent targets were community leaders or persons in strategic positions, such as mayors and other local officials, journalists, employees of strategic infrastructure, such as hydraulic stations and nuclear power plants, or educational personnel. The mission had received numerous testimonies of many instances of civilians being detained with the intention of spreading fear in the population of the temporarily occupied territory. The mission observed that detaining prominent local figures to spread fear in the population might also qualify as a form of hostage taking (B1395).

1004. The mission of experts concluded that all information they had collected strongly suggested that POWs and civilian internees were kept in mixed quarters, or at the same locations. Some facilities reportedly hosted civilians, POWs and sentenced persons in three different units of the same detention facility. In other instances, civilians were reportedly co-located with POWs in the same facility, but in separate buildings. While the Russian system for the detention of Ukrainian civilians seemed to have developed since 2022, the mission was unable to identify internment structures in line with the requirements of the GC IV. The information received by the mission suggested that in the regions of Kherson, Zaporizhzhia, Donetsk and Luhansk, the majority of arbitrarily detained Ukrainian civilians were being kept under the authority of counter-intelligence units and that no criminal proceedings were ongoing (B1398).

1005. The mission of experts noted that the Russian forces and administrations had established in 2022 an extended system of filtration, with the objective to register, map and collect personal data, biometric samples/DNA of the inhabitants in an area and to establish database with an overview of the population. Filtration facilities had been established throughout the territory. A detailed mapping of the filtration system in Donetsk showed that it could be seen as a four-tier system consisting of *ad hoc* registration points, facilities for holding those awaiting registration (for example, schools), interrogation centres (for extraction of information concerning the person and others) and finally prisons (typically correction colonies). The testimonies received by the mission indicated that while Russian armed forces had initially targeted individuals perceived as posing a

security threat, over time a wider net had been cast to include any person perceived to oppose the temporary occupation. The filtration measures were aimed at identifying those who did not welcome the occupation or who worked for the authorities or military forces of Ukraine, or their relatives. The main goal of the detaining Power was to separate those who remained loyal to Ukraine from those who would accept Russian authority. For example, in Mariupol, filtration centres were established outside of the city and those who did not pass filtration were consequently not given permission to re-enter the city. Filtration could take place in many different types of facilities: registration points, camps or other places of internment, interrogation centres, torture chambers, or prisons. Both the FSB (including military counter-intelligence) and the Russian penitentiary authority assigned their own officers to oversee filtration in particular regions (B1399).

1006. The mission of experts detailed a large number of reported incidents of serious forms of ill-treatment to which civilians and Ukrainian POWs had been subjected by Russian forces. In one report it noted "a pattern of serious mistreatment" of local civilian inhabitants in areas under the temporary control of the Russian armed forces (B1360). The evidence in its possession suggested that such areas had usually been turned into lawless zones where civilians had been left at the complete mercy of the Russian soldiers occupying the area. Instances of torture and inhuman or degrading treatment had been reported from all territories which were or had been temporarily occupied by the Russian armed forces. The towns of Bucha, Irpin and Hostomel had become witness to some of the most extensive and serious instances of this type during the Russian occupation in the first weeks of the conflict. Five bodies found in the basement of a children's sanatorium in Bucha had shown signs of mistreatment and there were suggestions that this basement might have served as a torture chamber during the Russian occupation. According to testimonies provided by the local inhabitants, Chechen forces (Kadyrovtsi) had been heavily involved in many of the atrocities. Reports from and about women being raped or otherwise sexually abused by members of the Russian armed forces, especially in newly occupied territory, had become abundant. According to the mission of experts, reports of sexual violence against children, including rape, had been particularly common, though the extent of this violence was difficult to assess due to the sensitive nature of the abuse, the well-known and understandable reluctance of victims to report it and the misinformation about this issue spread in the public space. One report cited the Ukrainian Parliament Commissioner for Human Rights, Lyudmila Denisova, who had described the case of a one-year-old boy who had been raped by Russian soldiers and had later died in a village near Kharkiv. Other reported victims had included two ten-year-old boys, triplets aged nine, a two-year-old girl raped by two Russian soldiers, and a nine-month-old baby raped in front of his mother. (ibid.).

1007. The OSCE Office for Democratic Institutions and Human Rights (ODIHR) published its first "Interim Report on reported violations of international humanitarian law and international human rights law in Ukraine" on 20 July 2022, covering the period between 24 February and 1 July 2022. It noted that during the reporting period, there had been credible reports of extrajudicial executions of civilians and local officials in territories outside the effective control of the Ukrainian authorities. At the beginning of April 2022, after Russian armed forces had withdrawn from Kyiv region, media and various human rights organisations, such as HRW and Amnesty International, had found extensive evidence of extrajudicial killings of civilians in the Kyiv region, including in Bucha. According to various sources, more than 1,000 bodies had been discovered in mass graves in the region. HRW had reported that hundreds of civilian bodies had been collected from the streets of Bucha in April. In addition, satellite images provided by a UK-based NGO showed more than 800 new grave plots in the cemetery in Kherson between 28 February and 15 April 2022 as well as a "series of mass graves" in the Yalivshchyna forest near Chernihiv (B1404).

1008. The report covered credible allegations about Ukrainian citizens abused and tortured while detained by Russian authorities in areas under Russian occupation. ODIHR had also received alarming reports of the extremely poor detention conditions and of conflict-related sexual violence committed by the Russian armed forces. The reported cases of rape had often been accompanied by beatings, humiliation and hate speech. The report contained statements of people who had witnessed seven or eight Russian soldiers taking a group of Ukrainian women into a basement of a multistorey building in Irpin and had heard "cries, shrieks, and different noises coming from the basement where the women had been taken". The witnesses had assumed that the women had been raped while being there for about two hours. Four of the women had then been shot in the forehead by the Russian soldiers. When the bodies had been brought outside the building, the witnesses had seen that the victims were all naked and had bruises on their bodies. The Russian soldiers had then ordered the witnesses to load the bodies of the victims onto a truck and had set fire to them. The remaining women had stayed in the basement and one witness could still hear their screams and some of the women pleading with the Russian soldiers to "kill me, just shoot me". According to the report, at the end of June 2022, Ukrainian law enforcement had launched 20 investigations into allegations of sexual violence committed by Russian forces (B1405).

1009. In its second interim report which covered the period between 1 July and 1 November 2022, ODIHR pointed to a large and increasing body of evidence of civilians having been "unlawfully killed, including wilfully killed and summarily executed" in the territories that had been or remained under the control of the Russian Federation's armed forces. In the Kyiv region alone, over 1,346 civilian bodies had reportedly been recovered by local

authorities by 18 July 2022. Documented evidence had shown that, while some civilians had died as a direct result of hostilities, stress or lack of access to adequate medical care, a significant number of civilians had been arbitrarily or wilfully killed or subjected to summary execution by small arms and light weapons, stabbing or torture. Throughout the reporting period, new allegations of unlawful killings of civilians had continued to emerge from territories that had been or remained under Russian occupation. For instance, in the city of Izium, which had been occupied by Russian armed forces until September, local authorities had reported that some of 436 bodies exhumed from a mass burial site had had ropes around their necks, tied hands, broken limbs and gunshot wounds, and that all but 21 of the victims were civilians (B1416).

1010. ODIHR provided statements of victims and witnesses of ill-treatment in the form of beatings, electric shocks, suffocation, being forced into painful stress positions, mock executions and threats of mutilation. The apparent aim had been to coerce them into cooperation with the occupying forces or to extract information or confessions, but some victims had also been ill-treated for speaking Ukrainian in public or for taking photos of Russian soldiers. ODIHR noted that recent reports of alleged sexual violence by members of the Russian armed forces had surfaced from Kharkiv and Kherson regions, as the Ukrainian armed forces had begun regaining control of these territories (B1417).

(d) Council of Europe Commissioner for Human Rights

1011. In her "Memorandum on the human rights consequences of the war in Ukraine" of 8 July 2022, the Council of Europe Commissioner for Human Rights ("the Commissioner") set out the findings of her visit to certain areas located to the northwest of Kyiv, which had previously been under the control of the Russian troops or witnessed heavy fighting. During her visit she had been confronted with "compelling evidence of patterns of violations of the right to life, including arbitrary killings". She referred to the discovery of a very large numbers of bodies of civilians after the liberation of areas in the Kyiv region. According to the information provided to the Commissioner, some of those victims had been found with their hands tied and had reportedly been tortured or ill-treated prior to being executed. The Commissioner had talked to witnesses and relatives of victims who had provided her with testimonies regarding the killings perpetrated by Russian soldiers (B1451).

1012. The Commissioner had also received numerous reports of war-related sexual violence allegedly committed by Russian troops and had been confronted with compelling evidence of patterns of violations of the prohibition of torture and ill-treatment, in particular gender-based violence and war-related sexual violence. The reports of war-related sexual violence had included rape, gang rape, threats of sexual violence and coercion to watch an act of sexual violence being committed against a partner or a child,

allegedly committed by Russian troop members at various locations in Ukraine under their control. According to the Commissioner, the visit had provided her with the "opportunity to observe first-hand the traces of some such egregious violations of human rights and international humanitarian law" (B1452).

1013. The Commissioner highlighted hundreds of cases of enforced disappearance, abductions, incommunicado detention and missing persons amongst human rights defenders, local officials, journalists, volunteers, civil society activists and ordinary civilians in areas of Ukraine under the control of the Russian Federation (B1453).

(e) Other sources

1014. In support of their allegations, the applicant Ukrainian Government also submitted to the Court a number of statements obtained by their authorities from witnesses and victims (B2566-3135 and 3159-340). Some of these witness statements describe killings carried out by Russian forces in areas under their control in the Kyiv and Kharkiv regions. Others, provided by victims themselves, describe the life-threatening attacks they had come under, especially when they had been trying to flee. Witness and victim testimonies by, as well as material pertaining to the criminal proceedings opened by Ukrainian judicial authorities contained in the case-file, also provide first-hand information about the forced labour to which victims were subjected after 24 February 2022 (B2706, 2782, 2831-33, 2839, 2841, 2843, 3012, 3030, 3042, 3045, 3308 and 3323).

1015. A large number of NGOs, including HRW, Amnesty International, Ukraine Crisis Media Centre, War Crimes Watch Ukraine, the International Partnership for Human Rights and Truth Hounds, extensively documented allegations and their findings of extrajudicial killings of civilians and Ukrainian soldiers *hors de combat*. Their reports are summarised in Annex B (B1620-2309).

1016. Numerous reports by HRW, World Organisation Against Torture, Reporters Without Borders, Amnesty International and other NGOs have corroborated and further documented acts of ill-treatment, torture and sexual violence of Ukrainian civilians and POWs at the hands of Russian armed forces (ibid.).

1017. Media articles and declarations of the Director General of the International Atomic Energy Agency (IAEA) refer to the Russian forces preventing Chornobyl nuclear power plant workers from changing shifts. As a result, workers had been forced to work for extended periods, without being able to leave the facility (B256-58). The BBC reported that more than 100 personnel and 200 guards had been stuck in the nuclear power plant for more than twelve days unable to leave after the Russian army had seized it on the first day of the armed attack on Ukraine by the Russian Federation (B3934 and 4122). Criminal proceedings no. 42022112330000028, initiated

by the Ukrainian authorities on 27 February 2022, concern the investigation into the occupation of the Chornobyl nuclear power plant. Documents gathered in the context of that investigation include statements from witnesses claiming that they had been forced to work at gunpoint from 24 February until 20 March 2022, without being allowed to leave the premises or walk freely (B2831-33).

1018. On 28 April 2022 the IAEA's Director General published a summary report of the situation in Ukraine regarding nuclear safety, security and safeguards of nuclear facilities and activities involving radioactive sources in Ukraine (B259). According to the report, on 4 March 2022 the armed forces of the Russian Federation had taken control of the nuclear power station at Enerhodar in the Zaporizhzhia region. The report indicated that the State Nuclear Regulatory Inspectorate of Ukraine had informed the IAEA in April 2022 that "the personnel at the [plant] were working under unbelievable pressure". In one case, a shift change had had to be stopped. The Director General expressed his increasing concerns about the difficult conditions facing Ukrainian staff. Staff at the occupied Zaporizhzhia nuclear power plant had been described to the BBC as being kept at gunpoint while Russian troops used it as a military base. One of the staff members had told the BBC that she did not go to her workplace for the last week because it was dangerous to go (B4070).

1019. The International Labour Organization (ILO) and the global union federation "IndustriALL" also reported that workers at the Zaporizhzhia nuclear power plant had been subjected to forced labour (B281). Most reported cases of forced labour concerned nuclear workers who had tried to leave the city but had been refused the right to leave the occupied territory. Other reports of forced labour concerned the right to freely choose employment. After Russian forces had occupied the power plant, workers had been refused the right to contact their Ukrainian employer and the workers who operated the nuclear reactor installations and equipment had been subjected to threats.

1020. On 21 August 2022 *The Independent* newspaper published an article named "Inside Olenivka, the Russian prison camp where Ukrainians vanish". Based on interviews with recently released detainees and with family members of those who were still believed to be held in Olenivka, it said it had uncovered evidence of forced labour (B4073-76). The Yale School of Public health's Humanitarian Research Lab ("HRL") report of 25 August 2022 "Mapping the filtration system in Donetsk oblast" gave a detailed account of the Olenivka prison. The report found that detainees in this prison were subjected to forced labour (B2198-200).

1021. A report entitled "Enforced disappearances and arbitrary detentions of active citizens during the full-scale armed aggression by Russia against Ukraine (February 2022-June 2023)", published by Ukrainian NGO ZMINA Human Rights Center together with an alliance of NGOs, provided

52 testimonies of victims, members of their families, and witnesses of enforced disappearances and arbitrary detentions. It recorded at least 562 cases of abductions of citizens on the basis of information drawn from open sources. The report noted that the practice of enforced disappearances in the course of Russian armed aggression had not been new and that since 2014, during the occupation of Crimea and certain areas of the Donetsk and Luhansk regions, the Russian Federation had followed a similar practice, trying to suppress any resistance and any attempt to protest. According to the report, activists and volunteers had been abducted mostly while passing checkpoints and filtration checkpoints (B2281-96).

1022. Numerous other reports by HRW, World Organisation Against Torture, Reporters Without Borders, Amnesty International, Institute for the Study of War, The Committee to Protect Journalists, HRL, the Institute of Religious Freedom and other NGOs have corroborated and documented cases of deprivation of liberty in occupied territory in 2022 (B1620-2309).

B. Article 2 of the Convention

1. The complaint

1023. The applicant Ukrainian Government complained of an administrative practice consisting of "extrajudicial killing, in a systemic fashion, of civilians and Ukrainian military personnel *hors de combat*, including during the Russian forces' occupation of towns and villages" throughout the Donbas between 11 May 2014 to 24 February 2022 and, from 24 February 2022 onwards, throughout Ukraine. The Court has, further, decided to deal with additional allegations related to attacks on civilians during evacuation or preventing their evacuation under Article 2 of the Convention (see paragraph 570 above). The allegations concern "attacks (often fatal) upon civilian evacuees (including children) travelling in cars that were clearly marked to be civilian and contain children, by train and bus, on foot" and "violation of humanitarian corridors through ... attempts to kill fleeing civilians ...".

1024. The applicant Ukrainian Government's complaint of unlawful military attacks in the context of the conduct of hostilities, in breach of Article 2 of the Convention, has been examined above in the context of the alleged administrative practice of unlawful military attacks (see paragraphs 743-772 above). The present alleged administrative practice in breach of Article 2 of the Convention concerns the actions of the respondent State in territory under the effective control of the respondent State only (see paragraphs 328-338 above).

1025. Article 2 of the Convention reads as follows:

> "1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:

(a) in defence of any person from unlawful violence;

(b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

(c) in action lawfully taken for the purpose of quelling a riot or insurrection."

2. The parties' submissions

(a) The applicant Ukrainian Government

1026. The applicant Ukrainian Government maintained that there was sufficiently substantiated evidence of the repetition of specific acts in breach of Article 2 in the occupied areas of Ukraine. Furthermore, such acts had been conducted with official tolerance so as to constitute an administrative practice within the meaning of the Court's case-law. Indeed, the scale and repeat nature of these acts and the complete failure of the respondent Government to respond to the allegations was consistent not merely with official tolerance but suggested official encouragement and endorsement of a particularly flagrant kind.

1027. A significant number of civilians and Ukrainian soldiers who were *hors de combat* had been killed between 11 May 2014 and 23 February 2022. The civilian victims had included mainly individuals with vocal "pro-unity views" and those who were believed to have such views, as well as those who had, or were believed to have, provided support to Ukrainian forces. A number of those civilians had been killed with gunshots to the head; some of the bodies bore signs of torture and their hands had been tied behind their backs. Some of the executions had been carried out by "LPR" and "DPR" officials under the pretext of official authority and following the imposition of a death sentence at the conclusion of a "judicial process".

1028. From 24 February 2022 Russia had violated Article 2 of the Convention on a staggering scale and, as such, the examples of the alleged administrative practices could not be set out exhaustively. The examples provided were necessarily illustrative only. The gravity and scale of Russia's violations of Article 2 were demonstrated by the Ukrainian forces' discovery of a significant number of mass graves upon their recapture of territory previously occupied by Russian armed forces. These included the discovery of a mass grave containing the bodies of dozens of Ukrainian civilians in Buzova, near Kyiv, on 10 April 2022; discoveries by 24 May 2022 of ten mass graves of civilians across the Kyiv region, in which 418 bodies had been found and examined in Bucha alone and over half of these victims had died from gunshot wounds; and the discovery of 450 bodies, most of whom were civilians, in a mass grave in Izium upon the liberation of that city on 16 September 2022. Bodies of some of the victims indicated that the victims

had been shot at close range, some victims had been discovered with their arms tied behind their back, and some had been burnt.

1029. The UN, the OSCE and Amnesty International had uncovered compelling evidence that Russian military forces had extrajudicially executed civilians in Ukraine throughout Phase 1 of the invasion, namely from 24 February to 7 April 2022. By mid-May 2022 the UN had confirmed that over 1,000 civilian bodies had been recovered in the Kyiv region alone. Extrajudicial executions had continued during the second phase of the invasion, in the east and south of the country, between 8 April to 30 June 2022. The OSCE had reported that individuals in Russia's "filtration camps" had been executed summarily.

1030. After 24 February 2022, the Russian military had also continued to kill Ukrainian military personnel who were POWs or *hors de combat*. One of the most horrific and demonstrative cases of Russian violation of international humanitarian law and Article 2 of the Convention during the invasion was the mass killing in July 2022 of Ukrainian POWs in Olenivka prison. The explosion in one of the warehouses of the prison had killed at least 54 Ukrainian POWs and injured more than 100.

(b) The respondent Government

1031. The respondent Government did not take part in the present proceedings on the merits of application nos. 8019/16, 43800/14 and 28525/20 and the admissibility and merits of application no. 11055/22 (see paragraph 142 above). At the separate admissibility stage of the present proceedings, they challenged in general terms the evidence submitted by the applicant Ukrainian Government (*Ukraine and the Netherlands v. Russia* (dec.), cited above, §§ 408-14 and 818-19).

1032. No submissions have been received from them in respect of the period after 26 January 2022, the date of the separate admissibility hearing in the present case, save for their brief response of 5 March 2022 to the Court's request for information in the context of its 1 March 2022 indication under Rule 39 of the Rules of Court (see paragraphs 9 and 140-141 above).

3. The Court's assessment

(a) General principles

1033. Relevant general principles in respect of Article 2 are summarised above (see paragraphs 450 and 743).

(b) Application of the general principles to the facts of the case

1034. The Court has explained that in its interpretation of the respondent State's obligations it will have regard to relevant provisions of international humanitarian law in accordance with its duty of harmonious interpretation (see paragraphs 429-430 above). As regards alleged violations of the negative

obligation under Article 2, it has recognised the possibility that a conflict may arise between Article 2 and provisions of international humanitarian law in circumstances where lethal force is used in the context of armed conflict (see paragraph 430 above). Such an apparent conflict will arise in circumstances where the use of force, although lawful under international humanitarian law, cannot be justified by reference to the exceptions listed Article 2 § 2.

1035. The applicant Ukrainian Government's complaint concerns the extrajudicial killing in occupied areas, outside any legal framework, of civilians and soldiers who were *hors de combat*. The protection of civilians and military personnel *hors de combat* is a fundamental principle of international humanitarian law. The obligations of humane treatment and respect for life and the prohibition of the murder during international armed conflict are codified in the Hague Regulations (B147) and Geneva Conventions (see *Kononov*, cited above, §§ 202-04). Article 12 GC I strictly prohibits any attempts upon the lives of the wounded or sick in armed forces in the field (B148). Article 13 GC III requires that POWs be treated humanely and be protected against acts of violence (B150). Article 27 GC IV similarly provides for the humane treatment and protection from acts of violence of civilians not participating in the conflict (B155). Article 75(2) AP I prohibits violence to life and murder (B141). Pursuant to Article 32 GC IV, States are prohibited from taking any measure of such a character as to cause the extermination of civilians in their hands, a prohibition which extends beyond murder to "any other measures of brutality", whether applied by civilian or military agents (B155). The wilful killing of protected civilians, wounded soldiers who are *hors de combat* or POWs constitutes a grave breach of international humanitarian law (B138, 148 and 154). The prohibition of violence to life and murder of civilians and members of armed forces who are *hors de combat* in times of armed conflict is so fundamental to international humanitarian law that it was extended to non-international armed conflict by common Article 3 of the Geneva Conventions (B148). There are, however, limited circumstances in which the protection from attack afforded to these categories of individuals may be lost. Thus civilians lose their protection against attack when and for such time as they take a direct part in hostilities (B140). The immunity from attack afforded to soldiers *hors de combat* is also conditional on their refraining from any hostile act or attempt to escape (B139).

1036. The evidence demonstrates beyond any doubt that from the very outset of the conflict in eastern Ukraine, the armed separatists used lethal force against civilians in occupied areas. The OHCHR reports provide numerous examples of civilians killed by the separatists in 2014 and early 2015. In Sloviansk, the evidence shows that summary executions were perpetrated by Mr Girkin's forces under the pretext of legal authority after the purported application of military laws in the city (see paragraphs 783-784 above). There are several examples of bodies found with injuries indicative

of unlawful killing in occupied areas, many of whom were last seen in the custody of the separatist armed forces (see, for example, paragraphs 777, 782 and 798 above). There are accounts, supported by several sources, of the deliberate killing of detainees by the "LPR" during its retreat from Sievierodonetsk in July 2014 (see paragraph 788 above). The OHCHR's 2016 thematic report identifies a considerable number of incidents in 2014 and early 2015 involving the summary execution of civilians, deaths following the use of force not in the immediate vicinity of hostilities and deaths during detention (see paragraphs 807-809 above).

1037. There is also evidence of the killing by separatist and Russian armed forces of Ukrainian soldiers who were *hors de combat*. There is evidence from HRMMU interviews that soldiers captured alive during the retreat of the Ukrainian armed forces at Ilovaisk were subsequently found dead (see paragraphs 793-794 above). There is evidence that Ukrainian soldiers captured following intense fighting around Donetsk airport in January 2015 were executed by "DPR" armed separatists (see paragraphs 811-814 and 824 above). One of the most extensively documented incidents, corroborated by witness accounts and video footage, involved the killing of Mr Branovytskyy, who was interrogated and then shot in the head by Mr Pavlov, commander of the "Sparta battalion"(see paragraph 812 above).

1038. A great deal of evidence is available as to the conduct of the Russian armed forces during their occupation of areas of Ukraine after 24 February 2022. This evidence has come to light following the recovery by Ukrainian armed forces of previously occupied areas. The detailed reports of the Commission of Inquiry make for distressing reading (see paragraphs 894-909 above). They lay out, in stark and disturbing detail, the frequent recourse by the armed forces of the Russian Federation to lethal violence against civilians and Ukrainian soldiers who were *hors de combat*. There is evidence of the large-scale murder of civilians perpetrated in occupied territory in the immediate aftermath of the arrival in those areas of Russian armed forces. Countless bodies were found with gunshot wounds to the head, with hands tied behind their backs and with throats slit. There is evidence of the unprovoked shooting by Russian armed forces of civilians seeking to flee hostilities in areas under Russian control. Those attacked were dressed in civilian clothes and travelling in civilian vehicles. In some cases their vehicles were clearly marked to indicate that children were on board. Civilians and Ukrainian soldiers who were *hors de combat* who had been taken into the custody of the Russian armed forces were later found dead, with no explanation of how they had died and injuries indicative of execution. Those attempting to flee occupied areas, including via humanitarian corridors, were shot at by the Russian troops. The extensive reports of the Commission of Inquiry clearly establish that the killings occurred in areas subject to Russian occupation at a time when those areas were under occupation, and were attributable to the respondent State. The reports also make it plain that the

examples reported are merely illustrative of a pattern of conduct which took place on a larger scale throughout occupied areas in Ukraine.

1039. For the period between mid-2015 and the 2022 invasion, direct evidence of the killing of civilians and soldiers *hors de combat* and of deaths in detention is more scarce. The OHCHR referred in some of their reports during this period to new allegations of killings (see paragraphs 804-805, 855-856 and 876 above). It estimated that by July 2021, between 200 and 300 people had been killed or had died while in detention in the "DPR" and the "LPR" since the start of the conflict (see paragraph 888 above). However, its reports for this period provide few concrete examples of incidents from mid-2015 to early 2022.

1040. The Court has already acknowledged the difficulty of gathering direct evidence of the alleged violations in light of the overall context and the nature of the allegations made (see paragraphs 589-594 above). Several OHCHR reports highlight, in relation to allegations of killings, reporting delays by witnesses or requests for confidentiality by relatives fearing retribution from armed groups (see paragraph 590 above). The Court moreover underlines the distinction between unlawful killing and other human rights violations which the victims themselves can subsequently report, even if years later. The only witnesses to extrajudicial killings may well be the perpetrators and the victims themselves. Access to occupied territory and freedom of movement by independent observers is critical to allow evidence of suspicious deaths or disappearances to be gathered and investigated thoroughly. The Court has explained that it will draw inferences it deems appropriate in the context of such lack of access and the reasons for it (see paragraph 596 above and 1041 below).

1041. The denial of access to places of deprivation of liberty is particularly relevant to the present complaint, given the allegations of people being killed while being deprived of their liberty and the evidence from 2014 and 2015 and after the 2022 invasion corroborating beyond doubt that this occurred. The Court further underlines that the evidence does not provide any indication that the conduct of the armed groups markedly changed after mid-2015. Multiple reports continued to identify examples illustrating the climate of lawlessness and impunity throughout the entirety of the conflict in eastern Ukraine. As noted above, the OHCHR referred to the "hidden character of the phenomenon" of human rights violations in the context of disappearances and detention (see paragraph 593 above). Despite this hidden character, there is extensive evidence of abduction and of ill-treatment in detention throughout this period, demonstrating that that there was no real interruption to the violence systematically applied in the "DPR" and the "LPR" to those deprived of their liberty by armed separatists (see the above summary of the evidence at paragraphs 774-1022 and paragraphs 1067-1083 and 1112-1124 below). The Court is satisfied that it can infer that such practices continued to result in death between mid-2015 and early 2022, as they did in the periods

both before and after (see *Ukraine v. Russia (re Crimea)*, cited above, § 970, where the Court took a similar approach to a complaint of enforced disappearances).

1042. As noted above, the protection of civilians and military personnel *hors de combat* is central to the rules governing armed conflict. There is no evidence, in any of the examples to which the Court has referred above, to suggest that the use of force might have been justified under international humanitarian law (see paragraph 1035 above). Indeed, the overwhelming evidence is to the contrary, relating as it does to civilians who were quite clearly not participating in the hostilities when they were attacked and to soldiers who were indisputably detained, unarmed and *hors de combat*. The Court is accordingly satisfied that the impugned conduct was not compatible with international humanitarian law.

1043. The respondent Government have not provided any information about the circumstances in which deaths of civilians or soldiers *hors de combat* occurred in occupied territory at the hands of the "DPR", the "LPR" or other agents of the Russian Federation. They have not engaged with the extensive allegations set out repeatedly in many of the widely available reports by international monitoring or investigative bodies covering the period under examination. They have provided no explanation for their failure to do so.

1044. The killing of civilians and soldiers *hors de combat* in the occupied areas cannot be justified by reference to the exceptions listed in Article 2 § 2 Convention. It was accordingly in breach of Article 2. For the reasons explained above, the Court is, moreover, satisfied beyond reasonable doubt that there existed an accumulation of identical or analogous breaches of Article 2 in the period between 11 May 2014 and 16 September 2022 which are sufficiently numerous and interconnected to amount to a pattern or system of extrajudicial killings. For the reasons set out in the relevant chapter below (see paragraphs 1617-1621), there is no doubt that the requirement of official tolerance is also met in respect of these killings perpetrated in breach of international humanitarian law.

1045. The Court accordingly finds the Russian Federation responsible for an administrative practice in violation of Article 2 of the Convention of extrajudicial killing of civilians and Ukrainian military personnel *hors de combat* in occupied territory in Ukraine in the period between 11 May 2014 and 16 September 2022.

C. Article 3 of the Convention

1. The complaint

1046. The applicant Ukrainian Government complained of an administrative practice in breach of Article 3 of the Convention extending throughout the Donbas from 11 May 2014 and extending across the territories

occupied by Russia from 24 February 2022 onwards. They alleged that from 11 May 2014 the practice consisted of:

> "a. the torture and ill-treatment of civilians and military personnel (including prisoners of war), including the subcategories of beatings, threats of execution, asphyxiation, electrocution, water/food/sleep/toilet deprivation, sexual violence against men and women including conflict-related sexual violence, threats of torture to the victims and/or their family members;
>
> b. the inhuman or degrading treatment of civilians and military personnel, including (most significantly) poor detention conditions, but also the humiliation and debasing treatment of Ukrainian civilians and military personnel ..."

1047. The Court has also decided to examine complaints made under Article 5 of detention of groups of civilians in occupied areas of Ukraine "in dirty and suffocating conditions, restricting their access to food, water, and toilets" from the perspective of Article 3 (see paragraph 564 above).

1048. The applicant Ukrainian Government further alleged that from 24 February 2022, the practice included causing suffering exceeding the minimum level of severity for Article 3 as a result of abductions and forced disappearances.

1049. Article 3 of the Convention reads as follows:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

2. The parties' submissions

(a) The applicant Ukrainian Government

1050. The applicant Ukrainian Government argued that since 2014 there had been a significant number of incidents of torture and ill-treatment including beatings, dry and wet asphyxiation, electrocution, sexual violence on men and women, positional torture, deprivation of water, food, sleep and toilet, isolation, mock executions, prolonged use of handcuffs and hooding; and threats of death or further torture or sexual violence, or harm to family members. The victims had included civilians, civil servants, members of local authorities, journalists, activists, protestors and captured Ukrainian soldiers. In most cases the perpetrators had been separatists from the "DPR" and the "LPR" and officials of the FSB. The ill-treatment had taken place, in particular, in Donetsk, Luhansk, Sloviansk, Makiivka, Ilovaisk, Horlivka and Yenakiieve, and surrounding areas under "DPR" and "LPR" control. The purpose of such treatment was "to extract confessions or information, or to otherwise force detainees to cooperate, as well as for punitive purposes, to humiliate and intimidate, or to extort money and property".

1051. Moreover, since 2014 Ukrainian civilian and military prisoners had been kept in extremely poor conditions. A large number of detainees had been detained in crowded conditions without sufficient beds, ventilation and, during cold periods, heating. There had been a lack of sufficient provision of

food, water and medical care and the sanitation facilities had been insufficient and very poor.

1052. After 24 February 2022 Russian forces had committed breaches of Article 3 in Ukraine on a staggering scale. The accumulations of breaches were demonstrative of a widespread and interconnected pattern of systemic and flagrant disregard for Convention rights. Indeed, the individual cases specifically referred to in the memorial were mere illustrations of the multitude of violations of the Convention perpetrated since the start of the invasion. It was impossible to describe each violation in detail. The OHCHR had found that detainees "in most areas under Russian control", and in particular POWs "during all periods of internment", had been subjected to ill-treatment.

1053. By way of specific example, the applicant Ukrainian Government alleged that there had been widespread torture of civilians during the Russian occupation of towns and villages, including Bucha, Izium, Motyzhyn, Husarivka and Vorzel. Bodies of many of the victims discovered in mass graves, pits, inside houses and basements and in other places after the liberation bore signs of serious ill-treatment and had been disfigured and mutilated. In Izium, between March and early September 2022 hundreds of people had been detained and systematically subjected to serious ill-treatment consisting of electric shocks, waterboarding, severe beating, threats, rape and threats of rape, and being forced to hold stress positions for extended periods. More than 450 bodies had later been discovered in a mass grave, many showing signs of torture. A total of ten Russian "torture chambers" had been discovered in the Kharkiv region alone after its liberation.

1054. From May 2022 and for a period of several months, at least 4,000 and perhaps as many as 10,000 residents of Mariupol had been detained in prisons in Donetsk with little or no access to water, food or medical treatment and in conditions as terrible and inhuman as those in a concentration camp. Furthermore, between 5 and 30 March 2022, Russian soldiers had forced around 300 civilians at gunpoint into the basement of a school in the village of Yahidne where they had had little food or water, no electricity and no toilets. During their captivity, seven of the detainees had been executed and ten others had lost their lives as a result of the harsh conditions.

1055. The treatment described above had not only been in breach of Article 3 of the Convention in respect of the direct victims to whom it had been meted out, but had also caused suffering for those witnessing it, in breach of the same provision. Moreover, the practice of abductions and forced disappearances had caused suffering reaching the minimum level of severity for Article 3, including the suffering of close relatives of the victims.

1056. Ukrainian POWs had also been subjected to ill-treatment in breach of Article 3 of the Convention. POWs who had been returned to Ukraine as part of prisoner exchanges had severe injuries; some had amputated limbs and

sepsis, indicative of severe ill-treatment. The ill-treatment had consisted of physical, sexual and mental abuse including beatings, electrocutions, threats and the withholding of medical assistance. Following their release as part of prisoner exchanges, a number of soldiers from the Azov Regiment had testified that they had witnessed prisoners being beaten until their bones were broken.

1057. In addition, the respondent State had continued to perpetrate conflict-related sexual violence in occupied areas, including rape, amounting to torture and inhuman and degrading treatment within the meaning of Article 3 of the Convention. The systematic use of rape as a weapon of war by Russia in Ukraine had been documented in the reports of many intergovernmental organisations and NGOs. Investigators had gathered evidence of widespread sexual violence, including gang rape and assaults at gunpoint by Russian forces. Post-mortem examinations on the bodies of women buried in mass graves indicated that some of them had been raped before being killed by Russian forces. Victims of rape included underage girls, very young children and even a baby. In many cases close family members, including children, had been forced to witness such attacks, thereby subjecting them to ill-treatment within the meaning of Article 3 of the Convention.

(b) The respondent Government

1058. The respondent Government did not take part in the present proceedings on the merits of application nos. 8019/16, 43800/14 and 28525/20 and the admissibility and merits of application no. 11055/22 (see paragraph 142 above). At the separate admissibility stage of the present proceedings, they challenged in general terms the evidence submitted by the applicant Ukrainian Government (*Ukraine and the Netherlands v. Russia* (dec.), cited above, §§ 408-14 and 818).

1059. No submissions have been received from them in respect of the period after 26 January 2022, the date of the separate admissibility hearing in the present case, save for their brief response to the Court's request for information in the context of its 1 March 2022 indication under Rule 39 of the Rules of Court (see paragraphs 9 and 140-141 above).

3. The Court's assessment

(a) General principles

1060. Article 3 makes no provision for exceptions and no derogation from it is permissible under Article 15 § 2 even in the event of a public emergency threatening the life of the nation: even in the most difficult circumstances, the Convention prohibits in absolute terms torture and inhuman or degrading treatment or punishment, irrespective of the conduct of the person concerned (see *El-Masri v. the former Yugoslav Republic of Macedonia* [GC], no. 39630/09, § 195, ECHR 2012).

1061. Ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is relative: it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim. Further factors include the purpose for which the treatment was inflicted together with the intention or motivation behind it (see *El-Masri*, cited above, 196). In the context of deprivation of liberty the Court has consistently stressed that, to fall under Article 3, the suffering and humiliation involved must go beyond that inevitable element of suffering and humiliation connected with detention (see *Muršić v. Croatia* [GC], no. 7334/13, § 99, 20 October 2016).

1062. In determining whether a particular form of ill-treatment should be qualified as torture, consideration must be given to the distinction between this notion and that of inhuman or degrading treatment. The Court has explained that, by means of this distinction, it attaches a special stigma to deliberate inhuman treatment causing very serious and cruel suffering. In addition to the severity of the treatment, there is a purposive element which defines torture in terms of the intentional infliction of severe pain or suffering with the aim, *inter alia*, of obtaining information, inflicting punishment or intimidating (see *Salman v. Turkey*, [GC], no. 21986/93, § 114, ECHR 2000-VII, and *Ireland v. the United Kingdom*, 18 January 1978, § 167, Series A no. 25). The nature of torture covers both physical pain and mental suffering, and the fear of physical torture may itself constitute mental torture. What is particularly important in this respect is the severity of the pressure exerted and the intensity of the mental suffering caused (see *Gäfgen v. Germany* [GC], no. 22978/05, § 108, ECHR 2010).

1063. The Court has found that the rape of a detainee by an official of the State is an especially grave and abhorrent form of ill-treatment given the ease with which the offender can exploit the vulnerability and weakened resistance of his victim, and thus may amount to torture (see *Aydın v. Turkey*, 25 September 1997, *Reports*, 1997-VI, § 83; *Maslova and Nalbandov v. Russia*, no. 839/02, § 108, 24 January 2008; and *Zontul v. Greece*, no. 12294/07, §§ 88-92, 17 January 2012). Victims experience the acute physical pain of forced penetration, which leaves them feeling debased and violated both physically and emotionally (*Aydın*, cited above, § 83, and *Maslova and Nalbandov*, cited above, § 107). The Court has explained that rape leaves deep psychological scars on the victim which do not respond to the passage of time as quickly as other forms of physical and mental violence (*Aydın*, cited above, § 83, and *Zontul*, cited above, § 88).

1064. The State must ensure that a person is detained in conditions which are compatible with respect for human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and

well-being are adequately secured. When assessing conditions of detention, account has to be taken of the cumulative effects of these conditions, as well as of specific allegations made by the applicant. The length of the period during which a person is detained in the particular conditions also has to be considered (see *Muršić*, cited above, §§ 99 and 101).

1065. The Court has found that strip searches may be necessary on occasion to ensure prison security or to prevent disorder or crime. They should be carried out in an appropriate manner with due respect for human dignity and must be necessary and justified. Where the manner in which a search is carried out has debasing elements which significantly aggravate the inevitable humiliation of the procedure, Article 3 has been found to be engaged (see for example *Iwańczuk v. Poland*, no. 25196/94, § 58-59, 15 November 2001).

1066. The general principles concerning the applicability of Article 3 to the suffering of relatives of victims of human rights violations are set out above (see paragraphs 538-544).

(b) Application of the general principles to the facts of the case

1067. The Court has explained that in its interpretation of the respondent State's obligations it will have regard to relevant provisions of international humanitarian law in accordance with its duty of harmonious interpretation (see paragraphs 429-430 above).

1068. International humanitarian law contains rules on the treatment of civilians and persons who are *hors de combat*. Article 32 GC IV prohibits measures of such a character as to cause the physical suffering of civilians, including torture, mutilation and "any other measures of brutality whether applied by civilian or military agents" (B155). Articles 5 and 27 GC IV provide for the humane treatment and protection from acts of violence of civilians not participating in the conflict (ibid.). Article 27 requires respect for their persons and their honour and explicitly stipulates that women are to be protected against rape and any form of indecent assault. Articles 76-77 AP I require protection for women and children against rape, enforced prostitution or any other form of indecent assault (B158). Article 12 GC I and Article 13 GC III require soldiers who are *hors de combat* to be treated humanely and be protected against acts of violence (B148 and 150. See also Article 4 of the Hague Regulations at B147). Mutilation and torture are explicitly prohibited (B148, 150 and 153). Article 14 GC III provides that POWs are in all circumstances entitled to "respect for their persons and their honour" (B150). Article 75(2) AP I also prohibits torture, mutilation and outrages upon personal dignity, in particular "humiliating and degrading treatment, enforced prostitution and any form of indecent assault". Under all three relevant Geneva Conventions, torture or inhuman treatment and wilfully causing great suffering or serious injury to body or health are considered grave breaches of international humanitarian law (B141).

1069. Article 25 GC III, Article 76 GC IV and Article 75(5) AP I provide for the accommodation of detained women in separate quarters from those of men (B141, 151 and 156). International humanitarian law further provides that detainees be accommodated in quarters that safeguard their health and must enjoy conditions of food, clothing and hygiene sufficient to keep them in good health (see notably B151-52 and 156). Article 11 AP I provides that the physical or mental health and integrity of persons who are in the power of the adverse Party or who are deprived of liberty shall not be endangered by any unjustified act or omission (B158).

1070. The evidence shows beyond any doubt that from the start of the conflict in eastern Ukraine, the armed separatists used violence against detainees, both civilian and military, in areas under the effective control of the Russian Federation. In relation to the period between 11 May 2014 and 24 February 2022, the OHCHR regularly reported incidents of violence and ill-treatment which had taken place across "DPR" and "LPR" territory in the context of abductions, deprivations of liberty, interrogations and forced entry into civilian homes. Many of these examples are described in the summary of evidence above (see, for example, paragraphs 817, 838, 845, 876 and 878). The OHCHR referred in June 2016 to a network of places of deprivation of liberty where people were tortured and ill-treated and subjected to inhuman conditions of detention (see paragraph 841 above). Its reports between 2014 and 2021 regularly referred to new allegations concerning the relevant reporting periods (see, for example, paragraphs 856, 885 and 887 above). It repeatedly expressed serious concern about its lack of access to places of detention and the delayed reporting by victims, but observed that interviews with prisoners transferred to government-controlled territories confirmed the allegations it was continuing to receive (see, for example, paragraph 871 above). In a thematic report from July 2021, the OHCHR observed that torture and ill-treatment had become less common after 2016 but noted that such practices had nonetheless continued to occur and were carried out systematically in some places of detention within the territory controlled by the "DPR" and the "LPR" (see paragraph 888 above). It estimated that around 2,500 conflict-related detainees had suffered torture and ill-treatment by the separatists in territory controlled by the "DPR" and the "LPR" since the conflict began (see paragraph 888 above).

1071. A great deal more evidence is available as to the conduct of the Russian armed forces during their occupation of areas of Ukraine in the period after 24 February 2022. This evidence has come to light following the recovery by Ukrainian armed forces of previously occupied areas and with the gradual release of detainees. The disturbing details that emerge from the reports of the Commission of Inquiry are corroborated by further investigations. The evidence shows a significant increase in the scale and in the gravity of acts of ill-treatment, both in detention and outside formal detention facilities, in improvised "torture chambers" or in the victims'

homes or villages. The Commission of Inquiry identified a division of labour among various groups of officials involved in inflicting torture in detention and concluded that torture was a coordinated State policy of the Russian Federation used in respect of Ukrainian civilians and POWs. It was used to extract confessions, to instil fear and exert physical and psychological pressure, and to break, humiliate, coerce, and punish (see paragraphs 923 and seq. and 941 et seq. above).

1072. The nature of the violence to which civilians and POWs were subjected at the hands of the agents of the Russian Federation between May 2014 and September 2022 is described in detail in the reports before the Court. Beatings, forced nudity and intimate searches conducted during filtration and in detention places were commonly reported. There are also consistent reports of mock execution, the cutting off of body parts and the application of electric shocks to victims, including to intimate areas of their bodies. Some detainees reported being forced to remain in a position, squatting or kneeling, for hours. There are accounts of POWs being forced to ingest their insignia. The evidence also shows that detainees were forced to witness the severe beatings and, sometimes, the summary executions of others. Witnesses described to the Commission of Inquiry hearing the loud and unbearable screams of co-detainees (see, for example, paragraphs 794, 817, 824, 896 and 1008 above).

1073. There is evidence of a widespread and systemic use of sexual violence by armed separatists and Russian troops, in respect of men and women, old and young (documented victims range from four to 80 years old) (see paragraphs 933-938 above). Rapes were committed at gunpoint, with extreme brutality and accompanied by acts of torture, such as beatings, strangling or electric shocks. Women and men were often subjected to sexual violence and rape in detention. Such acts are a means of inflicting pain, terror and humiliation (see, for example, paragraphs 942 and 951 above).

1074. There is also extensive evidence of rape outside classical situations of detention, largely perpetrated on women and girls but also on men and boys. The victims were assaulted in their own homes or in other unoccupied homes or shelters. In some cases, victims were gang-raped by Russian soldiers. In other instances, soldiers raped victims several times or over a lengthy period, exercising a degree of power and control over the victim which the Commission of Inquiry considered amounted to sexual slavery. Women and girls were raped in front of husbands, boyfriends and children. Children were raped and sexually assaulted in front of their parents. Family members who tried to intervene to stop the attacks were killed. Survivors and their families remain deeply traumatised by the ordeal they endured. Some survivors of rape or relatives forced to watch someone close to them being raped have expressed suicidal thoughts or have even attempted suicide. The evidence shows that such acts were perpetrated by armed separatists in eastern Ukraine from 2014 (see, for example, paragraphs 779-780, 789, 797,

829-830, 835, 853, 877 and 888 above). The available evidence points to the fact that, following the Russian invasion of 2022, the frequency of attacks on civilians involving sexual violence sharply escalated (see, for example, paragraphs 945-949 above).

1075. Civilians and POWs were also subjected to repeated threats of violence, including threats of summary execution. The perpetrators threatened to harm the victims' close family members, including threatening to rape their children (see, for example, paragraphs 780, 786, 789, 819, 821, 825, 845, 864, 878-879, 888, 931-933, 937-938 and 943-946 above). The Court underlines that these threats were made in a context where many of the victims had witnessed sexual violence or summary execution being perpetrated on others, with no regard for the age or particular vulnerabilities of victims. Moreover, the impugned conduct took place within an overall context of lawlessness and the commission of violence with impunity in occupied areas in Ukraine. The victims were aware that these were no empty threats and that the violence threatened would likely be perpetrated on them or on their loved ones, including their children.

1076. In the face of the overwhelming evidence, it is indisputable that there were multiple, repeated instances of the ill-treatment of civilians and POWs by separatists and the Russian armed forces and authorities in the occupied areas in Ukraine. The Court has no doubt that such treatment amounted, at the very least, to inhuman and degrading treatment within the meaning of Article 3 of the Convention. The Court is moreover satisfied that there was a pattern of treatment, encompassing the practices outlined above (see paragraphs 1072-1075 above), which amounted to deliberate inhuman treatment causing very serious and cruel suffering. It involved the intentional infliction of severe pain and suffering with the aim, *inter alia*, of obtaining information, inflicting punishment and intimidating and humiliating the victims. Those subjected to this treatment were aware of the horrific acts of violence that had been perpetrated against other civilians and POWs and must have been terrified that they or their loved ones would be killed in the most appalling circumstances. As noted above, the protection of civilians and military personnel *hors de combat* is central to the rules governing armed conflict (see paragraphs 1042 and 1068-1069 above). There is no possible justification under international humanitarian law for the treatment described in the examples to which the Court has referred above.

1077. The prevalence of sexual violence and rape by Russian soldiers in occupied territory is especially abhorrent. The evidence shows the extreme violence of the circumstances in which women were raped or sexually assaulted and the intent to terrorise, humiliate and debase them (see, for example, paragraph 1074 above). The widespread rape of women and girls in occupied areas is in flagrant breach of Article 27 GC IV (see paragraph 1068 above). In addition to the impact on the direct victims, the raping of women and girls in the context of an armed conflict has also been described as a

means for the aggressor to symbolically and physically humiliate the defeated men. Rape or the threat of rape is also used to drive communities off lands or to heighten terror during attacks. The evidence also attests to the horrific sexual violence frequently perpetrated upon male detainees (see, for example, paragraphs 934 and 937 above). The sexual abuse, torture and mutilation of male detainees is often carried out to attack and destroy their sense of masculinity or manhood. Abuse and torture of female members of a man's family in front of him is used to convey the message that he has failed in his role as protector. These forms of humiliation and violence take on powerful political and symbolic meanings. The deliberate initiation and endorsement of these acts by military commanders and political leaders underscores the significance of these acts as more than random assaults (B204).

1078. The sexual assaults and rape of civilians in communities across occupied territory in Ukraine, carried out with complete impunity, left women and men powerless to protect themselves and their families and living in fear. The Court is persuaded that sexual violence and rape was deployed in Ukraine following the February 2022 invasion as part of a military strategy to dehumanise, humiliate and break the morale of the Ukrainian population, as individuals and as a community, and to assert dominance over Ukrainian sovereign territory. The systematic rape of women as a weapon of war causes unthinkable physical, emotional and psychological suffering. Victims risked double victimisation, not only sustaining potentially dangerous and long-lasting injuries and trauma but also running the risk of stigmatisation and rejection by their families and communities. The ICC Statute defines rape committed as part of a widespread or systematic attack directed against any civilian population as a crime against humanity (B68). The Court finds that the use of rape as a weapon of war, as outlined above, is an act of extreme atrocity that amounts to torture.

1079. The Court accordingly finds beyond any doubt that there was a pattern of ill-treatment of civilians and POWs in occupied areas of Ukraine between 11 May 2014 and 16 September 2022 that qualified as torture and inhuman and degrading treatment, within the meaning of Article 3 of the Convention.

1080. There is also ample evidence for the period from 11 May 2014 to 16 September 2022 of inadequate detention conditions. The reports and witness statements refer to the poor conditions in which civilians and POWs were very frequently detained. Detainees were often held in the basements of seized buildings and other premises entirely unadapted for detention purposes. These premises lacked heat, ventilation and adequate sleeping materials for those being detained. The reports consistently refer to the absence of necessary medical assistance and inadequate access to food and water. There is reference to the cramped and overcrowded rooms in which detainees were held and the humiliating sanitary arrangements. Men and women were frequently detained together. Detainees had restricted contact

with families and in many cases were held incommunicado (see, for example, paragraphs 782, 815, 836-838, 841, 846, 878, 913, 921, 939, 962 973 and 988 above). The conditions of detention disclosed by the numerous reports and accounts of victims were in blatant contravention of the applicable provisions of international humanitarian law (see paragraph 1069 above). The Court finds that these conditions of detention amounted to inhuman and degrading treatment within the meaning of Article 3.

1081. Finally, in respect of the alleged suffering of the family members of those who were abducted or disappeared after 24 February 2022, the Court underlines that such abductions and disappearances of family members occurred in a context of mass arbitrary detentions (see further paragraphs 1114-1124 below) and the systematic abuse of those in detention. Those abducted risked summary killing, torture including sexual violence, and inhuman and degrading treatment. Their family members were all too aware of the likely fate of relatives who had been taken into detention by the authorities in occupied areas or had disappeared. The general feeling that human rights violations were being committed with impunity was an important source of fear and anxiety. The wife of one detained person said that the knowledge that a person could be detained and killed at any moment without respect for the rule of law was terrifying (see paragraph 953 above). The Commission of Inquiry documented numerous cases in which relatives had reached out to Russian authorities regarding the whereabouts of missing family members and had received no response (see paragraph 919 above). Those interviewed by the Commission of Inquiry spoke of their pain, anger and struggle to come to terms with their loss, being aware that there was no possibility for them to seek information or obtain an investigation into the circumstances of the disappearance, abduction and other possible human rights violations in respect of their relatives (ibid.). The Court finds that in the exceptional circumstances of this case, in view of the horrific violence being perpetrated on a massive scale against detainees in occupied areas, the flagrant, continuous and callous disregard of the obligation to account for the whereabouts and fate of missing relatives caused suffering which reached the threshold of inhuman and degrading treatment contrary to Article 3.

1082. The Court is accordingly satisfied that there is overwhelming evidence of acts in breach of Article 3 of the Convention in occupied areas in Ukraine between 11 May 2014 and 16 September 2022. This evidence enables it to conclude beyond reasonable doubt that there existed an accumulation of identical or analogous breaches of Article 3 during the period under consideration which are sufficiently numerous and interconnected to amount to a pattern or system of inhuman and degrading treatment and torture. The Commission of Inquiry has described some of these acts as amounting to a coordinated State policy of torture (see paragraphs 923-924 above). The Court finds that the organised and systemic practices cannot have taken place without the awareness and involvement of senior Russian

government figures. For these reasons and the further reasons set out below (see paragraphs 1617-1621), there is no doubt that the requirement of official tolerance is also met in respect of these acts.

1083. The Court accordingly finds the Russian Federation responsible for an administrative practice of torture and inhuman and degrading treatment in violation of Article 3 of the Convention in occupied territory in Ukraine in the period between 11 May 2014 and 16 September 2022.

D. Article 4 § 2 of the Convention

1. The complaint

1084. The applicant Ukrainian Government complained of an administrative practice of forced labour, extending throughout the Donbas from 11 May 2014 and extending across the territories occupied by Russia from 24 February 2022 onwards, in breach of Article 4 § 2 of the Convention.

1085. Article 4 §§ 2 and 3 of the Convention reads as follows:

> "2. No one shall be required to perform forced or compulsory labour.
>
> 3. For the purpose of this article the term 'forced or compulsory labour' shall not include:
>
> (a) any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of [the] Convention or during conditional release from such detention;
>
> (b) any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service;
>
> (c) any service exacted in case of an emergency or calamity threatening the life or well-being of the community;
>
> (d) any work or service which forms part of normal civic obligations."

2. The parties' submissions

(a) The applicant Ukrainian Government

1086. The applicant Ukrainian Government submitted that there was sufficiently substantiated evidence of the repetition of specific acts involving forced labour, in breach of Article 4 § 2, that had been conducted with official tolerance so as to constitute an administrative practice within the meaning of the Court's case-law. The forced labour included construction and reconstruction of buildings; digging trenches and graves; loading and unloading food, munitions, and scrap metal; transporting equipment; performing household work including cleaning; and carrying and burying dead bodies in eastern Ukraine. The applicant Ukrainian Government argued that none of the forced labour documented could be considered as falling within the scope of Article 4 § 3 of the Convention.

1087. The applicant Ukrainian Government further explained that on 24 February 2022 the forces of the Russian Federation had taken control of the former Chornobyl nuclear power station, which they had occupied until 31 March 2022. The staff on shift at that time had been forced to work at gunpoint for an extended period, without any possibility to change shifts. They had been unable to leave the facility and had had limited access to food and medicine. On 4 March 2022 Russian soldiers had taken control of the nuclear power station at Enerhodar in the Zaporizhzhia region and had forced the staff to work at gunpoint. That plant remained under the control of the Russian Federation, with staff reporting that they were being held at gunpoint and kept under the daily threat of kidnap.

1088. The applicant Ukrainian Government further alleged that the Russian armed forces coerced 300-400 Ukrainian detainees to work installing defensive structures in the Kyiv region. Similarly, Ukrainian captives had been forced to carry out renovations at the Olenivka detention centre and had been forced to dig mass graves. Russian forces had also attempted to mobilise Ukrainian civilians in Izium for manual labour.

(b) The respondent Government

1089. The respondent Government did not take part in the present proceedings on the merits of application nos. 8019/16, 43800/14 and 28525/20 and the admissibility and merits of application no. 11055/22 (see paragraph 142 above). At the separate admissibility stage of the present proceedings, they challenged in general terms the evidence submitted by the applicant Ukrainian Government (*Ukraine and the Netherlands v. Russia* (dec.), cited above, §§ 408-14 and 818).

3. The Court's assessment

(a) General principles

1090. The Court has explained that "forced or compulsory labour" means all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered him or herself voluntarily. The concept of "labour" should be understood in the broader sense as "all work or service". As to the "forced or compulsory" nature of such labour, the Court has noted that the adjective "forced" brings to mind the idea of physical or mental constraint while "compulsory" refers to a situation where work is "exacted ... under the menace of any penalty" and also performed against the will of the person concerned, that is work for which he "has not offered himself voluntarily". The concept of "penalty" has to be understood in a broad sense. It encompasses physical violence or restraint, but a "penalty" can also take subtler forms of a psychological nature (see *S.M. v. Croatia* [GC], no. 60561/14, §§ 281-84, 25 June 2020).

(b) Application of the general principles to the facts of the case

1091. The evidence of alleged forced labour included in the above summary of evidence (see paragraphs 774-1022 above) arose almost exclusively in the context of detention by armed separatists or Russian armed forces. The Court observes that Article 4 § 3 excludes from the definition of "forced labour" any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of the Convention. However, it finds that this exception to the Article 4 § 2 prohibition of forced labour is inapplicable in the present case in the light of the widespread context of unlawful arrest and detention in breach of Article 5 in which these instances of alleged forced labour occurred (see further paragraphs 1114-1124 below).

1092. International humanitarian law permits labour by POWs and civilian detainees but prohibits uncompensated or abusive labour. Article 49 GC III provides for the detaining Power to use the labour of POWs who are physically fit, taking into account their age, sex, rank and physical aptitude, "with a view particularly to maintaining them in a good state of physical and mental health" (B162). Article 50 lists in detail the categories of work a POW may be compelled to perform, "besides work connected with camp administration, installation or maintenance". The list concerns agriculture; certain industries, public works and building operations which have no military character or purpose; transport and handling of stores which are not military in character or purpose; commercial business, and arts and crafts; domestic service; and public utility services having no military character or purpose. No POW can be forced to undertake labour "which is of an unhealthy or dangerous nature" (ibid.). The removal of mines or similar devices is considered as dangerous labour. GC III contains detailed provisions concerning working conditions, duration of labour, working pay, occupational accidents and medical supervision (ibid.). Article 51 GC IV allows for adult civilians in occupied territory to be compelled to work only on work which is necessary either for the needs of the army of occupation or public utility services, or for the feeding, sheltering, clothing, transportation or health of the population of the occupied country. They cannot be compelled to undertake any work which would involve them "in the obligation of taking part in military operations". Payment of a fair wage is required and the legislation of the occupied country governing working conditions and safeguards is applicable (B163). Article 95 GC IV provides that interned civilians must not be employed "unless they so desire", and that employment which would involve a breach of Article 51 in the case of a non-detained civilian is prohibited. Article 95 also sets out rules on the payment of wages and on working conditions (ibid.). Article 23(h) of the Hague Regulations prohibits compelling nationals to serve in the forces of a hostile power (B135). So compelling a POW or a civilian is a grave breach of international

humanitarian law pursuant to Article 130 GC III and Article 147 GC IV (B154 and 138 respectively).

1093. The Court observes that there are credible reports of the separatists forcing detained Ukrainian soldiers and civilians to work from the early days of the conflict. While some of the tasks involved reconstruction of buildings and other maintenance duties, others were more closely linked to the hostilities, including the digging of trenches and the loading and unloading of military material, notably ammunition (see, for example, paragraphs 787, 806, 955 and 992 above). Such tasks appear to be incompatible with the provisions of Article 50 GC III and with Article 51 GC IV. There were reports of detainees being forced to engage in demining work, which is dangerous labour and therefore proscribed by international humanitarian law (see paragraphs 806, 992 and 1092 above). There are also a number of reports recorded by the SMM and the OHCHR that detainees were being coerced or obliged to join the separatist forces and, later, the Russian armed forces to fight at the front lines (see paragraphs 782, 787, 958, 964 and 993 above). The Commission of Inquiry referred to the "general mobilisation" ordered by the "DPR" and the "LPR" authorities shortly before the start of the invasion of 24 February 2022, requiring all men between the ages of 18 and 55 to enlist in the separatist armed forces (see paragraph 955 above). Forcing civilians in occupied territory or POWs to serve in the forces of a hostile power is strictly prohibited by international humanitarian law (see paragraph 1092 above).

1094. Released prisoners subsequently provided details of the forced labour which they had been required to undertake and the conditions in which that labour had been undertaken. Several referred to the poor conditions and to having been beaten by those supervising them (see paragraphs 806, 860, 871 and 992 above). The reports give rise to concerns regarding working hours and other working conditions, including entitlement to days of rest (see paragraph 1092 above). None of the reports or witness statements referred to any wage having been paid to those forced to perform these tasks.

1095. There are detailed reports concerning the working conditions at the Zaporizhzhia nuclear power plant following the capture of the plant by the Russian armed forces in early March 2022. Employees described working at gunpoint and being unable to leave. They were moreover forced to work in conditions in which they feared for their lives and safety, in view of the dangerous nature of operating a nuclear power plant in the midst of armed hostilities (see paragraphs 1018-1019 above; in respect of the Chornobyl nuclear plant see paragraph 1017 above). The respondent State has provided no information concerning the arrangements in respect of workers at the plant present there when it was captured or of the subsequent working conditions there.

1096. The Court is satisfied that reports and examples of cases of forced labour are available throughout the more than eight years of the conflict under examination in the present case. These instances of forced labour occurred in

territory under the effective control of the respondent State and were attributable to that State, as having been imposed by the "DPR" or the "LPR" or, later, by the Russian armed forces. To the extent that there are certain periods within these eight years where fewer details are available, the Court reiterates that the drawing of appropriate inferences is justified (see paragraphs 588-596 above). It has underlined the difficulty of obtaining direct evidence in light of the overall context of the conflict. Moreover, the association between the allegations of forced labour and the allegations of abduction mean that the denial of access for independent monitoring bodies to places of deprivation of liberty has a direct impact on the availability of relevant evidence. The Court has already noted the absence of evidence of any marked change in the conduct of the armed groups, notably in respect of detainees, over the years of the conflict (see paragraph 1041 above). Instead, the OHCHR reports provide ample evidence of the application by separatists of arbitrary laws and practices.

1097. Moreover, the available credible allegations of practices perpetrated on territory under its effective control, reported by the OHCHR and the OSCE and a number of NGOs, and referred to by other international institutions including the Parliamentary Assembly of the Council of Europe, called for a response from the Russian Federation. However, the respondent Government did not engage with the detail of the relevant evidence relied upon by the applicant Ukrainian Government which, for the most part, is also publicly available. Nor did they engage with the merits of the complaints under Article 4 § 2 of the Convention, notably by seeking to demonstrate that the instances relied upon were examples of labour permitted either under the terms of Article 4 § 3 or by international humanitarian law.

1098. In these circumstances, and in the wider context of the case, the Court accepts that the evidence before it of forced labour is substantially accurate. It further infers that there were numerous other undocumented instances of forced labour in occupied territory between 11 May 2014 and 16 September 2022. It accordingly finds, beyond reasonable doubt, that there existed an accumulation of identical or analogous breaches of Article 4 § 2 during the period under consideration which are sufficiently numerous and interconnected to amount to a pattern or system of forced labour. Moreover, for the reasons set out below, there is no doubt that these violations of Article 4 § 2 were officially tolerated by superiors of the perpetrators and by the higher authorities of the respondent State (see paragraphs 1617-1621 below).

1099. The Court therefore concludes that the Russian Federation was responsible for an administrative practice of forced labour in occupied territory in Ukraine in the period between 11 May 2014 and 16 September 2022 which violated Article 4 § 2 of the Convention.

E. Article 5 of the Convention

1. The complaint

1100. The applicant Ukrainian Government complained of an administrative practice in breach of Article 5 of the Convention from 11 May 2014, consisting of the following:

> "a. abductions, kidnappings, unlawful arrests and detentions of civilians in occupied areas of Ukraine;
>
> b. unlawful detention of civilians in 'filtration' centres in occupied areas of Ukraine;
>
> ...
>
> d. unlawful detention of groups of civilians in occupied areas of Ukraine...;
>
> e. hostage-taking of civilians and use of civilians as human shields."

1101. As explained above, their specific complaint under Article 5 about the abduction and transfer to Russia of Ukrainian children will be dealt with separately (see paragraphs 585 above and 1567-1599 below).

1102. Article 5 § 1 of the Convention reads as follows:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> (a) the lawful detention of a person after conviction by a competent court;
>
> (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
>
> (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
>
> (d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;
>
> (e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;
>
> (f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition."

2. The parties' submissions

(a) The applicant Ukrainian Government

1103. The applicant Ukrainian Government complained of an administrative practice in eastern Ukraine from 11 May 2014 consisting of the widespread detention of civilians by "DPR" and "LPR" authorities. Such detention had been targeted at perceived supporters of Ukrainian unity,

religious minorities and journalists. In violation of Article 5 and applicable international humanitarian law, detention had not been in accordance with applicable Ukrainian law or a regular procedure prescribed by the occupying Power. Moreover, separatist administrations had routinely failed to provide a legitimate reason for detention or any record of it. Victims had routinely been held incommunicado and/or in inhumane conditions and subject to treatment amounting to torture.

1104. The applicant Ukrainian Government referred to the findings of a thematic report by the OHCHR on arbitrary detention and ill-treatment between 2014 and 2021 that documented 532 cases of conflict-related detention (B707). They further emphasised the attempt to formalise deprivations of liberty since 2015 as "administrative arrest" in the "DPR" and as "preventive detention" in the "LPR". They highlighted the general absence of appropriate procedures and of legal guarantees which resulted in the assessment that the large majority of cases amounted to arbitrary detention. In April 2021 such arbitrary detention had remained a daily occurrence. The applicant Ukrainian Government referred to a number of cases as illustrative examples for the period from 2014 to February 2022.

1105. From 24 February 2022 the practice had been employed on a wider scale throughout Ukraine. The applicant Ukrainian Government relied on the findings of the HRMMU, which by 9 September 2022 had verified at least 416 cases of arbitrary detention and enforced disappearance in territory controlled by the Russian Federation. They provided illustrative examples of the alleged abductions.

1106. At least 20 filtration centres had been established in Russia and in territory controlled by Russian forces in the Donetsk and Luhansk regions, which had been used for the detention, identification and interrogation of displaced Ukrainian civilians. At these filtration centres, Ukrainian civilians had been held incommunicado and had had no contact with their families. Large groups of civilians had been detained in makeshift locations, such as basements and industrial buildings, in dirty and suffocating conditions. The applicant Ukrainian Government referred to hostage-taking at the Chornobyl power plant, at a hospital in Mariupol and on a civilian vessel. They further claimed that children had been used as human shields in front of Russian vehicles.

1107. The abduction and detention of civilians described did not comply with any of the sub-paragraphs of Article 5 § 1 of the Convention or with any of the provisions in relation to internment in GC IV.

(b) The respondent Government

1108. The respondent Government did not take part in the present proceedings on the merits of application nos. 8019/16, 43800/14 and 28525/20 and the admissibility and merits of application no. 11055/22 (see paragraph 142 above). At the separate admissibility stage of the present

proceedings, they challenged in general terms the evidence submitted by the applicant Ukrainian Government (*Ukraine and the Netherlands v. Russia* (dec.), cited above, §§ 408-14 and 818).

3. The Court's assessment

(a) General principles

1109. The key purpose of Article 5 is to prevent arbitrary or unjustified deprivations of liberty (see *Selahattin Demirtaş v. Turkey* (no. 2) [GC], no. 14305/17, § 311, 22 December 2020, and *Denis and Irvine*, cited above, § 123). With this in mind, the Court has repeatedly emphasised the importance of the lawfulness of detention, both procedural and substantive, requiring scrupulous adherence to the rule of law, and the importance of the promptness or speediness of the requisite judicial controls (see, for example, *Selahattin Demirtaş*, cited above, § 312).

1110. In order to meet the requirement of lawfulness, detention must be "in accordance with a procedure prescribed by law". The Convention refers essentially to national law but also, where appropriate, to other applicable legal standards, including those which have their source in international law (see *Medvedyev and Others*, cited above, § 79). Where deprivation of liberty is concerned it is particularly important that the general principle of legal certainty, inherent in the concept of "lawfulness", be satisfied. It is therefore essential that the conditions for deprivation of liberty under domestic law be clearly defined and that the law itself be foreseeable in its application (see *Denis and Irvine*, cited above, § 128).

1111. In addition to being in conformity with domestic law, Article 5 § 1 requires that any deprivation of liberty should be in keeping with the purpose of protecting the individual from arbitrariness (see *Ukraine v. Russia (re Crimea)*, cited above, § 985; *Navalnyy v. Russia* [GC], nos. 29580/12 and 4 others, § 71, 15 November 2018; and *Kavala v. Turkey*, no. 28749/18, §§132-33, 10 December 2019).

(b) Application of the general principles to the facts of the case

1112. The applicant Ukrainian Government have complained of the abduction, kidnapping, unlawful arrest and detention and hostage-taking of civilians in areas under Russian control in Ukraine, a complaint which they did not extend to include military personnel *hors de combat* (see paragraph 1100 above). To some extent these different terms may reflect different factual contexts, but the Court is not persuaded that any distinctions between these different forms of unlawful deprivation of liberty are significant for the complaint of an administrative practice in the present case.

1113. International humanitarian law permits the deprivation of liberty of civilians in occupied territory subject to conditions. As noted above, in principle the penal laws of the occupied territory remain in force (see

paragraph 606 above and B132). However, the occupying Power may pass laws notably to maintain the orderly government of the territory and to ensure its security. In the event that such laws are breached, Article 66 GC IV permits trials by "properly constituted, non-political military courts". Those convicted of offences under these provisions may be interned or imprisoned (B164). Article 71 GC IV provides that accused persons must be promptly informed, in writing, in a language which they understand, of the particulars of the charges preferred against them, and must be brought to trial as rapidly as possible (ibid.; see also Article 75(3) AP I and B141). Article 78 GC IV allows the occupying Power to subject civilians to assigned residence or to internment where it considers it necessary, for imperative reasons of security, to take these safety measures concerning civilians. Decisions regarding assigned residence or internment must be made according to a regular procedure to be prescribed by the occupying Power in accordance with the provisions of GC IV. Such procedure must make provision for appeal and for periodic review (B164). Internment outside the scope allowed by GC IV and hostage-taking are unlawful (B141 and 164). Article 147 GC IV lists "unlawful confinement" of civilians as a grave breach of the convention (B138).

1114. The comprehensive and detailed material which the Court has summarised above (see paragraphs 774-1022) leaves no doubt as to the prevalence of abductions, kidnappings, arrests and detention across occupied areas of Ukraine. It is clear that in the summer of 2014, armed groups of separatists, operating in a general climate of fear and impunity, deprived civilians of their liberty on a large scale. The OHCHR, in its report of July 2014, referred to some 400 cases of alleged abductions that it was following up on (see paragraph 781 above). By early 2015, it was reporting that several hundred people in the "DPR" and "LPR" were thought to be in detention at any given time (see paragraph 810 above). The head of the "DPR" referred to the daily detention of Ukrainian "subversives" (see paragraph 810 above). In 2021 the OHCHR reported that arbitrary detention was systematically being carried out in the "DPR" and the "LPR" (see paragraph 888 above). It estimated the total number of conflict-related detentions by separatists in Ukraine from April 2014 to April 2021 at between 4,300-4,700, mostly persons *hors de combat* and civilians accused of supporting the Ukrainian Government. Of the 532 cases documented by the OHCHR, the large majority of cases amounted to arbitrary detention, which the OHCHR said remained a "daily occurrence" in "DPR" and "LPR" territory (see paragraph 888 above).

1115. The details of particular incidents show that some people were taken into detention ostensibly for breaking the curfew or for other public order offences (see, for example, paragraphs 781, 829 and 886 above). Many others were detained for taking photographs or videos of, the activities of armed groups, because they were perceived by separatists to support

Ukrainian unity, or because they had expressed views critical of the separatist administrations (see, for example, paragraphs 815, 902, 924, 957, 1002 et seq. and 1010 above). In later years, reference to espionage and treason were frequently invoked by the "DPR" and the "LPR" as reasons for deprivations of liberty (see, for example, paragraphs 844, 852, 863, 874, 887 and 890 above). There are also examples of what appear to be purely opportunistic abductions of individuals who found themselves in the path of armed separatists. In its July 2014 report, the OHCHR commented on the "opportunistic and resource providing element to the abductions and detentions" (see, for example, paragraphs 781 above). Journalists, religious leaders, Ukrainian civil servants, activists and those holding pro-Ukrainian unity views were particularly targeted. Some individuals were abducted at checkpoints manned by the separatists. Others were arrested in public places, at churches, at their places of employment or at their homes.

1116. The Court notes in particular the practice of administrative, or preventive, arrest widely employed in "DPR" and "LPR" territory from as early as 2014 (see paragraph 889 above). These practices were purportedly authorised for certain periods by legal instruments of the separatist entities, but the evidence demonstrates that the practices occurred even in the absence of any purported legal framework (see paragraph 881 and 884 above). Countless civilians were detained in the "DPR" and in the "LPR" pursuant to these practices between 2014 and 2022. They were rarely informed of the purported legal basis for their detention or of the nature of the allegations against them. They were not brought promptly before a competent judicial body, and there is evidence that once the period of "administrative detention" provided for had expired, a new period of "administrative detention" was applied (see paragraphs 857 and 882-883 above).

1117. Following the Russian Federation's invasion of Ukraine on 24 February 2022, the Commission of Inquiry reported that the Russian armed forces unlawfully confined large numbers of civilians in areas which they controlled. Victims included local authority personnel, government personnel, veterans of the Ukrainian armed forces, volunteers evacuating civilians and civilians arrested for reasons which are not apparent. The Commission of Inquiry was unable to establish, in any of the cases it examined, that a judicial or administrative body had reviewed the detention. It further noted frequent instances of detainees not being informed of the reasons for their detention (see paragraphs 910-922 above).

1118. The evidence also reveals that a process of filtration was implemented across occupied territory to screen individuals seeking to leave besieged cities or other dangerous areas, including areas of military operations, and people remaining in occupied territory in the context of meetings and gatherings. Filtration measures included inspections of cars and of personal belongings, seizure of telephones and computer equipment, fingerprinting and taking of pictures, interviews with Russian officials and,

on occasion, forced nudity. This resulted on many occasions in the detention of individuals for further screening at so-called "filtration camps". If suspicions arose that a person maintained connections with or allegiance to the Ukrainian administration, they were simply kept in detention. This practice of filtration resulted in the detention of civilians on a large scale. The Commission of Inquiry identified detention facilities in the Chernihiv, Donetsk, Kharkiv, Kherson, Kyiv and Zaporizhzhia regions of Ukraine and in the Russian Federation where the authorities of the Russian Federation had detained large numbers of people for long periods of time. The OHCHR recorded 634 cases of arbitrary detention between February and May 2022. The OSCE mission of experts referred to a relatively consistent pattern of behaviour on the side of the Russian Federation where military occupation of a certain area was followed by abductions, interrogations, mistreatment and sometimes killings of important public figures (see paragraphs 921 and 984-985 above).

1119. The evidence summarised above suggests the purported application, following the 2022 invasion, of the Russian Federal Law on Martial Law in the occupied territories, providing for the internment of foreign citizens "in accordance with generally recognised principles and norms of international law" (see paragraph 983 above). However, the OHCHR had received no information to indicate that the Russian Federation had adopted procedures or practices to uphold the safeguards enshrined in GC IV, in particular the right to challenge the lawfulness of, or to otherwise appeal, internment decisions and to have them reviewed through fair procedures on a regular basis (ibid.; see also paragraph 913 above).

1120. As the Court has explained above, a deprivation of liberty will only be compatible with Article 5 § 1 if it has been imposed for one of the reasons listed in sub-categories (a) to (f) and was in accordance with a procedure prescribed by law.

1121. The respondent Government have not, in these proceedings, identified the purported grounds for the deprivations of liberty of countless civilians between 2014 and 2022 in occupied areas of Ukraine. No arrest warrants or judicial decisions authorising detention have been provided to the Court. The Court has not been informed by the respondent Government of any purported legal basis for the various measures depriving civilians of their liberty, arising from Ukrainian or Russian law, the "laws" of the "DPR" or the "LPR" or from international humanitarian law. In the circumstances of the conflict in Ukraine, the Court is not in a position to identify itself any legal framework enabling deprivation of liberty in occupied areas. Indeed, it is reasonable to conclude from the evidence that in many instances those depriving civilians of their liberty did so with little or no regard for the conditions in which they were permitted by law to do so.

1122. As explained above, there is evidence that both the "DPR" and the "LPR" introduced a form of "administrative detention" on the basis of

purported regulatory measures applicable throughout their territories (see paragraph 1116). There is also evidence that the purported legal basis for the filtration measures used to detain civilians across occupied territory following the 2022 invasion was the Russian Federal Law on Martial Law in the occupied territories (see paragraph 1119 above). However, the Court does not consider that any of these measures can provide the legal basis for the deprivation of liberty of civilians in Ukraine by the Russian Federation and its agents. As regards the regulatory measures in the "DPR" and the "LPR", the Court has already explained that these measures cannot be considered "law" for the purposes of Article 5 § 1 of the Convention (see paragraphs 602-605 above). More broadly, while it is true that international humanitarian law permits the internment of civilians in occupied territory in certain circumstances (see paragraph 1113 above), the applicable conditions for internment have not been shown to have been satisfied in the present case. The respondent Government have not shown that it was necessary, for imperative reasons of security, to detain any of the civilians to whom the evidence above refers. They have, moreover, failed to show that decisions to detain civilians on security grounds were made according to a regular procedure prescribed by the Russian Federation, in accordance with the provisions of GC IV. In this respect, it is noteworthy that the OHCHR received no information to support the conclusion that, in the post-invasion period, the Russian Federation had adopted procedures or practices to uphold the safeguards enshrined in GC IV, in particular the right to challenge the lawfulness of, or to otherwise appeal, internment decisions and to have them reviewed through fair procedures on a regular basis (see paragraph 1119 above). Consequently, the deprivations of liberty effected by separatists throughout the Donbas from 2014 and across occupied territory in Ukraine after the 2022 invasion cannot conceivably be said to have amounted to lawful internment under GC IV. It is therefore not necessary for the Court in this case to address the apparent conflict between the authorisation for internment of civilians under the relevant provisions of international humanitarian law and the exhaustive categories of permissible detention listed in Article 5 § 1 (see *Hassan*, cited above).

1123. The Court is accordingly satisfied beyond any doubt whatsoever that there existed an accumulation of identical or analogous breaches of Article 5 in the period between 11 May 2014 and 16 September 2022 which are sufficiently numerous and interconnected to amount to a pattern or system of unlawful and arbitrary detention of civilians without the most basic procedural safeguards. For the reasons set out below, there is no doubt that these violations of Article 5 were officially tolerated by superiors of the perpetrators and by the higher authorities of the respondent State (see paragraphs 1617-1621 below). Insofar as they stem from the purported application of legal rules, it is moreover clear that the measures were regulatory in nature and applied across occupied territory.

1124. The Court therefore concludes that the Russian Federation was responsible for an administrative practice of unlawful and arbitrary detention of civilians in violation of Article 5 of the Convention in occupied territory in Ukraine in the period between 11 May 2014 and 16 September 2022.

XV. ALLEGED ADMINISTRATIVE PRACTICE IN VIOLATION OF ARTICLE 8 OF THE CONVENTION

A. The complaint

1125. In so far as it has been declared admissible (see paragraph 583 above), the applicant Ukrainian Government's complaint under Article 8, which relates to the period from 24 February 2022, concerns the following:

> "b. the forcible transfer and deportation of civilians;
>
> c. the abuse and mistreatment of civilians during 'filtration' processes;
>
> d. the involuntary displacement of civilians and prevention of their return home;
>
> e. the destruction of homes and personal possessions;
>
> f. theft and pillage of personal possessions."

1126. Article 8 of the Convention reads:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

1127. The complaints concerning the destruction of homes on account of bombing and shelling have been examined in the context of the administrative practice of military attacks (see paragraphs 747-772 above). The complaints concerning looting and destruction of homes and personal possessions under Article 8 have also been raised under Article 1 of Protocol No. 1 to the Convention. The Court will examine them together under both provisions (see paragraphs 1439-1453 below). It is accordingly not necessary to examine them here. The Court will therefore limit its examination here to the allegations of an administrative practice consisting of forcible transfer and forced and involuntary displacement of civilians; and abusive filtration measures.

B. The parties' submissions

1. The applicant Ukrainian Government

1128. The applicant Ukrainian Government submitted that the alleged administrative practice in breach of Article 8 of the Convention had been carried out during an unlawful military operation. It had also been incompatible with applicable international humanitarian law rules which prohibited displacement and ill-treatment of civilians. They argued that the alleged administrative practice occurred from 24 February 2022 and continued after 16 September 2022. The geographical scope of the allegation covered all occupied areas and areas where checkpoints and filtration centres had been located, and in so far as involuntary displacement on account of shelling was concerned, the whole of Ukrainian territory.

1129. As a consequence of the illegal military action, Ukrainian civilians had been forced to flee their homes to seek safety. According to the UNHCR, some 7.3 million had fled to the European Union and 1.8 million had fled to Russia, while some 7 million had remained in Ukraine as internally displaced persons. This accounted for about a third of Ukraine's population. The ongoing war had prevented them from returning to their homes, particularly as many of their homes had been destroyed by indiscriminate shelling or deliberate acts of Russian soldiers on the ground (throwing grenades, setting houses on fire, or leaving mines and boobytraps when they had retreated).

1130. In respect of the alleged forced transfer of civilians, the applicant Ukrainian Government referred to examples of persons detained by the Russian armed forces and later transferred to Russia. They also referred to deportations carried out in Mariupol, where it had been reported that some 40,000 residents had been forcibly moved to Russian-controlled territory. Before civilians had arrived in territories occupied by Russia or in Russia, they had been through filtration measures.

1131. The applicant Ukrainian Government further submitted that the humanitarian corridors opened by Russia after March 2022 had forced Ukrainian refugees to flee to Russia, preventing them from staying in Ukraine. They referred to Russian forces redirecting convoys of civilian evacuees from Kherson into Crimea in May 2022 and the deportation of at least 512 Ukrainians from a "filtration camp" in Bezimenne to Russia in May 2022. They cited examples of people being stopped at checkpoints and subjected to filtration. The measures had been carried out outside any legal framework and in breach of the principles of necessity and proportionality. The most vulnerable groups of persons had not been provided with the necessary support.

2. The respondent Government

1132. The respondent Government did not take part in the present proceedings on the merits of application nos. 8019/16, 43800/14 and 28525/20 and the admissibility and merits of application no. 11055/22 (see paragraph 142 above). No submissions have been received from them in respect of the period after 24 February 2022, save for their brief response of 5 March 2022 to the Court's request for information in the context of its 1 March 2022 indication under Rule 39 of the Rules of Court (see paragraphs 9 and 140-141 above).

C. Summary of the relevant evidence

1. Transfer and displacement of civilians

1133. Reports of international organisations and NGOs refer to various forms of displacement of Ukrainian nationals from the territories under Russian occupation after 24 February 2022. These forms included people being detained and removed from the Ukrainian territory under occupation; people being directed, coerced and escorted by the Russian and Russian-controlled authorities to leave Ukraine and go to Russia or to territories occupied by Russia; and people leaving Ukraine on their own because of military action, the destruction of homes, generalised violence and human rights violations.

1134. By 1 April 2022 between 300,000 and 500,000 Ukrainian nationals had been transferred to Russia according to various Governmental sources from both countries (B1365). The Russian Federation acknowledged that the transfers were taking place, with official statements in September 2022 providing figures of transferred civilians of a total of almost 4 million people, including over 625,000 children. The Russian Federation denied, however, that these were "forced" transfers (B1574).

1135. According to Eurostat, by the end of September 2022 almost 3.9 million Ukrainian nationals from throughout Ukraine had been granted temporary protection in EU Member States; at the end of February 2024, this figure had risen to over 4.2 million (B393). The Council of the European Union, on 4 March 2022, unanimously adopted an implementing decision establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC and introducing temporary protection for people fleeing Ukraine and unable to return as a consequence of "Russian military aggression" (B391). On 25 June 2024, the Council of the European Union agreed to extend to 4 March 2026 temporary protection for people fleeing from Russia's war of aggression against Ukraine (B392).

1136. The Commission of Inquiry documented instances of people who had initially been confined in Ukraine, without a clear status, and then

forcibly transferred to the Russian Federation, on some occasions through Belarus (C.II.75-80 and C.IV.513-18). In some cases, after releasing detainees, Russian authorities had expelled them from occupied areas to territories under Ukrainian government control, with no right to return. The Commission of Inquiry documented such situations in the Kharkiv, Kherson and Zaporizhzhia regions; the victims were school principals, teachers, employees of the State Emergency Service of Ukraine and individuals involved in the management of the Zaporizhzhia Nuclear Power Plant, who had been detained as they had refused to cooperate with the Russian authorities (C.IV.518). The Commission of Inquiry concluded that the authorities of the Russian Federation had committed unlawful transfers within Ukraine and deportations to the Russian Federation of civilians and of other protected persons (C.III.70).

1137. The Commission of Inquiry further documented cases of Russian armed forces carrying out so-called "clearings" ("*зачистки*") while gradually taking control of Mariupol, which had included ordering civilians to leave immediately the locations where they were sheltering (C.VI.22). The OSCE Moscow Mechanism mission and the ODIHR mission reported in April and July 2022 that the armed forces of the Russian Federation and of the "DPR" and the "LPR" were transporting tens of thousands of civilians to filtration centres in the "DPR", before deporting them to Russia. Armed men would enter shelters and houses at night, claiming that an evacuation was ongoing, and the occupants would have to leave immediately. Some reports referred to Russian, "DPR" and "LPR" armed forces guaranteeing safety only to those who wished to evacuate from Kharkiv, Mariupol, Rubizhne and Troitske to Russian-controlled territories. People were actively encouraged to leave, being given the option to go to Russia or die. They were put in cars or buses and driven to filtration sites or checkpoints (B1333, 1362-65, 1406-09 and 1714-19). These occurrences had been reported in Mariupol once the Russian forces had gained complete control over the area in March 2022 and had continued well beyond that date; in the Kharkiv region in March 2022 and in May and September 2022 in response to the counter-offensive of the Ukrainian military, even in areas which had seen no fighting; and in the Kherson and Zaporizhzhia regions as late as September-November 2022, in an attempt to suppress Ukrainian opposition to and protests against the occupation regime or in response to the Ukrainian counter-offensive (B1333, 1363, 1714, 1716, 1853-54, 1858, 1991, 2028 and 2263-66).

1138. At the same time, humanitarian corridors had opened after 1 April 2022, most of them leading to the territories under the control of Russia. Evacuation corridors leading to Ukrainian-controlled territory had either been mined or bombed. Several sources reported that people had been informed about evacuation buses being made available at various meeting points. From there, they had been taken by the evacuation buses to villages located in the "DPR", the "LPR", Crimea or Russia. They had not always been informed

about their destination. After weeks spent without food, water and medical supplies in the shelters under shelling, many of the civilians had been desperate to leave, irrespective of the final destination. If the meeting points were not themselves filtration sites, the evacuation buses had taken people to such sites (B1365, 1406 and 2271).

1139. People who had not been removed from their shelters and homes at gunpoint, or had not used the travel arrangements offered by the Russian and Russian-controlled authorities but had decided to travel on their own, had also regularly been subjected to filtration, either at checkpoints or in designated filtration centres (B1362-63 and 1714-19). People who had left the Kharkiv region in March to June 2022 reported having been photographed and fingerprinted (B1726 and 1862).

1140. The OSCE and ODIHR missions described the circumstances in which people had left their homes as a coercive environment in which civilians had had no other choice than to leave for Russia. In particular, witnesses interviewed by the ODIHR mission had said that they had decided to evacuate because of fear for their and their families' lives due to constant shelling and fighting, pervasive violence and abuses by the Russian forces, and the extremely dire humanitarian conditions they were forced to endure. Others had also referred to the imposition of rules and regulations by the Russian-controlled authorities, notably the Russian-organised referendums (see paragraph 75 above), and increasing pressure to obtain Russian passports. They had further referred to oppression and the environment of fear created by the conduct of the Russian forces, the encroaching hostilities and increased military activity and shelling by both armed forces in proximity to witnesses' homes. There were witnesses who mentioned lack of access to critical infrastructure, including medical care and functioning medical institutions as well as electricity and heating during the winter period, as a result of the occupation. Witnesses explained that they had chosen to leave through the Russian Federation since it had been the only available route to flee safely, as evacuation corridors to Ukrainian-controlled territories had been blocked or attacked (B1409, 1418-20, 1422, 1430, 1432-33, 1858 and 1863). The OSCE noted that the sheer destruction of certain towns, like Mariupol, Izium and Irpin, had made living there impossible (B1323 and 1349. See also B2146-48).

1141. Most people who passed the filtration procedure were given a "travel voucher" for evacuation to Russia or a certificate with a custom-made stamp that they had been fingerprinted at a certain filtration point/site. Based on that document, they were relocated to the so-called Temporary Accommodation Points (*Пункты временного размещения,* "TAP"), all across the Russian Federation including the Russian Far North (Murmansk), Siberia (Irkutsk) and Far East (Kamchatka) (B1364 and 1411). Those who wished to remain in the territories controlled by Russian forces in the cities and regions of Donetsk, Luhansk, Kherson, Zaporizhzhia and Kharkiv had

had to go back to their places of residence and obtain a permit to move around the territories through local filtration procedures in locally opened "militia" stations (B1411).

1142. On 12 March 2022 the Russian government adopted a decree concerning the distribution throughout the territory of the Russian Federation of some 96,000 persons "forced to leave" Ukraine, the "LPR" and the "DPR" after 18 February 2022 (B24). According to Russian official sources, as of 3 October 2022, 38,000 people were staying in TAPs in various regions of Russia and of Crimea. In June 2022, new 559 TAPs were set up. After the beginning of the Ukrainian counter-offensive in the Kherson region and the announcement made by the Russian administration of that region about the need to evacuate to the left bank of the Dnipro River, additional TAPs were opened, reaching a total of 807 TAPs on 24 October 2022 (B2246).

1143. The ODIHR mission and HRW interviewed witnesses who had reported that, once in the territory of the Russian Federation, their Ukrainian passports had been taken from them by representatives of the Russian authorities. People had been offered the possibility to, and in some instances had been strongly pressured to, apply for Russian citizenship. The accounts of several other witnesses suggested that many individuals who had not been able to prove that they were joining family members already in the Russian Federation or to covertly arrange transfer to Europe with non-profit or for-profit carriers had been relocated to remote areas of the Russian Federation by train. In the experience of one witness, who reported being one of many Ukrainians on a train, they had travelled for three days without knowledge of their final destination (B1420, 1422-23, 1433, 1731-33 and 2247-48). Other reports described difficulties in returning to Ukraine because of the absence of identification documents, which had either been left in Ukraine or had been taken by Russian authorities upon arrival; sale of tickets or boarding had been refused due to the absence of passports (B1731-35 and 2250-52).

1144. After 16 September 2022 the Russian authorities passed legislation allowing people in the "new Russian territories" until 1 July 2024 to pledge allegiance to the Russian State and acquire Russian nationality, or risk being deported (B21).

2. Filtration measures

1145. Various sources have reported on filtration measures carried out from shortly after the outset of the armed conflict on 24 February 2022. The Commission of Inquiry described the measures being carried out in areas under Russian armed forces' control as part of a system, mainly at checkpoints and border points, of verification of documents and mobile phones, and of interrogation (C.IV.499). Other reports described filtration as involving extensive body searches, detailed checks of all personal belongings, including mobile devices, interrogations about an individual's

background, family connections, political beliefs and opinions about the war, and extensive data collection, such as downloading phone contact lists, registering identification numbers of the telephones, including IMEI numbers (International Mobile Equipment Identity number, a unique 15-digit serial number for identifying a device), collecting passport numbers and scanning for biometric indicators (palm and fingerprints, digital photographs of faces and other physical markers) (B1421 and 2196).

1146. Anyone with a mobile telephone, laptop or tablet had to turn it in and supply the passcode. Officials scrolled through photographs, text messages and browsing histories and screened for deleted content. Sometimes officials connected the devices to a computer and downloaded their content. The discovery of photos of damage from shelling, of the Ukrainian flag or of the Ukrainian military on a telephone resulted in the person to whom the telephone belonged being taken for more screening measures and harsher interrogation, including torture. The outcome was the same where a person was found to have tattoos alleged by the Russian authorities to display symbols of affiliation to the Ukraine military, the Azov battalion or "Nazi" groups, or to have injuries and signs thought to correspond to the use of weapons (B1421 and 1720-21).

1147. According to reports of the OHCHR and the OSCE mission of experts, the interrogations, which usually followed a predetermined set of questions, and the searches appeared to be aimed at establishing whether the persons had fought on the Ukrainian side, had any connections to the Azov battalion, had close links to the Ukrainian Government or had pro-Ukrainian or anti-Russian views. If this was found to be the case, the person was often separated from others and subjected to arbitrary detention, torture, ill-treatment and enforced disappearance (B750 and 1363. For more details, see the summary of evidence at paragraphs 893-1022 above).

1148. Various reports estimated the number of filtration sites at around 21 as of August 2022 (B1363 and 2196-244). The OHCHR documented filtration processes in Russian-occupied areas of the Kharkiv, Kherson, Luhansk and Zaporizhzhia regions, with the most comprehensive system being in the Donetsk region (in particular Mariupol and its surrounding areas) (B773). Filtration measures were carried out in respect of everyone leaving areas of ongoing or recent hostilities, as well as those residing in or moving through territory controlled by the Russian armed forces or affiliated armed groups, including children as young as fourteen. People would wait for filtration at their own expense, sometimes staying in line for weeks. Persons awaiting filtration would often spend nights in vehicles, in open fields or unfurnished premises, sometimes without adequate access to food, water or sanitation; or would stay in accommodation with poor living conditions and with food provided only once a day and subject to disease outbreaks (B750, 1410, 1421 and 2197). People who had not themselves been subjected to ill-treatment and executions were made aware of such occurrences in other

parts of the building either by insinuations made by the Russian forces or by overhearing screams and gunshots, and seeing signs of ill-treatment inflicted on others (B1410).

1149. These measures were carried out mainly by the "DPR" armed forces, Russian border guards, Russian military and sometimes FSB investigators (B1363 and 2245).

1150. On 7 September 2022 the Russian Ambassador to the UN told the UN Security Council that international humanitarian law did not define filtration and that, if the reference to it concerned the procedure of identifying among Ukrainian citizens who wished to come to the Russian Federation those who were fighters in nationalist combat battalions or Ukrainian army soldiers, who had participated in crimes against the civilian population, that was "normal practice for any army around the world". He described the movement of civilians to Russia as voluntary, claiming that they had fled "out of fear for their lives; they wanted to escape from the criminal regime that did not let them evacuate and used them as a 'human shield'". Moreover, the displaced persons had gone through registration, not filtration, and it was a normal global practice used also in the EU in respect of refugees from any country, including from Ukraine (B1574). The "DPR" authorities stated in May 2022 that filtration activities were carried out in the "DPR" with regard to residents of the territories formerly under Ukrainian control in order to prevent "persons affiliated with Ukraine's military, law enforcement and security agencies, nationalist battalions, and sabotage and intelligence groups from penetrating the republic" (B1722).

D. The Court's assessment

1. General principles

1151. "Home" is an autonomous concept which does not depend on the classification under domestic law. Whether or not a particular habitation constitutes a "home" which attracts the protection of Article 8 § 1 will depend on the factual circumstances, namely the existence of sufficient and continuous links with a specific place (see, for instance, *Sargsyan v. Azerbaijan* [GC], no. 40167/06, § 253, ECHR 2015). Where individuals live in a certain area with their families at the time of their flight and earned their livelihood there, their land and houses may be considered to constitute their "homes" for the purposes of Article 8 of the Convention (see *Chiragov and Others*, cited above, § 150). A measure removing people from their home therefore amounts to an interference under Article 8 of the Convention. The Court has found that the transfer of the population of a village directly concerned the private lives and homes of the people concerned and amounted to an interference under Article 8 of the Convention (*Noack and Others v. Germany* (dec.), no. 46346/99, ECHR 2000-VI; compare *Loizidou* (merits), cited above, § 66). The Court has found the refusal to allow

displaced persons to return to their homes to amount to an unjustified interference with Article 8 of the Convention (*Cyprus v. Turkey* [GC], cited above, §§ 174-75).

1152. The Court has also found that placing a convict in a particular penal facility may raise an issue under Article 8 of the Convention if its effects on his or her private and family life go beyond hardships and restrictions inherent in the very concept of imprisonment (see *Khodorkovskiy and Lebedev v. Russia*, nos. 11082/06 and 13772/05, § 837, 25 July 2013. See *Ukraine v. Russia (re Crimea)*, cited above, §§ 1291-93 in respect of inter-State transfers of prisoners).

1153. The Court has held that the use of the coercive powers conferred by legislation requiring an individual to submit, anywhere and at any time, to an identity check and a detailed search of his person, his clothing and his personal belongings amounts to an "interference" with the right to respect for private life (*Vig v. Hungary*, no. 59648/13, § 49, 14 January 2021). The search and seizure of electronic devices also interferes with Article 8 rights (see *Särgava v. Estonia*, no. 698/19, § 85, 16 November 2021). The public nature of the search may, in certain cases, compound the seriousness of the interference because of an element of humiliation and embarrassment. Items such as bags, wallets, notebooks and diaries may, moreover, contain personal information which the owner may feel uncomfortable about having exposed to the view of his companions or the wider public (*Gillan and Quinton v. the United Kingdom*, no. 4158/05, § 63, ECHR 2010 (extracts)). Further, the Court has on many occasions found that the collection and storing of data by the authorities on particular individuals constituted an interference with the private lives of the people concerned (see, for example, *Rotaru v. Romania* [GC], no. 28341/95, §§ 43-44, ECHR 2000-V and *Glukhin v. Russia*, no. 11519/20, §§ 64-67, 4 July 2023).

1154. The Court has repeatedly affirmed that any interference by a public authority with an individual's right to respect for private life, family life, home and correspondence must be in accordance with the law. This expression does not only necessitate compliance with domestic law but also relates to the quality of that law, requiring it to be compatible with the rule of law, which is expressly mentioned in the Preamble to the Convention and inherent in the object and purpose of Article 8. The law must therefore be accessible and foreseeable as to its effects (*Big Brother Watch*, cited above, § 332, with further references).

1155. The protection of personal data is of fundamental importance to a person's enjoyment of his or her right to respect for private and family life. The domestic law must afford appropriate safeguards to prevent any use of personal data as may be inconsistent with the guarantees of Article 8. The need for such safeguards is all the greater where the protection of personal data undergoing automatic processing is concerned, not least when such data are used for police purposes. Personal data revealing political opinions fall

within the special categories of sensitive data attracting a heightened level of protection. In the context of the collection and processing of personal data, it is therefore essential to have clear, detailed rules governing the scope and application of measures, as well as minimum safeguards concerning, *inter alia*, duration, storage, usage, access of third parties, procedures for preserving the integrity and confidentiality of data, and procedures for their destruction, thus providing sufficient guarantees against the risk of abuse and arbitrariness (see *Glukhin*, cited above, §§ 75-77, with further references).

2. Application of the above principles to the facts of the present case

1156. As noted above, the complaint of the applicant Ukrainian Government under Article 8 of the Convention concerns an alleged administrative practice as a result of the transfer and displacement of civilians and abusive filtration measures. It is appropriate to consider each of the elements of this alleged administrative practice separately before concluding whether an administrative practice in violation of Article 8 has been established on account of these measures.

(a) Transfer and displacement of civilians

(i) Introduction

1157. The evidence outlined above clearly demonstrates that after 24 February 2022 millions of Ukrainian nationals left their homes in occupied territory or were removed from this territory (see paragraphs 1134-1135 above). Coinciding reports from credible sources describe the different circumstances in which civilians in Ukraine were displaced within occupied territory or to the Russian Federation itself. They also disclose different levels of coercion associated with the displacement of Ukrainian nationals in occupied territory in Ukraine.

1158. Some civilians were detained and then removed from occupied Ukrainian territory to detention facilities in Russia. There is no reason for the Court to call into question the findings of the Commission of Inquiry, made after careful investigation, that transfer of Ukrainian detainees from occupied territory in the Kharkiv, Kherson and Zaporizhzhia regions to detention facilities in Russia took place (see paragraph 1136 above).

1159. As regards civilians at liberty in occupied territory, some were directed or coerced to leave by the Russian armed forces or occupying authorities in operations often presented as “evacuations”. The evidence shows that people were directed and coerced to leave Mariupol in March-April 2022 and later, when the city had already fallen under Russian effective control and the military hostilities had ceased. Similarly, in the Kharkiv and Kherson regions “evacuations” were actively promoted in August-September 2022, after the cessation of hostilities (see paragraph 1137 above). “Evacuations” were also conducted in areas that had seen no fighting

(ibid.). There is also evidence that the "evacuations" were part of the occupation authorities' response to protests against the occupation administration (ibid.).

1160. The evidence also confirms the large-scale displacement of the Ukrainian population in occupied areas, in the absence of any immediate coercion from Russian or occupying authorities, because of military action, the destruction of their homes and generalised violence and human rights violations (see paragraphs 1137-1140 above). Russian official State documents preparing the distribution of Ukrainian refugees throughout Russia referred to refugees as having had to be "forced to leave" Ukraine *en masse* (see paragraphs 1134 and 1142 above). The Russian ambassador to the UN also stated that the displacement of Ukrainian nationals had been forced, but alleged that such displacement was attributable to Ukraine (see paragraph 1150 above). The Council of the European Union has recognised the mass influx of displaced people from all over Ukraine and has introduced and extended temporary protection for them, finding that the situation in Ukraine, as a consequence of "Russia's war of aggression" did not allow for the return of displaced people to Ukraine in "safe and durable conditions" (see paragraph 1135 above).

(ii) Transfer of detainees in occupied territory

1161. There is no doubt that the transfer to Russia of detainees amounted to an interference with their rights under Article 8 of the Convention.

1162. No reasons have been advanced by the respondent Government for such transfers. The respondent Government did not refer to any legal framework or official individual decisions authorising such transfers and regulating their operation. None of the reports discussed above have identified any legal basis for these actions. The Court has already explained why any purported legal acts of the "DPR" and the "LPR" cannot be accepted as "law" for the purposes of the Convention (see paragraphs 602-605 above). It has further explained why, in the absence of any submissions from the respondent Government concerning the validity under international humanitarian law of applying Russian laws to occupied territory in Ukraine, such Russian law cannot be recognised as providing a valid legal basis for interferences with Convention rights (see paragraphs 602-605 above. See also the Court's conclusion regarding the transfer of detainees from Crimea to the Russian Federation in *Ukraine v. Russia (re Crimea)*, cited above, §§ 1296 and 1301). Individual or mass forcible transfers, as well as deportations of civilians from occupied territory to the territory of the occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive, under Article 49 GC IV (B169). Article 76 GC IV also prohibits the transfer of detainees, as civilians accused of offences are to be detained in the occupied country, and if convicted they are to serve their sentences there (ibid.). A transfer of population contrary to these

provisions amounts to a "grave breach" of Article 147 GC IV (B138). The Court does not consider that international humanitarian law provides any legal basis for the transfer of detainees from Ukraine to Russia in the circumstances outlined in the summary of evidence, above.

1163. The transfer of detainees from occupied territory to the Russian Federation was therefore not in accordance with the law.

(iii) Displacement of civilians at liberty in occupied territory

(α) Has there been an interference?

1164. The first question to be addressed is whether displacement of civilians at liberty, resulting from actions involving various degrees of coercion, can be described as forced displacement amounting to an interference with Article 8.

1165. The respondent Government have repeatedly claimed in their public statements that as far as civilians directed to leave their homes or escorted from them by Russian authorities were concerned, their movement to Russia and other Russian-controlled territories was the result of a humanitarian evacuation and their displacement had been voluntary (see paragraphs 1134 and 1150 above). Under international humanitarian law, total or partial evacuation is exceptionally possible only if the security of the population or imperative military reasons so demand; if it is carried out within the bounds of the occupied territory unless for material reasons it is impossible to avoid displacement outside such territory; and if it is temporary, with the evacuated to be transferred back to their homes as soon as hostilities in the area in question cease (B169). It is unlawful to use evacuation measures based on imperative military reasons as a pretext for removing the civilian population and seizing control over a desired territory. Although forced removal for humanitarian reasons is justifiable in certain situations, it is not justified where the humanitarian crisis that caused the displacement is itself the result of the perpetrator's own unlawful activity (see *Prosecutor v. Radovan Karadžić,* ICTY Trial Chamber judgment of 24 March 2016, paragraph 492 at B170; see also the summary of applicable international humanitarian law provisions at B167-71 and the United Nations' Guiding Principles on Internal Displacement at B205-06).

1166. International humanitarian law defines the term "forced", in the context of displacement, as including physical force, as well as the threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression, abuse of power or the act of taking advantage of a coercive environment. The forced character of displacement is determined by reference to whether there was a genuine choice by victims in their displacement. As such, while persons may consent to, or even request, their removal, any consent or request to be displaced must be given voluntarily and as a result of the individual's free will, assessed in light of the surrounding

circumstances of the particular case (see *Prosecutor v. Radovan Karadžić,* cited above, paragraphs 489 and 2468-75 at B170). In the *Karadžić* case, the ICTY concluded that there had been forced displacement when civilians had fled out of fear for their lives, in intimidating and violent circumstances "which negated any suggestion of voluntariness in their departures", such as "[an] environment of fear ... caused by ongoing violence, killings, cruel and inhumane treatment, unlawful detention, rape and other acts of sexual violence, discriminatory measures, and wanton destruction of villages, houses, and cultural monuments" (ibid. at paragraphs 2471 and 2475). The International Residual Mechanism for Criminal Tribunals found in *Prosecutor v. Ratko Mladić* that the displacement of civilians from Srebrenica in July 1995 had not been justified under international law because it had been the "conduct of the VRS [Army of *Republika Srpska*] that [had] precipitated the humanitarian crises that preceded the displacements as well as the violent nature in which the VRS [had] effected the displacements", and because no steps had been taken to secure the return of those displaced (Appeals Chamber judgment of 8 June 2021, paragraph 358: see B171).

1167. In the present case, civilians being "evacuated" were gathered, directed and at times escorted from their homes by armed men (see paragraph 1137 above). The coercion involved in their removal from their homes is sufficient in itself to lead to the conclusion that such removal amounted to an interference for the purposes of Article 8.

1168. It further follows from the summary of international humanitarian law above that the absence of direct physical force does not automatically render displacement voluntary. The creation of a humanitarian crisis or of a coercive environment may be sufficient to deprive civilians of a genuine choice between remaining in their homes and fleeing for safety and may characterise such displacement as forced and in breach of international law (see paragraphs 1165-1166 above). The United Nations' Guiding Principles on Internal Displacement provides under Principle 5 that "[a]ll authorities and international actors shall respect and ensure respect for their obligations under international law, including human rights and humanitarian law, in all circumstances, so as to prevent and avoid conditions that might lead to displacement of persons" (B206).

1169. This is corroborated by a 2019 ICRC study, which explained that violence was the first cause of displacement, with more people fleeing because of violence and direct or indirect effects of hostilities than for any other reason (B2086-91). It observed that not everyone who fled during armed conflict did so in response to an actual act of violence. Apprehension and fear could influence people's decisions as they decided to flee perceived or anticipated threats. Multiple, concurrent violations of human rights and of humanitarian law produced a cumulative effect. The study underlined that the choice of someone to stay did not invalidate the coercive element behind others' decision to flee. Displacement was more than a mere consequence of

war or the result of an international humanitarian law violation. In some cases, it was a deliberate strategy: the parties to a conflict used overt methods, ordering people to leave their homes or transferring them by force. Other, more underhand, strategies employed to force civilians out of their homes included deliberately provoking displacement by using methods such as direct attacks against civilians, sexual violence, public beatings, threats against people's lives and safety and direct attacks against civilian objects, including homes, places of work, infrastructure and religious and cultural property. A build-up of violations could push people further afield and keep them away from their homes for longer. The study further explained that displaced people were less inclined to return home if there was a pervading climate of fear and intimidation. They were not able to return home when their communities lay in ruins, partly because their houses were severely damaged or destroyed, but also because the essential services they needed in order to rebuild a stable and sustainable life – such as electricity and drinking water – were simply non-existent. Anti-personnel mines and cluster munitions were weapons that caused displacement and they could make it almost impossible for displaced people to return. Returnees faced similar problems with unexploded ordnance, booby traps and other weapons that posed a direct, indiscriminate threat to civilians. Many displaced people simply could not go home for fear that doors, light switches, cabinets and even their children's toys might be booby-trapped. The ICRC study referred specifically to the situation in Ukraine as revelatory of the direct correlation between conflict-induced violence and displacement.

1170. The Court has already concluded that there were mass human rights violations committed by the Russian Federation amounting to administrative practices in breach of Articles 2, 3, 4 § 2 and 5 of the Convention (see paragraphs 1034-1045, 1067-1083, 1091-1099 and 1112-1127 above). These practices involved unlawful killings, widespread violence, abductions, cruel and inhumane treatment, arbitrary detention, rape and other acts of sexual violence. It cannot be disputed, in the light of these prevailing circumstances, that there was after 24 February 2022 (the period with which the Court is concerned in respect of the present complaint) an environment of coercion, fear, violence and terror in Ukraine. It emerges clearly from the evidence that this environment was substantially responsible for civilians' decision to flee (see in particular paragraph 1140 above).

1171. In these circumstances, it cannot be said that those who left their homes in occupied territory to flee the war and violence in Ukraine, either to Russia or elsewhere, including the EU, were doing so of their own free choice even where direct and immediate coercion was not present. The Court finds that the level of coercion caused by fear of violence, duress, detention, psychological oppression and abuse of power by Russian and separatist forces was such that it resulted in the forced displacement of civilians in occupied territory. The ongoing environment of coercion and terror in occupied

territory has actively prevented, and continues to prevent, people from returning to their homes. The Court is accordingly satisfied that the displacement of civilians at liberty in occupied areas of Ukraine amounted to an interference under Article 8 of the Convention.

(β) Was the interference justified under Article 8 § 2

1172. The Court reiterates that, in the absence of relevant submissions from the respondent Government, any Russian law purporting to authorise actions in eastern Ukraine, including "evacuations", cannot be considered valid for the purposes of the Court's "lawfulness" assessment under the Convention (see paragraphs 606-609 above). It is true, as explained above (see paragraph 1165), that international humanitarian law permits evacuations in certain circumstances. However, the reports of the Commission of Inquiry and of the OSCE have not identified legitimate grounds for the "evacuations" carried out in occupied territory. The respondent Government have provided no information to the Court in this respect. While their public statements asserted that these "evacuations" were intended to protect civilians from alleged imminent harm from the Ukrainian counter-offensive, they were also conducted in areas that had seen no fighting and even as a response to protests against the occupation administration.

1173. Even assuming that "evacuations" which took place in areas affected by the Ukrainian counter-offensive were based on the legitimate grounds set out in Article 49 GC IV – a matter which has not been established – the Court has not been provided with any explanation as to the material reasons that made it impossible to avoid displacement outside Ukraine and across the border to Russia, let alone to the Russian Far North and Far East. The Court has no information as to whether prior attempts had been made to facilitate the evacuation of the civilians concerned to territory under Ukrainian control. The Court has already found that there were attacks, in breach of Article 2 of the Convention, on humanitarian corridors intended to permit evacuation to Ukrainian-controlled territory (see paragraphs 1038 and 1044-1045 above).

1174. Moreover, once in Russia, Ukrainian nationals encountered difficulties returning to their homes in occupied territory (see paragraph 1143 above). After 4 October 2022, occupied territory were annexed by the Russian Federation and anyone who refused to cooperate with the Russian administration and acquire Russian nationality was unwelcome there. Such persons risked permanent deportation from occupied territory after 1 July 2024 (see paragraphs 1144 above). These elements indicate that the displacement of Ukrainian civilians to Russia was intended to be long-term, if not permanent, in breach of Article 49 GC IV.

1175. It follows that it has not been shown that international humanitarian law provides a legal basis for the "evacuation" of civilians from Ukraine to Russia.

1176. As regards the displacement of civilians not "evacuated" by the Russian armed forces, the Court reiterates that they were driven away from their homes in occupied areas and prevented from returning as a result of unlawful violence and terror perpetrated on an unprecedented scale by the respondent State itself through its agents and policies. There can be no justification for the creation of such an environment of coercion and terror as has been described above. The Court underlines that this environment is not inherent in the conduct of hostilities in compliance with international humanitarian law. Rather, it results from widespread unlawful and arbitrary conduct of the occupying authorities and the deliberate acts of violence inflicted on the civilian population, in breach of international humanitarian law. These actions were, quite plainly, not in accordance with the law.

(iv) Conclusion in respect of the transfer and displacement of civilians

1177. The Court accordingly concludes that the transfer and displacement of civilians in detention and at liberty in occupied territory of Ukraine was not in accordance with the law for the purposes of Article 8 § 2 of the Convention and was therefore not justified under that Article.

(b) Filtration measures

1178. The evidence plainly shows that filtration measures applied by the respondent State involved invasive and abusive security checks of individuals, their phones and their personal belongings, and extensive data collection carried out in conditions which did not provide for the needs of the most vulnerable groups (see paragraphs 1145-1149 above). The Court reiterates that it has examined in the past cases concerning filtration points which were allegedly used for the identification of combatants in Chechnya but were in fact associated with practices in breach of the Convention, such as detention, abduction and disappearances (see for example, *Ortsuyeva and Others v. Russia*, nos. 3340/08 and 24689/10, 22 November 2016; *Elsiyev and Others v. Russia*, no. 21816/03, 12 March 2009; and *Shamayev and Others v. Georgia and Russia*, no. 36378/02, § 269, ECHR 2005-III). In the present case, the Court has already found human rights violations connected to the practice of filtration, including extrajudicial executions, various forms of ill-treatment and unlawful detention in the context of the administrative practices carried out by the respondent State in breach of Articles 2, 3 and 5 of the Convention (see paragraphs 1034-1045, 1067-1083 and 1112-1127 above).

1179. The applicant Ukrainian Government's Article 8 complaint about filtration measures is mainly concerned with the practice of the mass collection of data and the invasive methods used by the Russian agents in conducting it, with the potential creation of an extensive and detailed database of Ukrainians in occupied territory. The methods employed by the Russian

agents included detailed checks of all personal belongings, including mobile devices; interrogations about an individual's background, family connections, political beliefs and opinions about the war; and extensive data collection, such as downloading phone contact lists, registering identification numbers of the telephones, including IMEI numbers, collecting passport numbers and scanning for biometric indicators (see paragraph 1145 above). Aside from the immediate consequences of these search measures (see paragraph 1146 above), the extensive database generated by the recording of all this information was likely of particular assistance in the further identification, screening and surveillance of persons who opposed Russian occupation of Ukrainian territory. The sheer number of filtration sites, the presence of necessary equipment to take digital photographs and carry out finger and palm printing and the existence of standardised certificates issued after filtration with custom-made stamps for each filtration site/point (see paragraphs 1118, 1141, 1145 and 1148 above) indicate a level of organisation which excludes the possibility that these measures were random and isolated incidents. There is no doubt that, on the contrary, they were put in place in a systemic way across occupied territory and applied to anyone wishing to leave, move around or re-enter occupied territory. Such wide search measures and systematic collection of data clearly amount to an interference with the rights under Article 8 § 1 of the Convention.

1180. The public statements of the Russian authorities assert that the practice was nothing more than the "registration" of incoming Ukrainian nationals and legitimate screening for combatants (see paragraph 1150 above). However, it emerges from the extensive evidence summarised above that filtration measures went far beyond mere registration and screening. They were not only applied to Ukrainian nationals entering occupied territory or the sovereign territory of the Russian Federation but were also applied throughout occupied territory to individuals deprived of their liberty for reasons that were not disclosed (see paragraphs 984, 1005 and 1118 above). They were not limited to screening for combatants, as suggested, but were clearly applied to civilians – including children – more generally and specifically to civilians suspected of holding pro-Ukrainian views (see paragraphs 915 and 1145-1147 above). In light of the particularly invasive and expansive application of filtration measures across occupied territory in Ukraine, the need for safeguards was all the greater (see paragraph 1155 above). Without such safeguards, the scope for abuse and arbitrariness in the filtration process was obvious.

1181. However, the respondent Government have not provided the Court with any information concerning the legal framework governing these operations. Neither purported legal acts of the "DPR" or the "LPR" nor Russian law itself can constitute the legal basis for the invasive search and data-gathering filtration measures applied in occupied territory (see paragraphs 602-609 above). None of the reports discussed above have

identified a legal basis in Ukrainian domestic law for the measures applied. There is therefore no evidence before the Court of clear, detailed rules governing the scope and methods of filtration measures, as well as minimum safeguards concerning, *inter alia*, search procedures, duration, storage, usage, access of third parties, procedures for preserving the integrity and confidentiality of data, and procedures for their destruction, thus providing sufficient guarantees against the risk of abuse and arbitrariness, as required under Article 8 of the Convention (see paragraph 1155 above). The absence of a general prohibition under international humanitarian law of security measures in respect of civilians does not relieve the respondent Government of their obligation to establish any such measures under clear legislation with strict procedural safeguards, in compliance with Article 8 of the Convention.

1182. For these reasons, the filtration measures widely applied in occupied areas between 24 February and 16 September 2022 cannot be considered to have been "in accordance with the law" within the meaning of Article 8 § 2 of the Convention and was therefore not justified under that Article.

(c) Conclusion

1183. The Court accordingly finds, beyond reasonable doubt, that there existed an accumulation of identical or analogous breaches of Article 8 from 24 February to 16 September 2022 relating to the unjustified transfer and displacement of civilians and the unjustified application of filtration measures which are sufficiently numerous and interconnected to amount to a pattern or system. For the reasons set out below, there is no doubt that the unjustified transfer and displacement of Ukrainian civilians and application of filtration measures were officially tolerated (see paragraphs 1617-1621 below). Indeed, it follows from the organised nature of the measures applied that they were undertaken in pursuance of official policies and instructions and that their execution would not have been possible without the approval of the central authorities in the Russian Federation.

1184. The Court therefore concludes that the Russian Federation was responsible for an administrative practice between 24 February and 16 September 2022, consisting of the unjustified displacement and transfer of civilians and application of filtration measures, in violation of Article 8 of the Convention.

XVI. ALLEGED ADMINISTRATIVE PRACTICE IN VIOLATION OF ARTICLE 9 OF THE CONVENTION

A. The complaint

1185. The applicant Ukrainian Government complained of an administrative practice in breach of Article 9 of the Convention. From 11 May 2014, this administrative practice is alleged to have consisted of:

> "a. the abduction and illegal imprisonment of religious leaders and adherents of minority religious groups;
>
> b. the establishment and implementation of a discriminatory and impermissible system of mandatory registration for religious groups which has resulted in the prohibition of most minority denominations and the unjustified banning of religious publications;
>
> c. the intimidation, harassment and persecution of minority religious groups and their members;
>
> d. the confiscation and seizure of places of worship and other religious facilities belonging to minority religious groups of all faiths; and
>
> e. interference with community worship and other forms of the collective manifestation of faith by minority religious groups;"

1186. Article 9 of the Convention provides:

> "1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
>
> 2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."

1187. The Court notes that the applicant Ukrainian Government's complaints under Article 9 of the Convention essentially concern the intimidation, harassment and persecution of religious groups aside from the Ukrainian Orthodox Church of the Moscow Patriarchate ("UOC-MP"), and interference with their community worship and other forms of the collective manifestation of their faith through the abduction, ill-treatment and killing of religious leaders and adherents of such religious groups; the confiscation and seizure of their places of worship and other religious facilities; and the establishment and implementation of a discriminatory system of mandatory registration for religious groups. The Court will therefore focus its examination on these main forms of interferences, as elements of one administrative practice alleged to be in violation of Article 9 of the Convention.

B. The parties' submissions

1. The applicant Ukrainian Government

1188. The applicant Ukrainian Government submitted that since its invasion of eastern Ukraine in 2014, the Russian Federation and the separatists under its control had committed widespread and egregious violations of the right to freedom of religion guaranteed by Article 9 of the Convention. Following Russia's invasion in February 2022, these illegal practices had intensified and extended into other occupied areas of Ukraine.

1189. The occupation of the Donbas, in the years since it was seized by Russian and separatist forces in 2014, had been marked by a widespread and discriminatory campaign of persecution, intimidation and mistreatment directed at religious groups and religious figures of all faiths and denominations, with the notable exception of the UOC-MP, which had been formally designated by the authorities in both the "DPR" and the "LPR" as the dominant religion. Members of all other religious groups had been targeted relentlessly. Their ability to express their faith by attending their places of worship or practising with their community of co-believers had been seriously and consistently undermined. The targeting of religious figures not belonging to the UOC-MP had continued in the period following Russia's full-scale invasion.

1190. The violations committed by Russia in eastern Ukraine had assumed a variety of forms, including abduction and forcible mistreatment of members of religious organisations; persecution and intimidation of religious groups; bans and de-registration of minority religious denominations; seizure and confiscation of places of worship and religious materials; interference with religious worship; pejorative statements by public officials; and, after 24 February 2022, destruction of places of worship and religious facilities.

1191. These interferences were not necessary or proportionate, nor could they be said to be in accordance with the law, as they did not comply with the principle of lawfulness or with international law. The actions had been carried out as part of military operations and occupation which were unlawful as a matter of international law, and were incompatible with the requirements of international humanitarian law.

2. The respondent Government

1192. The respondent Government did not take part in the present proceedings on the merits of application nos. 8019/16, 43800/14 and 28525/20 and the admissibility and merits of application no. 11055/22 (see paragraph 142 above). At the separate admissibility stage of the present proceedings, they challenged in general terms the evidence submitted by the applicant Ukrainian Government (*Ukraine and the Netherlands v. Russia* (dec.), cited above, §§ 408-14 and 818).

C. Summary of the relevant evidence

1193. In its reports for June and August 2014, the OHCHR noted that freedom of religion or belief had come under increasing pressure in occupied territory in eastern Ukraine. It referred to "numerous" and "almost daily" attacks in May 2014, which had taken place against the inter-religious Prayer Marathon, attended by all major denominations except the UOC-MP. The attacks had included "heavy beatings" of participants, destruction of property and threats to organisers and volunteers. The OHCHR identified "DPR" representatives as having been involved in at least two attacks. It also referred to reports of other denominations, including Protestants, being attacked (A896).

1194. Statements taken from participants in the Prayer Marathon also referred to attacks on the Prayer Marathon in May 2014. For example, a pastor of an Evangelical church claimed to have been held captive and beaten by separatists in Donetsk on 24 May 2014. The perpetrators had said that the UOC-MP was the "only one true faith" (A2165). A member of the Divine Assembly Church said he had been beaten by armed men and his tent had later been destroyed (A2196).

1195. A pastor for the City of Faith Church in Snizhne reported harassment of his congregation by the "DPR" from 12 May 2014. A "DPR" official had turned up at a private house where the church community were meeting. She had informed them that their meetings were against the law since they had not received permission from the "DPR". Separatists had later turned up at the church, where they had said that all churches not adhering to UOC-MP would be destroyed. Armed men in military clothing had appeared at houses where meeting were being held and had written down registration plates of cars parked nearby. They had begun following parishioners to find out where they lived. Most of the congregation had subsequently fled to Kyiv for their safety (A2189).

1196. On 15 July 2014 the OHCHR reported that religious leaders had been harassed, threatened and abducted. It referred to a "disturbing number of incidents" in eastern Ukraine, noting that the armed groups had declared that the main religion in Donetsk was the UOC-MP and that all "sects" were prohibited. The OHCHR found that this statement explained to a large extent, the increasing number of attacks on Protestant, Mormon and Roman Catholic churches in the areas controlled by the armed groups (A897, B531. See also A2174 and 2178). One pastor of the Word of Life Church in Shakhtarsk reported that on 21 June 2014, armed "DPR" separatists had beaten him up in his church and told him that only Muslims and adherents of the UOC-MP "should be here". The separatists had subsequently taken over the church (A2180-81). According to other witnesses, in June 2014, armed separatists had abducted four parishioners of the Divine Transfiguration Church in

Sloviansk during celebrations for the feast of the Holy Trinity. Their charred bodies had later been found in a communal grave (A2182-84).

1197. In August 2014, after the regular evening session of the Prayer Marathon in Donetsk, four activists were abducted by the armed groups. They were gradually released over the following four days. According to the OHCHR, they had initially been detained because in the view of the armed groups they were participating in an "unsanctioned" rally. However, once identified as Protestants, they had been subjected to harsher treatment (B534. See also A2167, 2170 and 2176).

1198. On 16 August 2014 the Revival Church in Pervomaisk was burnt down by separatists after the pastor had received threats from the local "people's mayor" (A2185). On 25 August 2014 "DPR" separatists broke into the Word of Life Church in Olenivka and seized it (A2191. See also A2197). On 8 September 2014 the church of the House of Prayer for All Peoples Church of Evangelical Christian Baptists in Antratsyt was seized by armed "LPR" separatists (A2200). On 27 September 2014 armed men abducted a Protestant pastor of the Seventh-day Adventist church in Horlivka, Donetsk region, reportedly stating that "[T]his is Orthodox land and there is no place for various sects". The pastor was released on 16 October 2014 (A898; and B544 and 612).

1199. On 18 September 2014 the UOC-MP Metropolitan of Luhansk and Alchevsk issued an official statement announcing that the local Orthodox clergy had nothing to do with the forcible seizure of religious buildings, which was exclusively the initiative of the armed groups. He stated that diocese bishops disapproved of such actions and would not accept any buildings belonging to Baptists or any other confessions that had been seized by the armed groups and offered to his denomination for use. On 23 September 2014 the Evangelical Christian Baptist Church announced on its website that between the beginning of April and September, seven Baptist church buildings had been seized by the armed supporters of the "DPR" and of the "LPR". On 4 October 2014 armed Don Cossacks seized the Holy Trinity Cathedral (Ukrainian Orthodox Church of the Kyiv Patriarchate – "UOC-KP") in Luhansk and gave the clergy one hour to "get out", declaring that the church would be used as their dormitory (A898 and B544).

1200. In November 2014 the OHCHR reported that all faith traditions except for the UOC-MP appeared to be targeted by the armed groups through the persecution and detention of clergy members and believers, as well as the seizure of church property (A898).

1201. In its daily report for 10 December 2014, the SMM reported that in Luhansk city, a representative of the UOC-KP had explained that services were not being conducted publicly owing to security concerns (A899).

1202. Mission Eurasia's report on "Religious Persecution in Eastern Ukraine and Crimea 2014", based on statements from 31 victims of alleged religious persecution, explained that "in April-September 2014, hundreds of

believers were abducted in territories controlled by pro-Russian separatists in eastern Ukraine. These believers were abducted solely because they were not members of the [UOC-MP]". During that same period, 54 churches of various Christian denominations had been taken over or destroyed in Crimea and eastern Ukraine (A2161-64). Some of the examples given in the statements published in the report have been summarised above.

1203. An April 2015 report published by the Centre for Civil Liberties recorded violations of religious freedoms by separatist armed groups in eastern Ukraine between April 2014 and March 2015 (B1864). It documented the oppression of parishioners of the Petrovskyi Church of Christ in Donetsk and stated that, in October 2014, armed men of the "DPR" had seized control of the Church of Christ premises in the Petrovskyi district of Donetsk. According to a church elder, about a dozen fighters from the "Oplot" battalion had occupied the congregation hall. The battalion's commanding officer had accused the church leaders and congregation of collaborating with the Americans and had added, "[W]e only support the Orthodox Church and your Protestant churches should not be here". Upon vacating the premises two weeks later, the battalion had defaced the exterior wall with a black skull and crossbones emblem, and the name of their battalion in large lettering. Another group of pro-Russian fighters had occupied the same church premises in November 2014. In March 2015, the building continued to serve as a military camp.

1204. On 5, 11 and 20 December 2014 Kingdom Halls (prayer houses of Jehovah's Witnesses) were seized by armed groups in Krasnyi Luch, Telmanove and Zuhres. On 10 January 2015, in Horlivka, five Jehovah's Witnesses ministers were taken to the office of a "DPR" commander and accused of betraying the Orthodox religion. They were allegedly punched and kicked and subjected to mock execution. After several hours, they were released and threatened with being shot if they continued their religious activities. On 22 January 2015 in Donetsk city, a Jehovah's Witnesses minister was abducted at his workplace by members of the "Oplot" battalion. He was blindfolded and interrogated several times before being released on 23 January 2015 (B555).

1205. The OHCHR reported in August 2015 that in a statement issued on 20 May 2015, the head of the "DPR" had threatened to "brutally fight sects". He had further stated that the "DPR" did not recognise any religions apart from Orthodoxy, Roman Catholicism, Islam and Judaism (A900 and B568). The OHCHR further reported that, since the beginning of the conflict, armed groups had abducted and ill-treated 26 elders and members of the Jehovah's Witnesses. For example, on 17 May 2015 armed men had detained four Jehovah's Witnesses members in Novoazovsk, blindfolded them and delivered them to their "local headquarters". For two hours, they had beaten them and had conducted a mock execution, seeking to persuade the detainees to "acknowledge Orthodoxy as the only true religion" and to join the armed

groups. On 21 May 2015 the police in the "LPR"-controlled town of Stakhanov had detained two Jehovah's Witnesses engaged in having Bible-based conversations with local residents. They had been accused of disturbing peace by forcing their religious convictions on others and had been detained for fifteen days (A901). On 21 June 2015 in the town of "DPR"-controlled Torez, two armed men had entered the Kingdom Hall during prayer, had attacked the preacher and had verbally abused the audience. The community elders had reported the incident to the local police, but no follow-up action had been taken (A902).

1206. By 15 August 2015 twelve prayer houses of the Jehovah's Witnesses community had been taken over by armed groups. Representatives of the "DPR" in the towns of Yenakiieve and Zhdanivka told the OHCHR that these would never be returned to the religious community and would be turned into "more important things, such as gyms" (B568).

1207. On 25 August 2015 in the city of Luhansk, four members of the local Jehovah's Witnesses community were interrogated for six hours at the office of the "ministry of state security", and forced to state that they were connected to foreign intelligence services. The interrogators forbade them from distributing religious literature and publicly practising their religion. On 21 September 2015 in the town of Vuhlehirsk, two representatives of the local "military police" ordered the community of Jehovah's Witnesses in the region to stop religious services and distribution of religious literature until a law on religion was passed, threatening that members would otherwise be sanctioned by arrests or high fines. On 29 September 2015 in the town of Shakhtarsk, a group of people came to the Kingdom Hall to protest against the activity of the religious community and put up signs on the facade that read "Away with the Sect!" and "No place for sects!" The local "police chief" was present during the protest, but did not intervene (B573).

1208. On 6 January 2016 a group of armed men headed by a Cossack known as "Ivanych" detained two male Jehovah's Witnesses at the Maiorsk checkpoint (controlled by the "DPR"). Before being released, the two men were threatened that next time they would have their legs "shot through". On 17 January 2016 three unidentified armed men in camouflage and balaclavas entered the Jehovah's Witnesses house of worship in Horlivka, and abducted three parishioners. After reporting the abduction to local "police", the parents of the victims were informed that all three had been taken to the building of the "counter organised crime unit" in Donetsk. On 18 January 2016 the unit informed the families that the three men were being "detained" for participating in an extremist organisation banned by a decree of the "head of the republic" (A904 and B576).

1209. On 29 January 2016 in Donetsk, the OHCHR monitored a demonstration near a Greek Catholic Church by activists of the "Young Republic", an organisation associated with the "DPR". Demonstrators held posters with the message "No to sects in the 'DPR'!'" and "Greek-Catholic

church conducts 'anti-republican' activities!" Protesters told the OHCHR that they were speaking out against the Greek Catholic Church because it "promotes the idea of a united Ukraine". The OHCHR observed that protesters had left the site in an organised manner in buses provided beforehand (B576).

1210. The situation of minority Christian communities in armed group-controlled territories remained precarious throughout the period from February to May 2016. Although the Jehovah's Witnesses in Horlivka continued holding meetings, the number of parishioners regularly attending the church decreased. During the reporting period, the OHCHR was informed that the majority of one of the Christian Charismatic communities had been forced to leave Luhansk in 2014 due to persecution from the armed groups (B581).

1211. In February 2016 two representatives of the "ministry of state security" of the "LPR" demanded that a local priest with the UOC-KP sign a cooperation agreement. A priest told the OHCHR that parishioners did not feel safe at their place of worship and had sometimes been the targets of insults from local residents and the armed groups (ibid.).

1212. The OHCHR reported that on 18 March 2016 the "DPR national council" had passed a "law on freedom of consciousness and religious unions", which was not publicly available. A representative of the "DPR" had stated that "1,400 religious organizations were registered in Donbas [before 2014], the majority of which were imposed from abroad", adding they had been "mainly sects, which aim[ed] to brainwash people". According to the OHCHR, religious communities that continued to operate in the territory controlled by armed groups feared that the "law" was announcing a new wave of persecution against them (ibid.).

1213. The "DPR" "people's council" adopted a "Religion Law" on 24 June 2016. Article 3 included an explicit ban on "the creation of sects or the spreading of sectarianism", concepts that the "law" did not define. The "law" did not explicitly ban exercising freedom of religion or belief without official permission. However, the NGO Forum 18 observed that in outlining procedures for gaining State permission, the "law" presumed that such permission was required (B1891).

1214. On 16 November 2016 in Horlivka, "DPR" armed groups seized and closed a Seventh Day Adventists church without any prior notification or justification. The OHCHR reported in February 2017 that the "LPR" "ministry of state security" had publicly labelled the Baptist community a "non-traditional religious organization", and had accused the church of conducting "destructive activities" (B612).

1215. The OHCHR reported in June 2017 that the "LPR" had required religious organisations to provide documents to reconfirm their registration and legal status by 18 May 2017. While no sanction for violation of the

deadline had been announced, the OHCHR was concerned about the possible forceful expulsion of those operating without "confirmation" (B623).

1216. In its report covering the period between 16 May and 15 August 2017 the OHCHR reported that in the "DPR", Jehovah's Witnesses had been accused of extremism and subjected to harassment, arbitrary searches of religious buildings and confiscation of religious literature. Members of the Jehovah's Witnesses community had been summoned to police or prosecution offices and informed that they had to cease operations until their religious organisation had been registered. However, no procedure for obtaining such registration had been established. On 7 July 2017, the "supreme court" of the "DPR" had declared two religious publications of the Jehovah's Witnesses to be "extremist" and had prohibited their dissemination. In its report of September 2017 the OHCHR noted that since 2014, nine religious buildings of Jehovah's Witnesses had reportedly been seized by armed groups (A905).

1217. On 17 August 2017 the "LPR ministry of culture, sports and youth" adopted a "decree" requiring religious organisations to obtain a positive "theological opinion" in order to "register" and operate as a "legal entity". The "expert council" established to conduct such theological expertise had wide discretion to issue a negative opinion on the basis of a broad and vague list of reasons (A906 and B641).

1218. In August 2017 in Horlivka, one of the Jehovah's Witnesses Kingdom Halls was reportedly "expropriated" by the "DPR" on the basis that it was "abandoned", despite documentation confirming the congregation's ownership of the property, as well as its continued use by parishioners. On 28 August 2017 the "LPR ministry of security" announced that activities of unregistered organisations of Jehovah's Witnesses had been banned due to their alleged ties with the Ukrainian intelligence services. Following the announcement, Kingdom Halls in Luhansk, Alchevsk and Holubivka in territory controlled by the "LPR" became inaccessible for parishioners (B641).

1219. On 14 October 2017 "ministry of security" agents entered the private home of a Jehovah's Witnesses parishioner, interrupted a joint worship and collected personal data from all the participants. Four parishioners were temporarily detained and one was accused of organising an unauthorised public gathering (ibid.). Forum 18 reported on the same incident, noting that the officers had pressured the four to sign statements prepared by the police, despite their disagreement with the content of the statements. One of the parishioners later had told the City and District Court in Sverdlovsk (renamed Dovzhansk on 12 May 2016) that he had signed that statement only because he had been "severely intimidated by the aggressive actions" of the police and "state security ministry" officers. On 27 November 2017 the court had found the parishioner guilty and fined him 5,000 Russian roubles (RUB). The "head of the Religious Organisations and Spirituality

Department of the Culture, Sport and Youth Ministry in Luhansk" had been present in court as a "specialist". According to Forum 18, he had insisted to the court that all meetings required permission, regardless of what organisation was holding them, and that police and security agencies needed to be informed. He had set out registration requirements, adding that "conducting any events of a religious nature on private land [was] impermissible". Also present in court as a "specialist" had been an UOC-MP priest, who had insisted that the parishioner be found guilty of holding a religious meeting without State permission. He had reminded the court that Russia had banned Jehovah's Witnesses as "extremist", as had the two breakaway regions of Georgia: Abkhazia and South Ossetia (B1875).

1220. On 23 September 2017 the police detained two female Jehovah's Witnesses while they were sharing their beliefs with others. Five male police officers forced the women to undress to their underwear and searched them. During the five-hour interrogation, officers forced the women to stand for the duration and threatened them with lengthy imprisonment. The interrogation continued for another hour at the "LPR state security ministry". Officers also searched the home of one of the women (B1876).

1221. Forum 18 reported in August 2018 that the Kingdom Halls in Luhansk and Alchevsk had been seized. Officials had also seized Kingdom Halls in Brianka, Perevalsk and Krasnyi Luch (renamed in Khrustalnyi on 12 May 2016). On 30 May 2018 a fire had destroyed the confiscated Luhansk Jehovah's Witnesses Kingdom Hall. It was unclear how the fire had started or who had been using the building at the time (B1877). On 3 September 2017 Jehovah's Witnesses had found their Kingdom Hall in Donetsk vandalised and desecrated. After that, the authorities had seized Jehovah's Witnesses Kingdom Halls and handed them to local administrations. Titles to the properties had often already been seized in anti-"extremism" raids on the Kingdom Halls earlier in 2017. Officials had seized Kingdom Halls in Horlivka, Donetsk, Telmanove (renamed in Boikivske on 12 May 2016), Yenakiieve, Vuhlehirsk and Debaltseve. In an 8 September 2017 order seen by Forum 18, the head of the "State Property Fund" had declared that the Kingdom Hall in Horlivka had been abandoned and would be taken over by the town administration. Ten days later a "State Property Fund Commission", accompanied by town administration officials, had visited the building and confirmed the decision. On 27 September 2017 the Jehovah's Witnesses community in Horlivka had appealed to the "DPR ministry of interior". In his 3 November 2017 reply seen by Forum 18, the "deputy minister" had informed them that the confiscation had been ordered on the grounds that the building had been allegedly unused. On 25 October 2017 the "State Property Fund" had declared that the Debaltseve Kingdom Hall building was abandoned and should be managed by the town administration. On 22 November 2017 the police had welded shut the entrance door (B1881).

1222. From November 2017 to February 2018, Jehovah's Witnesses continued to be targeted in the "DPR" and the "LPR". The OHCHR documented two new instances of "expropriation" of buildings belonging to the community, which it said brought the total number of expropriated Kingdom Halls to fourteen. Two religious publications of Jehovah's Witnesses had been declared "extremist" by the "DPR" while a court in the "LPR" had found that actions of Jehovah's Witnesses "infringe[d] the right to religious self-determination of others" (B646).

1223. On 2 February 2018 the "LPR" authorities adopted a law banning all "religious groups" not directly linked to traditional religions. Another law passed on the same date provided for a six-month period during which all religious organisations wishing to operate in the territory had to register and stipulated that a failure to register would be considered to amount to their having ceased operations. In November 2018 the OHCHR reported that the registration process had been extended to 15 October 2018. The process required the submission of the personal data of the founders of the organisations, and a minimum of twenty founders for an organisation to be registered (A907; and B646 and 655). Forum 18 also reported that the "law" had imposed registration of all religious literature, which, once approved, could be distributed only by religious communities among their own members and had to have the religious community's full name on it. Forum 18 further reported that any community seeking registration had to be approved by an "Expert Commission of State Religious Studies Expert Analysis", initially created as a "council" in September 2017 (B1872). Forum 18 observed that although the "law" claimed to require that all religious communities be treated equally, Article 6 required that Orthodox communities "have compulsory diocesan registration" and that the dioceses "are recognised by Ecumenical Orthodoxy within the framework of the canonical territory of the Moscow Patriarchate". This provision, Forum 18 said, seemed designed to prevent parishes of the UOC-KP or other Orthodox jurisdictions from seeking registration (B1883).

1224. According to Forum 18, in the evening of 27 March 2018 men in military uniforms had arrived at the church of the Council of Churches Baptists in Stakhanov (renamed Kadiivka on 12 May 2016) and had broken into the unoccupied building. Two lorries had then arrived and the men in military clothing had removed "literally everything" from the building, including the pulpit, the communion chalice, the amplification system, musical instruments, radiators and all the kitchen equipment. The intruders had also vandalised the building, breaking down internal doors and damaging windows, electrical fittings and linoleum (B1878).

1225. The OHCHR reported that the "DPR" had passed a law on 13 April 2018 "on freedom of religion and religious unions", requiring all religious organisations to complete a registration procedure by 1 March 2019. Those

failing to do so would not be allowed to operate in territory controlled by the "DPR" (A907).

1226. In its report covering the period between 16 May to 15 August 2018, the OHCHR reported that the authorities of the "DPR" had closed the only functioning mosque in Donetsk. The premises had been searched, religious literature had been confiscated and two Muslim practitioners had been questioned and forced to sign a commitment not to leave "DPR" territory (B655). Forum 18 also reported this incident, which it said had taken place in June 2018, noting that a criminal investigation had been launched against the two men for spreading "extremist" literature (B1882).

1227. On 3 June 2018 five armed men in plain clothes and balaclavas interrupted the Sunday morning meeting for worship of the Baptist Union Church in Molodohvardiisk. About 35 church members were meeting when the men, who said they were from the local "state security ministry", arrived. The intruders stopped the meeting, demanded explanations and asked to see documents permitting the worship. They searched the premises, seizing literature and the church laptop. They ordered all those present to give their addresses and phone numbers and then let most of them leave. The church's leader and four church members were held and ordered to write statements. The men then sealed the premises. The following day the police summoned and brutally interrogated the church's leader about the community's activities. Officers then searched his home, seizing a hard drive from his computer, literature and his phone along with the SIM card. The district police officer informed him that a case had been opened under "LPR Administrative Code Article 20.2, Part 2" for "holding illegal religious gatherings". Items the police seized were not returned and the premises remained sealed. On 1 August 2018 the Krasnodon (renamed Sorokyne on 12 May 2016) Town and District Court fined the church's leader RUB 8,000, according to a decision seen by Forum 18 (B1879).

1228. On 26 July 2018 the "LPR ministry of security" announced on its website that it had banned the "destructive activity of the extremist religious organisation the All-Ukrainian Union of Evangelical Christian/Baptist Churches". The "ministry" claimed that the Baptist Union "with its headquarters in Kyiv" had refused to submit to compulsory state registration locally (B1880).

1229. In its report for the period from August to November 2018, the OHCHR expressed its concern about the further narrowing of freedom of religion or belief in territory controlled by the "DPR" and the "LPR" due to the classification of evangelical Christian denominations as extremist organisations. On 26 September 2018 the "DPR" "supreme court" banned the religious activities of Jehovah's Witnesses as unlawful on the basis that it was an extremist organisation. As non-registered religious organisations were considered "illegal" even before registration deadlines, their worship meetings were disrupted by authorities which referred to "regulations"

limiting public assemblies. Such restrictions, reported both in the "DPR" and the "LPR", resulted in the inability of some religious organisations to use their houses of worship due to fear of possible seizure or sealing of their premises (B662).

1230. On 7 August 2018 Forum 18 reported that "LPR" authorities regularly halted worship meetings, seized religious literature and fined religious leaders. On 6 August 2018 the Pentecostal Church in Alchevsk had been raided. Earlier raids included those on Baptist and Jehovah's Witnesses communities in Krasnodon (Sorokyne), Horodyshche, Molodohvardiisk, Stakhanov (Kadiivka), Naholno-Tarasivka, Chervonopartyzansk (renamed Voznesenivka on 12 May 2016), Alchevsk and Luhansk. Many individuals had been fined several weeks' average wages for holding "illegal" worship meetings. "LPR" "courts" generally punished religious leaders under "Article 20.2" of the "LPR Administrative Code", which had been adopted in July 2016. Part 1 of that provision punished "[v]iolation by organisers of public events of the established procedure for organising or conducting gatherings, meetings, demonstrations, processions or pickets" with fines of RUB 3,000 to 5,000 or community work of up to thirty hours. Part 2 punished individuals holding public meetings without informing the authorities, with fines of RUB 5,000 to 10,000, community work of up to fifty hours, or up to ten days' imprisonment. A fine of RUB 5,000 was, at the time, equivalent to seventy euros and represented more than three weeks' local average wages for those in formal work (B1874).

1231. Forum 18 also reported that in August 2018 armed men had seized five Jehovah's Witnesses Kingdom Halls, while only two of the eighteen pre-2014 UOC-KP churches locally still functioned. According to Forum 18, the "LPR" authorities insisted that religious communities that had not undergone local registration were illegal under a May 2015 "decree" by Igor Plotnitsky, the then Head of the "LPR", banning mass events while the area was under martial law, and the February 2018 "Religion Law" approved by the "LPR People's Council" on 2 February 2018 (B1877).

1232. In October 2018 Forum 18 reported that throughout 2018 "DPR" authorities had continued to confiscate or seal places of worship to prevent religious communities from meeting. A Baptist Church in the southern seaside town of Novoazovsk, confiscated and sealed against entry in September 2018, was the latest known confiscation. Also seized in 2018 was a Baptist Church in Makiivka. The "State Property Fund" often seized places of worship on the pretext that they were unused and without an owner. Religious communities contested these claims. Also in 2018, Adventist churches had been denied registration and had decided to halt all their activities to avoid "provoking unpleasantness". Most of the 44 local Baptist communities which were part of the Ukrainian Baptist Union had lodged re-registration applications. However, all had seen their applications refused. The five Pentecostal communities which used to be linked to the Ukrainian

Pentecostal Union had also been denied registration, as had other independent Pentecostal communities. They had all received letters informing them that registration of the congregation was "inadmissible", without specifying in what way the congregations' documents had failed to comply with the "legal provisions" (B1884).

1233. In April 2019 premises of the UOC-KP were seized by "DPR" law enforcement agencies. The premises were reportedly to be transmitted to the UOC-MP. In the "LPR", searches were conducted in church premises and priests' residences, and items including personal correspondence seized (B674). Activities of several Christian denominations had continued to be targeted by separatist law-enforcement agencies, which had prevented the congregation of worshippers owing to lack of registration (A909).

1234. Forum 18 explained that on 21 April 2019 at least four police officers had come to a home in Krasnodon (Sorokyne) where a Council of Churches Baptist congregation met regularly for worship. The officers had ordered church members to halt their Sunday morning service. They had demanded that church members not meet again without official registration. Church members had reported that "[t]hey promised that if we still gather they will come to every service and drive us out, and not allow us the possibility of meeting". Officials had taken the names and other details of all those present. They had taken three church leaders, including the pastor to the police station. The three had refused to give the police any statements or sign any documents. Officers had fingerprinted and photographed each of the three church leaders before releasing them (B1885).

1235. The Nativity of the Blessed Virgin Mary Parish in Luhansk gained registration in the "LPR" in September 2019. Officials had previously demanded the names of parishioners and the police had visited the homes of some parishioners. A prior registration application had been refused with false claims that parishioners had criminal records (B1895).

1236. Forum 18 reported in October 2019 that "LPR" courts had continued to punish individuals who led worship meetings in defiance of official bans. Of the seven known cases in 2019, all of them from various Baptist denominations, two had been fined about one month's average wages each, one had been given a 20-hour community work order and the other four had not received any sanction (B1886).

1237. On 11 October 2019 the "DPR" "People's Council" adopted a further amendment to its "religion law", changing in Article 3 the ban on "the creation of sects or the spreading of sectarianism" to a ban on "the creation of religious associations infringing on the rights and freedoms of citizens" (B1892).

1238. In November 2019 the OHCHR reported that some religious communities in the "DPR" and the "LPR" remained unable to conduct worship meetings due to fear of arbitrary arrests or seizure of property. Several religious organisations had suspended their public activities after

mandatory "registration" of religious organisations had been rolled out in both "republics" between autumn 2018 and spring 2019 (B687).

1239. In autumn 2019 a priest of the Orthodox Church of Ukraine (formed in December 2018, uniting the UOC-KP and the Ukrainian Autocephalous Orthodox Church), temporarily travelled out of the rebel-held area into government-controlled Ukraine. When he sought re-entry to territory of the "DPR", "DPR officials" barred him entry and refused to put the ban in writing (B1893).

1240. In December 2019 Forum 18 reported that "LPR authorities" had banned as "extremist" twelve Baptist books, including the Gospel of John, the main hymnbook used by the Council of Churches Baptists, their regular magazine and children's books. The 26 November 2018 "LPR government decision" banning the Baptist books had become known on 10 December 2018, when the "LPR ministry of justice" had published the "State List of Extremist Materials" on its website. The decision itself had not been published, with one government official describing it as a "secret document for official use and for limited distribution". According to Forum 18, it remained unclear why such books were regarded as "extremist" and who had made this decision. Forum 18 observed that the computer formatting of the list was very similar to the "DPR Republican List of Extremist Materials". As of 20 December 2019, the "DPR" list contained forty-five entries, including the Jehovah's Witnesses international website, many Jehovah's Witnesses publications and several Muslim works. However, in the "DPR", items had been banned not by "government" decision but by the "supreme court" (B1887).

1241. Forum 18 reported that in 2019 the "LPR" authorities had cut off the gas supply to religious communities which had a recognised place of worship but which had failed to gain registration under "LPR laws". In late 2019 the "LPR" authorities had also threatened to cut off electricity and water supplies. A Baptist pastor told Forum 18, "Officials argue that they cannot supply gas, electricity and water to organisations that don't officially exist, as they can't have contracts with them" (B1889).

1242. By December 2019 the "LPR" authorities had registered only 195 religious organisations, according to figures given by the "minister for culture, sport and youth", at a 26 December 2019 briefing in Luhansk. The "minister" explained that of the 195 registered religious organisations, 188 were from the UOC-MP. The others were Muslim, Old Believer, Jewish and Catholic. No non-Moscow Patriarchate Orthodox Church, Protestant, Jehovah's Witnesses, Hare Krishna or other communities which existed before 2014 had been granted registration (B1890).

1243. Forum 18 reported that "DPR" security forces had raided a Protestant community during its Sunday morning worship meeting on 19 January 2020. They had taken church leaders to the police station for interrogation but had released them after several hours (B1894). On

28 January 2020 officers of the "LPR ministry of security" had arrived at the home of a Baptist pastor in the town of Krasnodon (Sorokyne). They had taken him to the "ministry" branch in Krasnodon (Sorokyne) for questioning. The officers had asked him about his religious activity. Then they had read him a warning that he risked criminal liability under Article 340 of the "LPR Criminal Code" for conducting extremist activity and for distributing extremist literature. The sanction under that provision ranged from fines of 100 to 300 times the minimum monthly wage or forced labour of up to five years or up to five years' imprisonment (B1888).

1244. In 2020 "LPR" officials told the Orthodox Church of Ukraine that it could no longer use its second church in Luhansk, the small Exaltation of the Cross chapel. Officials said that one church was enough and told the priest that if he served there he would be imprisoned (B1896).

1245. The OHCHR reported that during the period from August 2020 to January 2021, several religious communities in territory controlled by armed groups had continued to face limitations on their enjoyment of freedom of religion or belief. It said that the enforcement of "legislation" in "DPR" and "LPR" territory discriminated against a number of religious organisations. Representatives of religious communities who had earlier communicated with the OHCHR had refused to continue their interactions with the Office, fearing possible persecution (B703).

1246. In its report covering the period between 1 February and 31 July 2021, the OHCHR stated that on 25 June 2021 the prosecution service in the "DPR" had requested the "DPR" arbitration court to ban the activities of the "Probuzhdenie" (Awakening) Church of Evangelical Christian Baptists. On 20 July 2021 the Sverdlovsk (Dovzhansk) District Court had reportedly declared four books published by the International Union of Evangelical Christian Baptists to be extremist literature (A911).

1247. Forum 18 reported that March 2021 amendments to the 2016 "DPR Religion Law" acknowledged the existence of religious associations only if they had been registered. The June 2021 "List of Extremist Materials" contained ninety-seven items, some of them religious. Most publications banned by the "supreme court", including Jehovah's Witnesses and Muslim publications, also appeared on the list. On 25 June 2021 the "DPR minister of culture" had instructed all institutions under the "ministry's" control, such as musical and other artistic institutions, to display publicly in their institutions the two lists of banned publications and organisations (B1897-98).

1248. In a news article of 4 October 2021, Forum 18, reported the banning of three Protestant churches by the "DPR" courts. On 17 June 2021 the "DPR" "prosecutor general's office" had announced that two Protestant churches, the Good News Baptist Church and the Church of Our Lord Jesus Christ, had been banned. On 25 June 2021 it had further announced that a case had been filed in court against a third church, the Church of the

Awakening in Yenakiieve. Forum 18 explained that the "DPR" authorities required that religious communities be registered but officials would then routinely deny registration on arbitrary grounds. Those who had failed to register faced fines and raids on their places of worship or were denied re-entry from Ukrainian-controlled territory. As part of this campaign, "numerous places of worship" had been seized from a variety of religious communities, including Baptists, Jehovah's Witnesses, the Church of Jesus Christ of Latter-day Saints, Seventh-day Adventists, Muslims and the Donetsk Christian University. Forum 18 reported that the "DPR" authorities banned religious communities for not having been registered; after being banned by a "court" for failing to gain registration; or after a "court" had found them to be "extremist". All non-Moscow Patriarchate religious communities were banned from functioning if they had failed to get re-registration by 1 March 2019 (B1899).

1249. On 9 December 2021 the OHCHR published its report on "Civic Space and Fundamental Freedoms in Ukraine" covering the period from 1 November 2019 to 31 October 2021. According to the report, restrictions on religious groups by both the "DPR" and the "LPR", such as unreasonably heavy bureaucratic requirements and criminal sanctions for religious activities that were equated with extremist activity, continued to have a profound impact. As at 31 October 2021, several religious organisations were still unable to operate because requirements of obligatory registration of religious organisations, which authorities had used as a tool to obstruct religious activities or to shut them down completely, remained in force. This had particularly affected several evangelical Christian denominations and Jehovah's Witnesses. The authorities had persecuted Jehovah's Witnesses, interfered with their religious practices and accused the organisation and its members of extremist activities (A913).

1250. The reports on religious freedom in Ukraine for 2015, 2016, 2018 and 2021 by the Department of State of the United States of America, relied upon by the applicant Ukrainian Government, refer to the same or similar cases as those outlined above of harassment and intimidation related to religious activity by separatists and the persecution of religious groups and leaders (B1482-97).

1251. After the invasion of 24 February 2022 the OHCHR reported that in the territory occupied by the Russian Federation or controlled by Russian armed forces or affiliated armed groups, the overall environment for religious minorities had remained highly restrictive from February to July 2022 (B753).

1252. In addition to the cases included in the summary of evidence in respect of the complaints under Articles 2-5 of the Convention (paragraphs 893-1022 above), the OHCHR reported that a Baptist pastor from Kharkiv region had been abducted in May 2022 by three masked men in uniforms of the Russian armed forces. The pastor had been taken to a police station and

subjected to severe beatings. While being tortured, he had been told that "there [could] be only the Russian Orthodox Church in the area" and that "there [was] no place for a Baptist church". No information on his fate and whereabouts had been provided to his relatives and his detention had not been acknowledged by the occupation authorities. He had subsequently been released without conditions (B763). The OHCHR also reported on the abduction and ill-treatment in three different facilities in the Kherson region of a pro-Ukrainian priest from August 2022 to May 2023 (B786).

1253. Forum 18 continued to report on harassment and intimidation of religious communities in occupied territory throughout 2022. It reported that in March 2022 a Crimean Tatar and Imam of the Muslim Birlik (Unity) Mosque community in the village of Shchaslyvtseve, Kherson region, had been detained and tortured in a basement by Russian occupation forces. During his detention, a man (call sign "Bars") in plain clothes had insisted that he cooperate with the occupation authorities. "Bars" had also insisted that the imam cut the community's ties to the Spiritual Administration in Kyiv and subjugate his mosque community to the Spiritual Administration of Muslims of Crimea in the occupied Ukrainian city of Simferopol. After the imam's release, the Russian occupation forces had come to inspect the Birlik (Unity) Mosque. In October 2022 the mosque remained closed (B1900).

1254. Forum 18 also reported that on 9 April 2022 Russian forces had detained the Head of the Berdiansk German Lutheran Church while he had been walking in the town centre. They had taken him to the police station where the Russian military had established their headquarters. No contact and no information about his fate had been given until his release in early May 2022 (B1907). In June 2022 Russian officials or soldiers had visited two churches in the Donetsk region, the Central Baptist Church and the Church of Christ the Saviour in Mariupol, and had forcibly expelled Protestants from their church and rehabilitation centre in the nearby village of Manhush. The Russian officials and soldiers had conducted searches, confiscated equipment and demanded documents. On 12 June 2022 armed men had arrived at Mariupol's Central Baptist Church, where nearly 100 church members had been meeting for worship. The armed men had issued threats and demanded the church's registration documents. Church members had handed over the original documents, which the armed men had taken with them (B1901).

1255. On 21 May 2022, according to Forum 18, the "DPR's ministry of culture" had initiated the removal from public libraries of publications it regarded as "extremist". The chief specialist in the "ministry of culture" had said at a briefing in Donetsk on 25 May 2022 that specialists from the Krupskaya Donetsk Republic Universal Scientific Library had been travelling to newly-seized towns and villages to remove such literature from libraries. She had explained that about 2,000 "extremist" publications had already been removed, including included books on "political and religious figures". On 30 May 2022 the "head of the DPR", Denis Pushilin, had signed a decree

bringing the "DPR" "Republican List of Extremist Materials" in line with Russia's Federal List of Extremist Materials (B1902).

1256. Forum 18 reported that a leader of Ukraine's Baptist Union had informed it that on 14 June 2022 Russian FSB officers had raided a Baptist church in Vasylivka and had recorded the details of all those present. The officers had told the parishioners that they were closing the church as a "destructive sect" and that no further meetings would be allowed. The officers had seized the keys to the building (B1903).

1257. Forum 18 reported that on 23 June 2022 the Russian military had brought a delegation of Moscow Patriarchate priests to Mariupol. There, they had toured churches, including the Church of Petro Mohyla of the Orthodox Church of Ukraine. The adviser to the (Ukrainian) mayor of Mariupol who had had to flee the city was recorded as stating, "After the visit of the Moscow FSB agents in cassocks, it became known that the whole large library, collected by volunteers and benefactors, was seized and burned in the yard" (B1904).

1258. Forum 18 reported that after occupying the city of Lysychansk in the Luhansk region in early July 2022, Russian and Russian-backed forces had seized the Central Baptist church, the largest Protestant church in the city. Men in military dress, who had not identified themselves, had broken down the door to gain entry. According to the church's pastor, they had thrown out all the church's possessions, including all their Christian literature such as Bibles and educational materials. The Baptist Church had subsequently been used by the Russian-controlled city administration. The "LPR authorities" had used the church in late September 2022 to hold the "referendum" on joining Russia. Also in Lysychansk, in late July 2022, the Russian forces had seized the Grace Baptist church. Russian officials had claimed it would be used as a kindergarten. According to Forum 18, Russian officials had told local church members in Lysychansk that the military administration had banned all Baptists, Pentecostals and Adventists as extremists. No written document had been provided to this end (B1905).

1259. On 11 September 2022, in an incident reported by Forum 18, the Russian military had raided the Protestant Grace Church in Melitopol during the Sunday morning meeting for worship. Church members had been singing a worship song in Ukrainian as soldiers had mounted the stage to halt the service, as seen on the Church's livestream. Soldiers had recorded the names and passport details of all those present. They had forced the women and children out of the church building and then photographed and fingerprinted all the men, taking their identity documents. Russian soldiers had accused Grace Church members of having links with the United States, had declared the church "nationalised", and had told parishioners not to come there in future. They had detained two of the church's pastors, including the chief pastor (B1906).

1260. A report of 22 September 2022, entitled "Russian attacks on religious freedom in Ukraine", published by the Institute for Religious Freedom, focused on Russian attacks on places of worship and religious infrastructure. According to the report, at least 270 places of worship had been destroyed by Russian forces during the five months of full-scale war, including 71 in the Donetsk region, 53 in the Kyiv region, 40 in the Luhansk region and 39 in the Kharkiv region as well as places of worship in the Zhytomyr, Chernihiv, Sumy, Zaporizhzhia, Kherson and Mykolaiv regions (B2218). It was reported that all the books from the library of the Church of Petro Mohyla in Mariupol, belonging to the Orthodox Church of Ukraine, had been seized and burned by the Russian military (B2220). There had been at least 20 personal attacks on religious figures and leaders (B2224-29).

1261. A report by ZMINA Human Rights Center, referring to the period between February 2022 and June 2023, reported eight instances where religious figures had been abducted by the occupation forces (B2282-83). The individuals had usually been detained for a short period of time, from several hours to several days (B2293-96).

1262. A report of Crimea SOS, based on 27 in-depth interviews with people of the Kherson region, noted that between 30 March 2022 and 26 January 2023 the Russian forces had abducted at least three religious leaders in Kherson (B1909 and 1911).

1263. According to the Jehovah's Witnesses community, since 2022, Russian occupation authorities have seized 32 Kingdom Halls in occupied areas of the Donetsk, Luhansk, Zaporizhzhia and Kherson regions (B1513).

D. The Court's assessment

1. General principles

1264. The term "religion" in Article 9 of the Convention must not be interpreted to the detriment of non-traditional forms of religion (see *İzzettin Doğan and Others v. Turkey* [GC], 2016, § 114). However, a conviction must attain a certain level of cogency, seriousness, cohesion and importance to benefit from protection under Article 9 (see *İzzettin Doğan and Others*, cited above, § 68). It would be fundamentally inconsistent with the logic of Article 9 to limit the rights guaranteed under that provision solely to the religions and registered religious organisations recognised by the State, and to followers of them (see *Hamzayan v. Armenia*, no. 43082/14, § 51, 6 February 2024).

1265. The right of believers to freedom of religion, which includes the right to manifest one's religion in community with others, encompasses the expectation that believers will be allowed to associate freely, without arbitrary State intervention (see *Moscow Branch of the Salvation Army v. Russia*, no. 72881/01, § 58, ECHR 2006-XI, and *Jehovah's Witnesses of Moscow and Others v. Russia*, no. 302/02, § 99, 10 June 2010). The refusal

to recognise a religious community as a legal entity or the dissolution of an existing legal entity constitutes an interference with the right to freedom of religion under Article 9 of the Convention (ibid., § 101).

1266. Under the terms of Article 9 § 2 of the Convention, any interference with the right to freedom of religion must be "prescribed by law" (see, among many other authorities, *Bayatyan v. Armenia* [GC], no. 23459/03, § 112, ECHR 2011, and *İzzettin Doğan and Others*, cited above, § 98). The Court's scrutiny of the lawfulness requirement does not stop at ascertaining that there was a statutory basis for the interference. In *Taganrog LRO and Others v. Russia* (nos. 32401/10 and 19 others, §§ 151 and 159, 7 June 2022), the impermissibly broad definition of "extremism activities", coupled with a lack of judicial safeguards, led to a finding of a violation of Article 9 on the basis that the interference was not "prescribed by law".

2. Application of the above principles to the facts of the present case

1267. The relevant provisions of international humanitarian law outlined in previous sections concerning unlawful deprivation of liberty, ill-treatment and torture and extrajudicial killing (see paragraphs 1035, 1068-1069 and 1113 above) are relevant to the allegations of an administrative practice under Article 9 in so far as they concern the same conduct. The obligation to respect the religious convictions and practices of persons in occupied territory was codified in Article 46 of the Hague Regulations (B147). Respect for convictions and religious practices is recognised in Article 75(1) AP I as a fundamental guarantee for all persons who are in the power of a party to the conflict (B141). Article 15 AP I codifies the obligation to respect and protect civilian religious personnel in all circumstances (B176).

1268. Before turning to consider whether the evidence summarised above is sufficient to show that interferences with Article 9 rights occurred, it is necessary for the Court to consider what weight to place on the evidence of Forum 18, the source of many of the examples summarised above. It notes that Forum 18 is an NGO established to work for freedom of religion or belief for all on the basis of Article 18 of the Universal Declaration of Human Rights and the ICCPR. It is a partner of the Norwegian Helsinki Committee. Its reporting is based on direct quotes from those involved in the incidents and from its own examination of documents discussed in its reports. There is no evidence before the Court of any reason to question the independence and impartiality of the authors of these reports. The Court considers this material to constitute credible and reliable primary evidence upon which it may rely in the establishment of the facts.

1269. The evidence shows that since May 2014 freedom of religion has been significantly curtailed in occupied Ukrainian territory. The separatists in the "DPR" and the "LPR" quickly declared the UOC-MP to be the main religious group in occupied territory. They harassed and persecuted religious figures of other religions or Christian churches as well as civilians engaging

in worship in the context of those religions and churches, in breach of the requirements of international humanitarian law (see paragraph 1267 above). As early as May 2014 there were a number of attacks on the Prayer Marathon for peace and Ukrainian Unity in Donetsk (see paragraphs 1193-1194 above). Places of worship were seized by separatists, with reports indicating a lack of tolerance for what separatists called "sects", in most cases apparently intended to cover all religious practice outside the context of the UOC-MP (see, for example, paragraphs 1198-1199, 1203, 1204, 1214, 1216, 1221, 1231-1233, 1248, 1258, and 1263 above). There are numerous reports of religious leaders being ill-treated, abducted during religious activities and, in some cases, killed by separatists in eastern Ukraine. It is clear from the context of many of these instances that these individuals had been targeted on account of their positions as leaders of religious communities and in the context of a generalised practice of disrupting and preventing the right of those not adhering to the UOC-MP to practise their religions (see, for example, paragraphs 1196, 1200, 1202-1203, 1227, 1229-1230, 1233-1234, 1242-1243, 1248, 1260 and 1262 above). There is also evidence of the banning of religious material, which was deemed to be "extremist" by separatist administrations and institutions (see, for example, paragraphs 1222, 1226, 1230, 1240, 1243, 1247, 1255 and 1260 above). Members of the Jehovah's Witnesses appear to have been particularly targeted.

1270. From 2016 the evidence shows that the "DPR" and the "LPR" began to put in place formal requirements for the registration and operation of religious groups. Even where registration was theoretically open to all, in practice it was applied restrictively to refuse registration to a number of religious organisations on grounds which were not disclosed (see paragraphs 1212-1213, 1215-1217, 1223, 1225, 1231, 1237, 1242 and 1248-1249 above). Some religious organisations were identified as "extremist" organisations and banned on this ground with their religious material and publications seized, destroyed and banned (see, for example, paragraphs 1216, 1221, 1228-1229, 1240, 1246 and 1248 above). Immovable property was seized by the "DPR" and "LPR" authorities on the basis that it was "abandoned property", that it was property belonging to banned or "extremist" organisations, or without advancing any reason whatsoever (see paragraphs 1199, 1202-1204, 1206, 1214, 1216, 1221, 1229, 1232, 1244 and 1248 above). The OHCHR's December 2021 report referred to unreasonably heavy bureaucratic requirements and criminal sanctions for religious activity deemed by the separatist administrations to be extremist (see paragraph 1249 above). Religious leaders and parishioners were pursued on charges of organising or attending illegal gatherings (see, for example, paragraphs 1219, 1226, 1230, 1236 and 1243 above). The OHCHR underlined the profound impact of these measures on religious organisations in occupied territory eastern Ukraine (see paragraph 1249 above).

1271. The evidence confirms that after 24 February 2022 the practice of abducting religious leaders and seizing and destroying churches and religious property continued across the territories occupied by the respondent State (see paragraphs 1251-1263 above). Extremism "laws" and other provisions purporting to ban "sects" were applied in newly occupied territory to justify the confiscation of religious material and prevent religious worship by those outside the UOC-MP community (see, for example, paragraphs 1255, 1258-1259 and 1263 above). In 2022 the Russian occupation administration "nationalised" property from religious communities and repurposed it for their own ends (see paragraphs 1256 and 1258 above).

1272. The measures described in the evidence were applied to religious communities outside the UOC-MP including other Christian communities, Muslim communities and, notably, Jehovah's Witnesses. They were intended to, and in many cases did, discourage or prevent members of religious communities from associating freely and from manifesting their religions and beliefs. The Court is satisfied that these measures amounted to interferences with religious convictions protected by Article 9 of the Convention.

1273. The Court has already found administrative practices in breach of Articles 2, 3 and 5 of the Convention on account of widespread practices of unlawfully depriving of their liberty, ill-treating and killing civilians in occupied areas in Ukraine (see paragraphs 1034-1045, 1067-1083 and 1112-1127 above). In so far as the allegations under Article 9 concern the unlawful deprivation of liberty, ill-treatment and torture and extrajudicial killing of civilians on account of their belonging to or practising their religion, such conduct quite clearly cannot be justified under Article 9 § 2.

1274. The seizure and confiscation of religious property and materials was frequently carried out as yet another manifestation of the general violence and lawlessness perpetrated by separatists across territories in their hands. Evidence from later years refers to the application of "laws" and other purported legal acts in respect of extremism to ban organisations and their materials as "extremist" and to seize and destroy religious property. At the same time, "laws" were adopted to require registration of religious organisations in the "DPR" and the "LPR". The respondent Government have not identified or provided copies of the "laws" and other purported legal acts to which the summary of the evidence refers.

1275. As already explained, in the absence of any information from the respondent Government, the Court does not accept that such "laws" or "legal acts" can provide a legal basis for measures taken by the separatists or the Russian military occupation administrations (see paragraphs 602-609 above). No legal basis for the seizure and confiscation of religious property or for the mandatory registration of religious communities can be discerned in international humanitarian law. This is sufficient, in itself, to enable the Court to conclude that the impugned measures were not "prescribed by law". However, the Court further observes that it is unlikely that the measures taken

in occupied areas of Ukraine pursuant to purported legal acts proscribing extremism would satisfy the "quality of law" requirement inherent in "lawfulness" on account of the absence of safeguards to protect against an excessively broad interpretation of the concept of "extremism" by the "DPR", "LPR" and other occupation authorities (see *Taganrog LRO and Others*, cited above, § 159). It is also questionable whether any law purporting to limit to the followers of registered religious organisations only the right guaranteed by Article 9 to manifest one's religion would satisfy the "lawfulness" requirement in light of the fundamental inconsistency of such a law with the requirements of that provision (see *Hamzayan v. Armenia*, cited above, §§ 49-52).

1276. The Court accordingly finds, beyond reasonable doubt, that there existed an accumulation of identical or analogous breaches of Article 9 of the Convention between 11 May 2014 to 16 September 2022 which are sufficiently numerous and interconnected to amount to a pattern or system of intimidation, harassment and persecution of religious groups aside from the UOC-MP. For the reasons set out below, there is no doubt that the violations of Article 9 described were officially tolerated by the superiors of the perpetrators and by the higher authorities of the respondent State (see paragraphs 1617-1621 below).

1277. The Court therefore concludes that the Russian Federation was responsible for an administrative practice in occupied areas of Ukraine of intimidation, harassment and persecution of religious groups aside from the UOC-MP in violation of Article 9 of the Convention in the period between 11 May 2014 and 16 September 2022.

XVII. ALLEGED ADMINISTRATIVE PRACTICE IN VIOLATION OF ARTICLE 10 OF THE CONVENTION

A. The complaint

1278. The applicant Ukrainian Government's complaints under Article 10 of the Convention concern the existence of an alleged administrative practice from 11 May 2014 consisting of the following:

> "a. killing of members of the press;
>
> b. imprisonment of members of the press;
>
> c. intimidation, including by physical violence, of members of the press;
>
> d. interferences with the population's ability to receive information, including by blocking of Ukrainian broadcasters."

1279. Article 10 of the Convention reads as follows:

> "1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference

by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

1280. The Court notes that the applicant Ukrainian Government's complaints under Article 10 of the Convention concern interferences with the freedom to impart and receive information and ideas through individual but systemic acts of harassment, violence and intimidation of members of the press and of persons expressing views contradicting the mainstream political views; and through administrative measures blocking media outlets, internet sites and social media. The Court will therefore focus its examination on these main forms of interferences, as elements of one administrative practice alleged to be in violation of Article 10 of the Convention.

B. The parties' submissions

1. The applicant Ukrainian Government

1281. The applicant Ukrainian Government argued that in the territory under their control in eastern Ukraine, the separatists had targeted independent journalists, both from international and from Ukrainian media. Journalists had been prevented from reporting, shot dead, arrested and detained. The armed groups had also blocked Ukrainian broadcasters in the areas under their control.

1282. Following Russia's invasion in February 2022, there had been widespread violations of the right to freedom of expression and freedom of the press. These included unlawful killings, enforced disappearances, arbitrary arrests, abduction and detention of human rights activists, journalists and volunteers. In addition, the respondent Government had interfered with the freedom of the press to impart information and the public's freedom to receive such information by seizing control of local media outlets, blocking Ukrainian television and internet services and threatening those who might speak out against the occupation.

1283. All the acts described constituted interferences with freedom of expression, and none of these interferences had been prescribed by law, had served any legitimate aim or had been necessary in a democratic society.

2. The respondent Government

1284. The respondent Government did not take part in the present proceedings on the merits of application nos. 8019/16, 43800/14 and

28525/20 and the admissibility and merits of application no. 11055/22 (see paragraph 142 above). At the separate admissibility stage of the present proceedings, they challenged in general terms the evidence submitted by the applicant Ukrainian Government (*Ukraine and the Netherlands v. Russia* (dec.), cited above, §§ 408-14 and 818).

C. Summary of the relevant evidence

1285. In May 2014 the OHCHR said that the working environment for journalists in eastern Ukraine had become increasingly dangerous and was deteriorating. Journalists had reportedly been harassed, threatened, abducted, unlawfully detained, obstructed and killed in the course of their journalistic activities in the eastern regions of Ukraine (A915).

1286. In its daily report for 14 May 2014, the SMM reported having met with the journalist Irma Krat, who had been in detention in Sloviansk since April 2014. On 26 May 2014 the press secretary of separatists in Luhansk confirmed that two journalists were being detained on suspicion of "espionage". Following interviews with journalists who had fled Donbas, the SMM reported threats to and intimidation of local media, including the beating of staff, by separatists from March 2014. The journalists had told the SMM that some editors-in-chief had been replaced by individuals loyal to the separatists while other newspapers had chosen to close (A918).

1287. In their reports of May and June 2014, the OHCHR referred to armed attacks on editorial offices and television towers (A916). In its report of June 2014, the OHCHR indicated that "[t]he working environment for journalists has become increasingly dangerous, with the threat of abduction and illegal detention by armed groups". It noted that "editorial offices continue to be threatened and intimidated by armed groups". For instance, on 14 May the OHCHR had received credible reports that journalists who worked in the region but had refused to comply with the orders of the "DPR" had been threatened and harassed (B522-23). The OHCHR also referred to reports that the State regional television was in a "particularly difficult situation" as its office had practically been blocked by approximately 100 heavily armed men. Moreover, on 21 May 2014 an unidentified man had called the editorial office of the Public Television of Donetsk region and threatened its journalists. On 27 May 2014 the editorial office of a local web-based outlet had been forced to relocate to a different town, reportedly because of threats from the "Army of the South-East". On 26 May 2014 it had been reported that the publisher and editor-in-chief of one of the local newspapers in Kramatorsk had been forced to flee the region with his family because of threats they had received after he had refused to publish materials that "DPR" armed representatives had demanded him to publish (B526). The OHCHR also referred to arbitrary arrests of journalists. It reported that on 15 May a journalist and cameraman of the ICTV Ukrainian channel had been

arrested on the border by the Border Service and FSB between Kharkiv and Belhorod while performing editorial tasks (ibid.).

1288. The June 2014 report of the OHCHR referred to an incident on 2 June 2014 where armed members of the "Donbas People's Militia" had arrived at the office of the newspapers *Donbas* and *Vecherniy Donetsk* and had blocked all entrances and exits. They had abducted the editor-in-chief of *Donbas* and his deputy, and the editor-in-chief of *Vecherniy Donetsk*. According to local NGOs interviewed by the OHCHR, the armed groups had used psychological pressure and death threats to change the editorial policy of the newspapers and ensure more positive coverage of the "DPR". The three editors had eventually been released on 3 June, after which all *Donbas* employees had been sent on leave and the newspaper had stopped its publication (ibid.).

1289. The OHCHR further referred to information received from NGOs that Ukrainian TV channels had been switched off by the "DPR" and replaced by its own media programmes and Russian TV. For example, on 5 June, a local cable TV and Internet network provider in Donetsk had terminated the broadcast of Ukrainian channels 1+1, Donbas, UBR and News24 at the demand of "DPR" representatives (ibid.).

1290. On 15 July 2014 the OHCHR reported (A920):

> "152 ... Many journalists previously working in the east have already fled after being abducted, harassed, intimidated or otherwise threatened. Those that remain in Luhansk have been instructed by the armed groups on how they should report the news. Words such as 'separatist' and 'terrorist' should not be used, they were told, and each Monday there would be a meeting with the editors of local media to instruct them on what to cover and how. Media outlets were threatened that if they did not cover the activities of the armed groups positively, their equipment would be destroyed and employees put in danger. In Donetsk, all media outlets are required to register with the armed groups' 'Ministry of Information and Communications'. This extends to online resources, including individual bloggers, as well as distributors of print media. Any outlet that does not register would be banned from all media activities. Ukrainian television channel ICTV and the local municipal TV channel 12 in Donetsk were replaced by Russian TV channel broadcasts ..."

1291. In August 2014 the OHCHR reported that abductions, threats, harassment and intimidation of foreign and Ukrainian journalists by armed groups had continued to take place in the east of Ukraine. For example, on 19 July 2014 ten foreign journalists, who had been attempting to report on the crash of flight MH17, had been detained by armed groups in Donetsk. All had been released several hours later after having been interrogated. On 22 July 2014, a CNN freelance journalist and field producer had been abducted from the Donbas Palace hotel in Donetsk and accused of being a Ukrainian spy. He had been released on 26 July 2014 after having been severely beaten. On 31 July 2014 two Ukrainian freelance journalists had been detained by armed groups in the Luhansk region, and on 2 August 2014 the operator of the NTN channel had been abducted in Donetsk. The whereabouts of all three remained

unknown on 17 August, the date on which the OHCHR report was published (A924 and B533).

1292. The OHCHR further reported that on 21 July 2014 the "defence minister" of the "DPR", Mr Girkin, had announced that journalists, cameramen and photographers were not allowed to take photos, videos and audio recordings, or to be present, in a combat zone or in the immediate proximity of military objects. Several journalists had subsequently been harassed, regardless of whether or not they had accreditation from the "DPR". The OHCHR reported on 15 August 2014 that in Krasnodon (Sorokyne) representatives of the "Army of the South-East" had prohibited photographing and filming in public places in the city, under threat of prosecution by their so-called military tribunal (A921 and B533).

1293. The OHCHR report also referred to an overview of a study, published on 31 July 2014, by the NGO Institute of Mass Information, which had monitored violations of journalists' rights in Ukraine. The study had covered the cases of 51 journalists who had been abducted and held hostage by armed groups in the Donetsk and Luhansk regions from April to the end of July 2014. It had provided examples of abducted journalists who had been forced, against their will, to give false statements to Russian media (A923).

1294. In its October 2014 report the OHCHR reported that foreign and domestic journalists continued to face threats and abductions, with an obvious impact on their work and freedom of expression (B537). A journalist and a cameraman from TV channel 112 Ukraine had been detained on 21 August 2014 by armed separatists from the "LPR" while reporting on an exchange of hostages. Both had been released two and a half weeks later. A journalist of the media outlet Road control and a cameraman of Espreso TV, released on 2 September 2014, had reported that they had been abducted by Russian servicemen near Ilovaisk on 25 August. At the time the report was published, two Kharkiv journalists, who had been detained by the armed groups in the "LPR" on 17 August 2014, and a journalist of Espreso TV, detained by the "DPR" armed groups on 25 August 2014, remained in captivity (ibid.).

1295. The OHCHR's November 2014 report referred to the continuing abduction of journalists by armed groups (B542). As of 31 October 2014 the OHCHR was aware of at least six more journalists and media workers who remained in the captivity of armed groups of the "LPR". During the period from 17 September to 31 October 2014, five journalists had been released from captivity. On 25 September 2014 a blogger of Ukrainian Truth had been released after forty-eight days of detention by an armed group of the "DPR". On 30 September 2014, a freelance journalist of *Vesti* newspaper and *The Reporter* magazine, together with a freelance photojournalist, who had been held by the armed groups since 22 September had been released in Sverdlovsk. On 6 October a journalist of Espreso TV had been released after thirty-eight days of detention by an armed group in Makiivka. He had reportedly been ill-treated and forced to give a false testimony on camera

about the Ukrainian armed forces. He had later been forced to make video reports as a pre-condition for his release, under the supervision of members of the Don Cossack unit that was holding him. On 11 October 2014 a freelance journalist from the Lviv-based news agency ZIK had been released after having been held by armed groups in the Luhansk region since 23 July, along with a group of priests with whom he had been travelling to report on their missionary work in the conflict area. All had been held in the basement of the Luhansk state administration building and had been severely beaten. On 27 October 2014 a local civic activist and blogger captured on 22 September by armed groups of the "DPR" had been released during a detainee exchange (ibid.).

1296. The OHCHR's report covering the period between 16 February and 15 May 2015 reported that the "council of ministers" of the "LPR" had issued an order demanding that telecommunications operators remove 23 Ukrainian television channels and the independent television channel Dozhd from the broadcasting network on the grounds that they "pose a threat to state security" (B559). In its subsequent report, covering the period from 16 May to 15 August 2015, the OHCHR reported that the company Donetsk Cable Television had confirmed that it had blocked access to 39 Internet-based media outlets, upon an order from the "ministry of information" of the "DPR" (A926 and 931; and B567).

1297. On 11 March 2015 a journalist from the city of Makiivka, controlled by the separatists, was reportedly abducted by armed groups. The journalist was released on 10 May 2015 (A929).

1298. In its report covering the period between 16 May and 15 August 2015, the OHCHR reported that on 16 June 2015 a journalist from the independent Russian newspaper *Novaya Gazeta* had been captured in Donetsk by the "ministry of state security" of the "DPR". He had been interrogated, beaten and then released at the border with the Russian Federation (A932).

1299. In its report covering the period between 16 August and 15 November 2015, the OHCHR said that to ensure their safety, journalists working in the areas controlled by armed groups had reportedly increasingly resorted to self-censorship. A Donetsk-based media professional had told the OHCHR that there was no freedom of speech in the "DPR", as "no one from local media would even think to express a critical opinion" (A933).

1300. In the same report, the OHCHR referred to information received by interlocutors, who had reported that loyal journalists were granted certain privileges such as extended accreditation. One media professional had explained that the armed groups had exerted pressure on him by sending the police to the hotel where his crew was staying while preparing a report on a sensitive topic. The same media professional had said that he had been apprehended not far from Donetsk airport with a colleague, taken to a military

base and questioned for one and a half hours by members of armed groups in March 2015 and forced to erase all their recorded material (A934).

1301. In its reports covering the period between 16 November 2015 to 15 February 2016 and 16 May to 15 August 2016, the OHCHR reported that in order to receive permission to enter and work in the "DPR" and "LPR", foreign journalists had to apply for "accreditation", a process that involved close scrutiny of their prior reporting and publications. According to the OHCHR, the procedure had become more complicated over the summer of 2015 with the creation of the "special analytical department", responsible for monitoring all the reporting of journalists working in the "DPR". For example, two foreign journalists had been refused accreditation and invited for an interview at the "analytical department". One of the reporters had been accused of being a "propagandist" and ordered to leave Donetsk city. Nine other media outlets had informed the OHCHR of their difficulties with accreditation. Certain foreign journalists who had been working in the "DPR" and the "LPR" following the outbreak of hostilities had been refused accreditation or had been required to apply for re-registration (A935).

1302. In June 2016 the OHCHR reported that between February and May 2016, freedom of expression, including the ability to openly express dissenting views, had remained severely restricted in the territories controlled by the armed groups. The report stated (B582):

> "121. ... Persons living in the 'Donetsk People's Republic' and 'Luhansk People's Republic' know that expressing their opinion freely and publicly was not acceptable in armed group-controlled territory. When asked why no-one would protest and publicly speak out against the 'republics', residents inform OHCHR that such actions would be unimaginable."

1303. The report referred to the abduction in January 2015 by the "LPR" armed groups and subsequent exchange in March 2016 of a freelance journalist (see paragraph 815 above). According to the OHCHR, to many journalists seeking to report from the "DPR" and "LPR", "her prolonged deprivation of liberty was a signal of the intolerance and danger of free opinion and expression in areas under the control of the armed groups". The report also referred to the case of foreign journalists working for the Turkish media outlet TRT World who, on 1 May 2016, had been denied entry to the "DPR" at the Kurakhove checkpoint by several "DPR ministry of security officers" despite having received accreditation on 29 April. The OHCHR had moreover received information that armed groups were "directly influencing and shaping the content in local media when it comes to depicting the leaders of the armed groups as well as the conflict-related developments". Local journalists reported that only a few Internet websites or online channels provided a platform where people and media professionals could freely express their views without censorship (B582).

1304. The OHCHR further reported that in addition to the 150 websites that had been previously banned by the "LPR ministry of justice" on

22 March 2016, the "ministry of information, press and mass communications" had registered on 25 April 2016 an "order" prohibiting operators and providers of telecommunications services from disseminating information in violation of "LPR" rules. According to the "ministry of justice", these restrictive measures had been taken to further protect the "national security of the republic" (ibid.).

1305. In its report covering the period between 16 November 2016 and 15 February 2017, the OHCHR indicated that some media representatives working in territory controlled by separatists had faced deliberate and targeted acts of violence perpetrated by the armed groups. They also continued to experience obstruction to their work, including denial of access to territory controlled by armed groups, censorship, unlawful detention and harassment (A937). Two bloggers, who had been active on social media networks and who had regularly expressed criticism of the armed groups and of the political and socio-economic situation in Luhansk, had been detained by "LPR" armed groups. The "ministry of state security" of the "LPR" had said that one of the bloggers was accused of "inciting hatred" and "espionage" (A938).

1306. In its report covering the period between 16 May and 15 August 2017, the OHCHR said that it continued to observe "systematic attacks on civil society space severely hindering the work of media representatives" (B630). It had documented cases of media professionals who had been detained by armed groups or subjected to intimidation and interference with their work. Journalists entering territory controlled by armed groups of the "DPR" were required to inform the press centre of the "ministry of defence" about their activities on a daily basis, were arbitrarily required to show their video footage at checkpoints and were accompanied by members of armed groups when travelling close to the contact line (A939).

1307. The OHCHR's report for 16 August to 15 November 2017 highlighted that freedom of expression had remained severely restricted with no critical publications or elements of dissent allowed in media outlets circulating in the territory under the control of the armed groups. On 27 September 2017 armed men had forcibly entered the home of a well-known blogger and activist in Donetsk, had beaten him and had interrogated both him and his wife. The blogger had been accused of terrorism and arbitrarily detained for thirty-six days, until 2 November. The charge had allegedly stemmed from his published articles criticising the leadership of the "DPR" (A940). Another blogger in the "LPR" had reportedly been convicted of "extremism" and "espionage" for his critical posts on social media and had been sentenced to fourteen years' imprisonment (B640).

1308. The OHCHR stated in its report covering the period from 16 February to 15 May 2018 that (B650):

> "79. The space for freedom of expression and freedom of media remains highly restricted in territory controlled by armed groups. With few critical voices publicly

> expressed in this territory, OHCHR is concerned that they may have been silenced, including by means of intimidation, expropriation of property and deprivation of liberty ..."

1309. During the reporting period, the OHCHR documented four cases where civilians were detained in relation to their expressing pro-Ukrainian views in public and in social media or being critical towards the 'authorities' (A942).

1310. In its report for the period from 16 May to 15 August 2018, the OHCHR repeated that the space for freedom of opinion and expression remained highly restricted. It had documented the case of two men detained and charged with "espionage", *inter alia*, for their pro-Ukrainian position expressed in social media. The OHCHR also referred to "[m]ore limitations ... introduced by the self-proclaimed 'Donetsk people's republic' impinging on the ability of foreign media to report and work in armed group controlled territory". The OHCHR reiterated that local media were operating mainly as a tool for promoting those in control (A943).

1311. In its report covering 16 November 2018 to 15 February 2019, the OHCHR again observed that the space for freedom of expression and freedom of the media remained highly restricted in the "DPR" and the "LPR". It shared its concern that expression of any critical opinion or alternative view could lead to arbitrary detention or other punishment of critics (B667).

1312. In its report covering the period between 16 August and 15 November 2019, the OHCHR reported that it had been informed by several interlocutors that media professionals residing in "DPR and LPR" territory had refrained from expressing critical views out of fear of retaliation. The report noted (B686):

> "76. ... This was confirmed by OHCHR observations on the absence of critical media content that contradict mainstream political views supported by representatives of the 'republics'. OHCHR monitoring found that social media was the only platform available to residents to express their views on the current political, social, economic situation in this territory."

1313. The OHCHR condemned the sentencing of a journalist who had contributed to Ukrainian and international outlets, to fifteen years' imprisonment by a "court" of the "DPR" following proceedings held in camera. Reportedly, the espionage and extremism charges had been partially based on his publications criticising the "DPR". The report also said that a blogger remained detained in territory controlled by the "DPR" for over two years (A944).

1314. In its report covering the period between 16 November 2019 and 15 February 2020, the OHCHR said that it continued to observe a lack of media coverage critical of or deviating from the perspectives of the "authorities" in the "DPR" and the "LPR". For example, widespread criticism regarding delayed salaries and other benefits had appeared on social media, but had not been covered by local media (B690). The OHCHR continued:

> "99. In a further shrinking of the space for free expression, in 'Luhansk people's republic', the list of 'administrative offences' was expanded to include dissemination, including online, of information offending human dignity, public morals and explicit disrespect to 'authorities' ..."

1315. The OHCHR reported that the journalist and the blogger who had been detained since 2017 by "DPR" authorities (see paragraph 1313 above) had been released on 29 December 2019 (B690).

1316. In its report for 1 August 2020 to 31 January 2021, the OHCHR expressed concern about the arbitrary detention of individuals in the "DPR" and the "LPR" for their social media posts. In one case, a blogger had reportedly been detained for his articles on arbitrary detention and torture by members of armed groups in the "DPR", the content of which the authorities had referred to as extremist. In another case, a person had been charged with crimes for his social media posts, and released only after spending nine months in detention following a court hearing at which the judge found him guilty and imposed a fine (A947).

1317. In its report covering the period between 1 February and 31 July 2021, the OHCHR said it had documented three cases of arbitrary detention of individuals who had expressed opinions on online social networks in territory controlled by the "DPR". In at least one case, an individual who had expressed opinions through social media platforms had also faced prosecution for "extremism", "activities against territorial integrity" and "incitement to hatred" (A948).

1318. In its 2021 report on "Civic Space and Fundamental Freedoms in Ukraine", the OHCHR explained that it had documented ten cases where individuals had been persecuted for expressing their opinions, in particular pro-Ukrainian views, for participating in public affairs or for seeking a remedy for violations of their rights (B717). Furthermore, social media users had seen their online exchanges of information and views which opposed positions of the "DPR" and "LPR" censored and shut down. As reflected in the courts' verdicts in such cases, the free exercise of critical opinions was seen by both the "DPR" and "LPR" as a threat to their "authority" and the "constitutional order" (A949-57). The report set out other examples of arrests of individuals, sometimes on terrorism-related charges, for social media posts expressing support for Ukraine or criticising the conduct of armed groups (B717).

1319. The report referred to legislative amendments to further limit online circulation of information (B717):

> "43. During the reporting period, OHCHR noted attempts by actors of both self-proclaimed 'republics' to limit online by amending 'legislation'. In June 2020, a new article was included in the 'criminal code' of 'Donetsk people's republic' on 'financing extremist activities', which *inter alia* states that 'supporting the activities of an extremist community or an extremist organization' will be punished with up to eight years in prison. Further, in April 2021, a provision was added to the 'criminal code' prescribing 'criminal punishment' for slander committed publicly and on social

networks. The amendments also introduced penalties such as corrective labour and imprisonment of up to two years.

44. Similarly, the 'people's council' of 'Luhansk people's republic' amended its 'code on administrative liability' in December 2019, expanding the list of 'administrative offences' to include dissemination, including online, of information offending human dignity or public morals, or explicitly disrespecting 'authorities'. In March 2021, the article of its 'criminal code' on 'defamation' was amended, adding a criminal penalty for defamation committed online. The amendments also introduced punishments such as corrective labour and imprisonment of up to two years.

45. OHCHR is concerned that these new penalties discouraged social media users from expressing opinions about the decision-making processes of both self-proclaimed 'republics' and led to more self-censorship, further shrinking the already severely restricted space for free expression. OHCHR noted that, following these amendments, criticism of decisions and actions of actors of 'Donetsk people's republic' and 'Luhansk people's republic' has appeared less frequently on social media."

1320. In its report covering the period from 1 August 2021 to 31 January 2022, the OHCHR noted a lack of media activity critical of or different from the official position of the "DPR" or the "LPR" on political or sensitive matters. The OHCHR observed that there had been little space to freely express opinions and that social media could not be considered a safe space for expressing critical views due to the real risk of reprisals (B724).

1321. In its report covering the period between 24 February and 15 May 2022, the OHCHR indicated that it was "alarmed at the security risks faced by journalists and media workers" and that it had "documented 16 cases of deaths of journalists and media workers during hostilities and recorded 10 more cases of injured journalists ..., including four cases where survivors reported they may have been targeted because of their status as journalists" (B740). The OHCHR had also recorded 13 cases of arbitrary arrests and enforced disappearances related to the exercise of freedom of expression by the victims. Such acts had, according to the OHCHR, had a chilling effect on the exchange of opinions and ideas, which had resulted in an additional adverse impact on freedom of expression (ibid.).

1322. A March 2022 report by the Institute for the Study of War ("ISW") reported that Russian forces had killed an American journalist in Irpin on 13 March 2022 (B1964).

1323. On 21 March 2022 Reporters Without Borders published the story of a 32-year-old Ukrainian fixer, who had been abducted by Russian forces while he was driving a car with the "Press" sign on it (B2142).

1324. On 22 March 2022 the Committee to Protect Journalists reported that a reporter who had gone missing on 11 March 2022 had been released eleven days later. She had been detained by Russian forces in Russian-held territory and pressured by Russian security forces to record a video denying her captivity. The video had then been disseminated on pro-Russian media and social platforms. Additionally, on 21 March 2022 four journalists from the Ukrainian news agency MV had briefly been detained by unidentified

armed men in Russian-occupied Melitopol. The journalists, including the MV executive editor, had been taken from their homes, subjected to "preventive talks" discouraging their reporting, and then released (B2132-33).

1325. On 1 April 2022 the Committee to Protect Journalists called for information on the whereabouts of a Ukrainian journalist, the chief editor of the *Kherson Newcity*, who had gone missing in Kherson on 30 March 2022. According to his friend, on that day Russian soldiers had searched for him. The Committee to Protect Journalists expressed concern over his disappearance, linking it to a growing trend of Ukrainian journalists who had gone missing since the full-scale Russian invasion (B2134).

1326. On 7 April 2022 the Committee to Protect Journalists urged Russian authorities to halt the detention of journalists. It emphasised the recurring practice of detaining journalists as an attempt to intimidate the press covering the war and called for the immediate release of two journalists (B2135-36).

1327. The OSCE Moscow Mechanism's mission of experts published a report on 13 April 2022 on violations of international humanitarian and human rights law, war crimes and crimes against humanity committed in Ukraine since 24 February 2022. The mission had received information indicating that the standards of the protection of journalists had repeatedly been violated in the conflict. It had received several credible reports that Russian forces had arrested journalists, without following any procedure, and had ill-treated them using methods that amounted to torture. The report also noted that the OHCHR had documented the arbitrary detention and enforced disappearance of 21 journalists and civil society activists who had vocally opposed the invasion in the Kyiv, Kherson, Luhansk and Zaporizhzhia regions. Five of the journalists and three of the activists had been allegedly released. The whereabouts of the other individuals remained unknown. The mission noted that the OHCHR findings had been consistent with 29 cases documented by various NGOs and reported to the mission. The mission reported that since 24 February 2022 five journalists had been killed and many more injured by the Russian forces. It suggested that at least some of them had involved intentional targeting of journalists. There had also been many cases where journalists had been detained by the Russian forces (B1329, 1337, 1340 and 1367).

1328. The mission also reported that at least ten television towers in eight regions in Ukraine (Melitopol, Kyiv-Vynarivka, Kharkiv, Rivne, Vinnytsia, Korosten, Lysychansk and Bilopillia) had been destroyed or damaged. As a result, Ukrainian broadcasting had completely or partially disappeared from those regions. In Kherson, local media had been prevented from operating or had been used to broadcast pro-Russian propaganda. Certain media outlets had received anonymous letters calling on them to abandon their anti-Russian activities. Certain foreign channels, such as BBC News, Radio Free Europe/Radio Liberty or the Voice of America, had been blocked by a decision of the Russian telecoms regulator (Roskomnadzor) and could not be

accessed from territories under the effective control of Russia. Social networks had also seen large restrictions imposed on them in the territories under the effective control of Russia (B1344-45).

1329. The OSCE mission's subsequent report of 14 July 2022 stated that the number of journalists who had been killed and abducted continued to rise. It provided further examples of journalists who had been abducted, ill-treated or injured. The report also noted that in territories under Russian effective control, Ukrainian media had been replaced by Russian media and the local inhabitants only had access to the latter (B1367-68).

1330. The Commission of Inquiry also referred, in respect of the period 2014-2022, to reports that had documented attacks by armed groups on local media offices. It observed that armed groups had reportedly instilled a climate of fear, with abductions, attacks, persecutions, and unlawful detentions, targeting journalists, bloggers and other media personnel expressing pro-Ukrainian views, with an overall lack of accountability (C.IV.64).

1331. On 12 May 2022 the State Language Protection Commissioner of Ukraine made a statement on the ban of Ukrainian television and radio in occupied territory. According to the Commissioner, Russian forces had been suppressing the use of the Ukrainian language and spreading Russian propaganda by shutting down Ukrainian TV channels and radio stations, and abducting and murdering journalists in occupied territory (B2529).

1332. On 12 May 2022 the Chair of the National Council of Television and Radio Broadcasting of Ukraine spoke at the 55th meeting of the European Platform of Regulatory Authorities. She stressed that Russian aggression against Ukraine had commenced in 2014 as a "hybrid war" with the dissemination of sophisticated propaganda. Since spring 2014 Ukraine had lost 175 broadcasting frequency assignments in the territories of the "DPR" and "LPR". Since 24 February 2022 a further 284 frequency assignments had been lost to Russia, with 164 Ukrainian broadcasters having had to stop broadcasting and Russian media having launched broadcasting using these frequencies (B2524).

1333. On 19 May 2022 the Representative on Freedom of the Media to the Permanent Council of the OSCE stated that in the battle zones, journalists had been injured, abducted, attacked and lost their lives (B406).

1334. In its 2022 report, the International Partnership for Human Rights and Truth Hounds indicated that on 30 May 2022 the Russian forces had fired at an evacuation vehicle, killing a French journalist (B2062).

1335. In her memorandum dated 8 July 2022 on the human rights consequences of the war in Ukraine, the Council of Europe Commissioner for Human Rights referred to various reports of enforced disappearances or abduction of Ukrainian journalists or their relatives by Russian troops. She noted that at least four journalists and media workers had allegedly gone missing in Ukraine since 24 February 2022. Multiple attacks on journalists and media workers covering the war in Ukraine had been reported, with

evidence suggesting that some of those killed or injured might had been deliberately targeted by Russian forces. The prevalence of casualties among members of the press since the beginning of the war strongly suggested that at least some members of the press appeared to have been deliberately targeted by Russian forces. In areas under the control of Russian troops, in particular in the Kherson and Kyiv regions, mobile communication towers had been reportedly damaged or deactivated, cutting communications and creating information blackout zones (B1455).

1336. ZMINA Human Rights Center reported in April 2023 that an atmosphere of fear and intimidation prevailed in the "occupied" territories in relation to any manifestation of a pro-Ukrainian position (B2262 and 2266). It said that Russian authorities had restricted access to information in occupied territory. In the Kherson region, the Russian military had seized the Kherson TV tower, blocked the broadcast of Ukrainian channels and turned on the broadcast of Russian channels, thereby limiting the local population's access to alternative sources of information. In May 2022 Russian forces had turned off mobile communication and the internet, switching to Russian operators. Residents of Mariupol reported that communication in the city had disappeared in the first days of the full-scale invasion, and that Russian forces had spread information that Ukraine no longer existed (B2267).

1337. The Partner Organisations to the Safety of Journalists Platform of the Council of Europe documented multiple attacks on journalists and other media workers covering events in the "DPR", and the "LPR" and the war in 2022. The victims included at least 12 journalists and media workers who had reportedly been killed and at least 13 others who had been injured (B1462-81).

1338. The case-file also includes several witness statements from journalists describing how they or the media outlets for which they worked were targeted by the separatists (A1317-19, 1374 and 1394-95; and B2840-41 and 3147-48).

D. The Court's assessment

1. General principles

1339. Article 10 is applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb (see *Hurbain v. Belgium* [GC], no. 57292/16, § 176, 4 July 2023). The press has a duty to impart information and ideas on all matters of public interest and the public has a right to receive them. Were it otherwise, the press would be unable to play its vital role of "public watchdog". Particularly strong reasons must therefore be provided for any measure limiting access to information which the public has the right to receive (ibid., §§ 177-78).

1340. Freedom of expression is subject to exceptions which must be construed strictly. Any interference with freedom of expression will be in breach of the Convention unless it was "prescribed by law", pursued one or more of the legitimate aims referred to in the second paragraph of Article 10 and was "necessary in a democratic society" (see *Karácsony and Others v. Hungary* [GC], nos. 42461/13 and 44357/13, § 132, 17 May 2016). In particular, the law must afford a measure of legal protection against arbitrary interferences by public authorities with the rights safeguarded by the Convention, and indicate with sufficient clarity the scope of any discretion conferred on the competent authorities and the manner of its exercise (see *Hasan and Chaush v. Bulgaria* [GC], no. 30985/96, § 84, ECHR 2000-XI, and *Vladimir Kharitonov v. Russia*, no. 10795/14, § 37, 23 June 2020). A legal framework that fails to establish safeguards capable of protecting individuals from excessive and arbitrary effects of blocking measures is incompatible with the rule of law (ibid., § 46).

1341. The general principles established in the Court's case-law concerning pluralism in the audiovisual media were set out at length in its recent judgment *Ukraine v. Russia (re Crimea)* (cited above, § 1085).

2. Application of the general principles to the facts of the present case

1342. The killing, imprisonment and intimidation of civilian journalists is prohibited by international humanitarian law. In particular, Article 79 AP I likens journalists engaged in dangerous professional missions in areas of armed conflict to civilians (B176).

1343. It plainly emerges from the evidence summarised above that Russian authorities and armed forces of the separatist administration specifically targeted independent journalists from both international and Ukrainian media from the outset of the conflict in occupied territory in eastern Ukraine. By summer 2014, the separatists were instructing the media how to report on current events, under threat of harm to staff or premises or the banning of their publications. The use of certain terms such as "separatist" or "terrorist" was prohibited (see, for example, paragraph 1290 above). Journalists' access to conflict areas and to public events to gather information was restricted. They were prevented from recording in conflict zones (see, for example, paragraphs 1292 and 1300 above). Editorial offices were attacked and editors were replaced by individuals loyal to the separatist regime (see, for example, paragraphs 1286-1287 above). The separatists instructed journalists on what news to cover and how to report it, to the extent that the OHCHR described local media as operating mainly as a tool for promoting those in charge (see, for example, paragraphs 1290 and 1310 above). Journalists who criticised the separatists or who did not present a sufficiently positive account of them were intimidated and detained. There are numerous credible reports which refer to the intimidation and detention of journalists apprehended in the course of their duties (see paragraphs 1287-1294 above).

In some cases, journalists were ill-treated or killed (see, for example, paragraphs 1305-1313, 1315-1317, 1321-1327, 1329-1330, 1333-1335 and 1337 above). The documented cases of these incidents support the conclusion that they occurred regularly throughout the conflict period.

1344. The imposition by the "DPR" in the summer of 2014 of an obligation for media outlets, including individual bloggers, to "register" with authorities was a further tool for monitoring and arbitrarily restricting the activities of journalists operating in eastern Ukraine (see paragraph 1290 above). By 2016, it was apparent that an "accreditation" process was also applied to foreign journalists seeking to work in the "DPR" and the "LPR" (see paragraph 1301 above). It is not clear from the reports whether "registration" and "accreditation" referred, essentially, to the same process, or whether two different processes with different requirements and scope were concerned by these terms. The grounds on which "registration" or "accreditation" was granted or could be refused are not disclosed in the reports before the Court and have not been explained by the respondent Government. Any media outlet which failed to register was banned from all media activities, and even journalists who had accreditation were nonetheless harassed. A number of media outlets reported encountering difficulties with accreditation, and journalists who had been working in the "DPR" and "LPR" following the outbreak of hostilities were subsequently refused accreditation for reasons which, as noted above, were not clear (see, for example, paragraphs 1300-1301, 1303 and 1306 above).

1345. By 2019 the only platform available to residents of occupied territory to disseminate information and views on the political, social and economic situation in occupied Donbas was via social media (see paragraph 1312 above). However, the access of the local population to information was further negatively impacted by new "laws" prohibiting and penalising the dissemination of information in support of Ukraine and the application of terrorism and extremism "laws" to those circulating such information. These measures affected both members of the press and individual bloggers, many of whom were "convicted" of espionage, terrorism-related offences or extremism by "courts" in the separatist entities and sentenced to lengthy prison terms (see, for example, paragraphs 1305, 1307, 1310, 1313-1314 and 1316-1319 above).

1346. Meanwhile, from the start of the conflict, Ukrainian and foreign media had been blocked from broadcasting in the "DPR" and the "LPR". By July 2014 the OHCHR was reporting that local television channels had been replaced by Russian television channel broadcasts (see paragraph 1290 above). In 2015 the "LPR" and the "DPR" ordered access to be blocked to numerous television channels and Internet-based media outlets (see paragraph 1296 above). There is evidence that from 2016 numerous websites were banned by the "LPR ministry of justice" (see paragraph 1304 above). Following the 24 February 2022 invasion, Roskomnadzor ordered that

independent foreign news channels be blocked, preventing those in occupied territory from accessing them (see paragraph 1328 above).

1347. The evidence before the Court leaves no doubt as to the overall effect of these various practices on the freedom of expression of the press and the local population's access to information. The chilling effect of the detention and ill-treatment of journalists is starkly described in the evidence. Already by 2015, there was very little scope for expressing views in occupied areas without censorship. As one reporter told the OHCHR in late 2015, the climate in the occupied territory was such that no local reporter would ever have considered expressing a critical opinion (see paragraphs 1299 and 1302). Local media was effectively controlled by the separatists, with a marked absence of media content contradicting the mainstream political views of the separatist entities (see paragraphs 1310, 1314 and 1329-1331 above above). The general measures applied to journalists and individual bloggers significantly restricted the dissemination of information criticising the separatist entities and expressing support for Ukraine. Only information that met with the approval of the separatist and Russian authorities was freely available to those in occupied areas. The Court is satisfied that the individual acts of intimidation and violence and the various general measures applied in occupied territory amounted to a serious interference with the rights to impart and to receive information on all matters of public interest guaranteed by Article 10 of the Convention.

1348. The Court has already found administrative practices in breach of Articles 2, 3 and 5 of the Convention on account of widespread practices of unlawfully depriving of their liberty, ill-treating and killing civilians in occupied areas in Ukraine (see paragraphs 1034-1045, 1067-1083 and 1112-1127 above). In so far as the allegations under Article 10 concern the unlawful deprivation of liberty, ill-treatment and extrajudicial killing of civilians, including journalists, on account of the expression of information and ideas, such conduct quite clearly cannot be justified under Article 10 § 2.

1349. In respect of the general measures described above, the reports summarised indicate that these were applied on the basis of "legal acts" of the "DPR" and the "LPR", or on the basis of laws or administrative decisions of the Russian Federation. The respondent Government have not identified or provided copies of the purported legal or administrative acts introducing a system of registration or accreditation of journalists and media outlets or authorising the blocking of Ukrainian and foreign broadcasters in occupied territory. They have provided no information on the penal measures purportedly applied, including provisions on terrorism, extremism and other specific criminal "offences" concerning dissemination of information.

1350. As explained above, in the absence of any information from the respondent Government, the Court does not accept that such "laws" or "legal acts" can provide a legal basis for measures taken by the separatists or the Russian military occupation administrations (see paragraphs 602-609 above).

There is, moreover, no legal basis for these measures under international humanitarian law. The Court therefore concludes that the impugned measures were not "prescribed by law" on account of the absence of any evidence that they had a basis in law. Moreover, as already indicated, the Court considers it unlikely that the measures taken in occupied areas of Ukraine pursuant to "legal acts" concerning extremism would satisfy the "quality of law" requirement inherent in "lawfulness" on account of the absence of safeguards to protect against an excessively broad interpretation of the concept of "extremism" by the "DPR", "LPR" and other occupation authorities (see paragraph 1275 above and *Karastelev and Others v. Russia*, no. 16435/10, §§ 78-97, 6 October 2020). The Court also observes that there is no evidence of any safeguards capable of protecting individuals from the apparently excessive and arbitrary effects of the measures used to block access to websites and broadcasters in occupied territory (see *Vladimir Kharitonov*, cited above, § 46). Finally, the Court notes that a similar practice of suppressing non-Russian media in Crimea, by refusing to grant broadcasting licences, revoking broadcasting licences, failing to allocate broadcasting frequencies, and putting pressure on broadcasters to publish only content not perceived as contrary to the interests of the State, was found to be "not only unlawful, but also, in any event, not necessary in a democratic society" (see *Ukraine v. Russia (re Crimea)*, cited above, § 1104). The Court sees no reason for arriving at a different conclusion in the present case.

1351. The Court accordingly finds, beyond reasonable doubt, that there existed an accumulation of identical or analogous breaches of Article 10 of the Convention between 11 May 2014 to 16 September 2022 which are sufficiently numerous and interconnected to amount to a pattern or system of interferences with the freedom to impart and receive information and ideas. For the reasons set out below, there is no doubt that the violations of Article 10 were officially tolerated by the superiors of the perpetrators and by the higher authorities of the respondent State (see paragraphs 1617-1621 below).

1352. The Court therefore concludes that the Russian Federation was responsible for an administrative practice in occupied areas of Ukraine of unjustified interference with the freedom to impart and receive information and ideas in violation of Article 10 of the Convention in the period between 11 May 2014 and 16 September 2022.

XVIII. ALLEGED ADMINISTRATIVE PRACTICE IN VIOLATION OF ARTICLE 11 OF THE CONVENTION

A. The complaint

1353. The applicant Ukrainian Government complained of an administrative practice in occupied areas of Ukraine, from 24 February 2022,

of "unlawful interference with the peaceful right to protest by the use of unlawful and often lethal force", in breach of Article 11 of the Convention.

1354. That Article reads:

> "1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
>
> 2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State."

B. The parties' submissions

1. The applicant Ukrainian Government

1355. The applicant Ukrainian Government argued that after its invasion on 24 February 2022, the respondent State had repeatedly interfered with the right of peaceful assembly and association, in particular the rights of protesters. Several of the violations of Articles 9 and 10 of the Convention already highlighted also constituted violations of Article 11. The applicant Ukrainian Government gave six illustrative examples of the use of force to disperse peaceful assemblies in March and April 2022 in the Kherson and Kyiv regions. They contended that Russia's actions had violated Article 11, because these interferences were not prescribed by law, did not pursue any legitimate aim and because the use of force was in any event disproportionate.

2. The respondent Government

1356. The respondent Government did not take part in the present proceedings on the merits of application nos. 8019/16, 43800/14 and 28525/20 and the admissibility and merits of application no. 11055/22 (see paragraph 142 above). No submissions have been received from them on this complaint.

C. Summary of the relevant evidence

1357. In its report of 29 June 2022 on the situation of human rights in Ukraine, covering the period between 24 February and 15 May 2022, the OHCHR reported that in areas controlled by the Russian armed forces, several peaceful pro-Ukrainian assemblies had taken place, mainly to protest against the occupation. The OHCHR had documented at least ten cases where these assemblies had been dispersed by Russian armed forces, who had resorted to unnecessary and disproportionate use of force by using teargas, flash grenades and firearms (aiming above participants' heads). While most

of these incidents had occurred in the Kherson region, others had been reported in the cities of Enerhodar, Melitopol, Tokmak and Berdiansk in the Zaporizhzhia region and in Crimea (B741).

1358. In their report of April 2022, the OSCE Moscow Mechanism's mission of experts expressed the view that the conflict in the territory of Ukraine had affected the enjoyment of the right to freedom of assembly and association. They referred to having received reports and videos which they considered to cast doubt on whether the applicable standards had been respected by Russia in the course of several demonstrations held in certain newly occupied towns (B1346).

1359. The following incidents were reported in the material before the Court.

1360. The OSCE mission of experts reported that on 6 March 2022, one man had been shot dead and seven others injured during a peaceful demonstration held in Nova Kakhovka. This was corroborated by a letter of the Ministry of Defence of Ukraine dated 1 April 2022 (B1346, 2413 and 2416). On 5 May 2023 the Ukrainian prosecution authorities charged a member of the Russian armed forces with the violent dispersal of a peaceful assembly in support of the territorial integrity of Ukraine in Nova Kakhovka in respect of the incident. The bill of indictment alleged that during the march, the Russian soldier had ordered the dispersal of the peaceful protestors using firearms, rubber batons, stun and smoke grenades, and tear gas, even though the protesters had not posed a threat. The bill of indictment further stated that the peaceful protestors had suffered excessive and indiscriminate force, various bodily injuries, physical pain, and moral injuries. The indictment mentioned three victims who had received significant injuries (B2714-17). A witness statement corroborates the allegations of the prosecutor about the dispersal of the demonstration (B3179).

1361. According to a letter of the Ministry of Defence of Ukraine dated 1 April 2022, on 7 March 2022 Russian servicemen opened fire at demonstrators who were rallying against the Russian occupation in Chaplynka, Kherson region. As a result, two people had been injured (B2413 and 2416). This incident was also reported by the "Foreign Policy Council 'Ukrainian Prism'", a network-based non-governmental analytical centre (B2158), in the press and on social media (B4193).

1362. The ISW's "Russian offensive campaign assessment" of 13 March 2022 reported that Russian troops had fired in response to a protest in Kherson (B1966). This incident was also covered in the press, with one news outlet reporting that shots had been fired at people's legs and that a least one man had been hit in the leg (B4194-95).

1363. The OSCE mission of experts reported that on 16 March 2022, Russian armed forces had opened fire on participants of a peaceful rally in Skadovsk who were demanding the liberation of the city leadership captured by the Russian military. The mission expressed doubt as to whether

international human rights applicable to law enforcement had been complied with (B1347).

1364. The ISW reported that social media users had filmed Russian forces beating protesters in Berdiansk on 20 March 2022 (B1983).

1365. The OSCE mission of experts reported that on 21 March 2022, during a protest against the occupation in Kherson, Russian forces had used tear gas, stun grenades and live ammunition against the protesters, causing several injuries (B1347). The ISW's "Russian offensive campaign assessment" of 21 March 2022 also reported that Russian forces had fired at protesters in Kherson and included hyperlinks to social media videos of the incident. It referred to information from the Ukrainian General Staff that Russian authorities had deployed National Guard forces to the Kherson and Zaporizhzhia regions to conduct punitive measures against civilians in order to deter further protests in occupied cities (B1983). The incident was the subject of a press statement by the President of Ukraine on the same day (B2320).

1366. On 24 March 2022, based on information from the Ukrainian General Staff, the ISW reported that units of the Russian National Guard had been engaging in acts of "terrorising the local population" in Kherson as a response to protests (B1992). Two days later it reported that in order to suppress Ukrainian unrest in Kherson, Henichesk, Berdiansk and certain districts of Mariupol, the Russian forces had deployed all National Guard units stationed in the Kherson, Donetsk and Zaporizhzhia regions and Crimea (B1995).

1367. According to the report of the OSCE mission of experts, on 26 March 2022 Russian soldiers had sought to disperse a protest against the occupation held in Slavutych, shooting in the air and throwing stun grenades at the crowd, which had resulted in several injuries (B1348). This incident was also described in the June 2022 report of the OHCHR, which explained (B741):

> "123. On 25-26 March, Russian armed forces entered the city of Slavutych, in the Kyiv region. On 26 March, several thousand protesters gathered in the city centre with Ukrainian flags to express their support for Ukraine and demand that Russian armed forces leave the city. The latter attempted to disperse the protest by discharging firearms. The mayor of the city reported that three protesters were killed. OHCHR is working to corroborate the circumstances of their death, which remain unclear."

1368. The forcible dispersal of the protests in Slavutych is also corroborated by the ISW's 26 March 2022 report (B1995).

1369. The ISW's "Russian offensive campaign assessment" of 2 April 2022 refers to the forceful dispersion by Russian forces of a protest in Enerhodar on 2 April 2022 (B2005). This incident is also referred to in a letter of April 2022 from the Ukrainian Ministry of Defence, which reported that Russian servicemen had used explosives and small arms against the peaceful demonstration in Enerhodar in support of Ukraine. As a result, four people

had been wounded and several protesters had been taken in an unknown direction (B2415-16).

1370. The Ukrainian Ministry of Defence letter of April 2022 reported that on 3 April 2022, Russian servicemen had used explosives and small arms against a peaceful demonstration in support of Ukraine in Kakhovka city, Kherson region (B2415-16). This incident was also reported in the media (B4196-97).

1371. According to media reports, on 27 April 2022 a pro-Ukrainian rally was dispersed by the Russian military in Kherson city using tear gas and stun grenades. Four people were reportedly injured (B4192-98).

1372. On 27 September 2022 the OHCHR published its report on the human rights situation in Ukraine from 1 February to 31 July 2022. It referred to numerous peaceful protests during March and April 2022, held in areas controlled by Russian armed forces in the Kyiv region and occupied by the Russian Federation in Kherson and Zaporizhzhia regions (B752). It stated:

> "120 ... OHCHR documented at least ten cases where Russian armed forces dispersed peaceful assemblies by resorting to unnecessary and disproportionate force, such as using teargas, flash grenades and firearms (discharged above participants' heads). The vast majority of these incidents occurred in Kherson region, while others were reported in the cities of Enerhodar, Melitopol, Tokmak and Berdiansk in Zaporizhzhia region and in Slavutych in Kyiv region ..."

1373. ZMINA Human Rights Center's report of April 2023 on "deportation of Ukrainian citizens to the territory of the Russian Federation" stated that an atmosphere of fear and intimidation prevailed in occupied territory in relation to any manifestation of a pro-Ukrainian position. According to the report, in April 2022, protests against the occupying authorities began to subside in Kherson due to numerous interrogations, searches, detentions and disappearances of activists (B2266).

D. The Court's assessment

1. General principles

1374. Article 11 of the Convention protects the right to "peaceful assembly", a notion which does not cover gatherings where the organisers and participants have violent intentions (see *Navalnyy*, cited above, § 98). Where irregular demonstrators do not engage in acts of violence, the public authorities must show a certain degree of tolerance towards their peaceful gatherings if the freedom of assembly guaranteed by Article 11 of the Convention is not to be deprived of all substance (see *Laguna Guzman v. Spain*, no. 41462/17, § 50, 6 October 2020).

1375. The use by the police of force against peaceful participants during the dispersal of an assembly constitutes an interference with the freedom of peaceful assembly (see, for example, *Laguna Guzman*, cited above, § 42, and *Zakharov and Varzhabetyan v. Russia*, nos. 35880/14 and 75926/17, § 88,

13 October 2020). Such an interference will constitute a breach of Article 11 unless it is "prescribed by law", pursues one or more legitimate aims under paragraph 2 and is "necessary in a democratic society" for the achievement of the aim or aims in question (see *Kudrevičius and Others v. Lithuania* [GC], no. 37553/05, § 102, ECHR 2015, and *Laguna Guzman*, cited above, § 44).

2. Application of the above principles to the facts of the present case

1376. Under Article 43 of the Hague Regulations, the occupying forces must maintain law and order in the occupied territory (B131). Pursuant to Article 64 GC IV, the occupying Power may subject the population of the occupied territory to measures essential to enable it to fulfil its obligations under the convention, to maintain the orderly government of the territory and to ensure the occupying Power's security (B155).

1377. The evidence summarised above refers to concerns expressed by the OHCHR, the OSCE and others that following the invasion of 24 February 2022, the Russian authorities had resorted to unlawful force in order to disperse peaceful protests against occupation. The OHCHR reports of June and September 2022 referred to ten documented instances of unnecessary and disproportionate use of force (see paragraphs 1357 and 1372 above). This included the use of firearms, rubber batons, stun and smoke grenades and tear gas. Injuries and deaths resulting from the use of force were reported (see, for example, paragraphs 1357, 1360, 1362, 1367 and 1371 above). Ten instances of dispersal by the Russian military of peaceful protests in occupied towns and cities using force are set out above (see paragraphs 1360-1371 above). Several of these incidents were corroborated by more than one credible and reliable source. The reports described above also refer to the widespread deployment of the Russian National Guard to suppress unrest within newly-occupied Ukrainian cities (see paragraphs 1365-1366 above).

1378. The complaint of the applicant Ukrainian Government, advanced in its application form of 23 June 2022, concerns the "unlawful interference with the peaceful right to protest by the use of unlawful and often lethal force". The evidence in respect of this complaint is limited to March and April 2022. In its September 2022 report, the OHCHR also referred to peaceful protests in March and April 2022 only (see paragraph 1372 above).

1379. The respondent Government have not provided submissions in respect of this complaint and there is therefore no suggestion before the Court that Article 11 was not applicable to the protests described above. The Court considers that forcible dispersal of peaceful protests in occupied territory in March and April 2022 amounted to interferences with the right to freedom of assembly, guaranteed by Article 11 of the Convention. Such interferences will be in breach of the Convention unless they can be justified under Article 11 § 2.

1380. International humanitarian law requires that the occupying Power maintain law and order in occupied territory and permits the occupying Power

to adopt measures to this end (see paragraph 1376 above). The Court is therefore prepared to accept that the respondent State, as occupying Power in the towns and cities identified, was entitled to take measures to maintain law and order and that, in this respect, a general legal basis for such measures may in principle be found in international humanitarian law. However, as explained above, any such legal basis must be reflected in the domestic legal order through relevant legal instruments and appropriate guidance that satisfy the quality of law requirement inherent in the notion of "lawfulness" (see paragraph 608 above).

1381. The absence of submissions from the respondent Government means that the Court has no information as to any purported legal basis for the forcible dispersal of protests or the laws and procedures in place to govern the use of force by State agents in such situations. In light of the failure of the respondent State to provide the relevant information, it has not been shown that the use of force applied during the protests set out above had any basis in law. Moreover, the Court cannot be satisfied that any applicable law contained the necessary safeguards to protect against abuse. In particular, it cannot scrutinise the permissible grounds for the use of force against protestors nor the arrangements in place for the oversight and review of any decision to use force. The Court further observes that any law permitting the use of deadly force against peaceful protesters appears so fundamentally inconsistent with the requirements of Article 11 that it is unlikely to satisfy the "quality of law" requirement inherent in the notion of "lawfulness" (ibid.). The Court is accordingly not persuaded that the actions taken by the respondent State to disperse the peaceful protests described above were "prescribed by law" for the purposes of Article 11 § 2 of the Convention.

1382. The Court has referred to ten specific instances of forcible dispersal of protests in March and April 2022. The majority of these incidents were reported by independent sources, and were corroborated by other material. In view of the short time period concerned, the Court is satisfied that the instances were sufficiently numerous and interconnected to amount to a pattern or system. For the reasons set out below, there is no doubt that the violations of Article 11 were officially tolerated by the superiors of the perpetrators and by the higher authorities of the respondent State (see paragraphs 1617-1621 below). Indeed, the deployment of the Russian military, including the Russian National Guard, cannot have occurred without the knowledge of senior members of the Russian military command.

1383. The Court therefore concludes beyond reasonable doubt that the respondent State was responsible for an administrative practice in occupied areas of Ukraine in March and April 2022 of unjustified interference with the right to peaceful assembly in breach of Article 11 of the Convention.

XIX. ALLEGED ADMINISTRATIVE PRACTICE IN VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

A. The complaint

1384. The applicant Ukrainian Government complained of an administrative practice in breach of Article 1 of Protocol No. 1 from 11 May 2014 consisting of:

> "a. destruction of and damage to residential real property;
>
> b. destruction of and damage to commercial and industrial real property and businesses;
>
> c. destruction of and damage to personal possessions and chattels;
>
> d. the misappropriation of property by looting and seizure."

1385. They further alleged that from 24 February 2022 the practice also consisted of:

> "e. destruction of and damage to essential infrastructure, in particular energy infrastructure (including gas and oil infrastructure and nuclear facilities), transport infrastructure and medical facilities;
>
> f. destruction of and damage to civic, cultural and religious property;
>
> g. destruction of and damage to NGO property."

1386. The applicant Ukrainian Government's complaint of destruction of property as a result of unlawful military attacks in breach of Article 1 of Protocol No. 1 to the Convention has been examined above in the context of the alleged administrative practice of unlawful military attacks (see paragraphs 740-772 above). The present alleged administrative practice in breach of Article 1 of Protocol No. 1 to the Convention is limited to the actions of the respondent State in territory under the effective control of the respondent State.

1387. Article 1 of Protocol No. 1 to the Convention reads:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

B. The parties' submissions

1. The applicant Ukrainian Government

1388. The applicant Ukrainian Government submitted that the alleged administrative practice was carried out from 11 May 2014 and also continued after the 2022 invasion by Russia.

1389. In respect of the period from 2014 to February 2022 they cited as illustrative examples instances of destruction of personal property, expropriation, theft and looting by the Russian, "DPR" and "LPR" armed forces and officials, which had occurred throughout the entire period of time. The destruction of private property by Russian forces and their proxies in the local armed groups, including civilian homes and vehicles, had been commonplace throughout the conflict. There had also been numerous reported instances of theft and looting of private and commercial property throughout the areas under their control. Large swathes of private property had been unlawfully appropriated without compensation. The applicant Ukrainian Government referred to violations of property rights of private individuals and the introduction of martial law imposing an obligation to accommodate "DPR" troops, the illegal seizure of property, the imposition of illegal taxes, the destruction of property, the confiscation of private property and the nationalisation of property.

1390. As for the period after 24 February 2022, the applicant Ukrainian Government submitted that Russia's "war of aggression" had resulted in large-scale destruction and damage of civilian objects. They cited illustrative examples of destruction of residential, commercial and industrial property. They also referred to instances of armed attacks against individual cars and convoys of cars used by civilians for evacuation; of widespread looting, robberies, vandalism and seizure of property carried out by the Russian armed forces in Staryi Bykiv, Bucha, Hostomel, Nova Basan, Kherson and Chornobyl; as well as the destruction of property owned by NGOs, including humanitarian, cultural and religious organisations.

2. The respondent Government

1391. The respondent Government did not take part in the present proceedings on the merits of application nos. 8019/16, 43800/14 and 28525/20 and the admissibility and merits of application no. 11055/22 (see paragraph 142 above). No submissions have been received from them in respect of the period after 26 January 2022, the date of the separate admissibility hearing in the present case, save for their brief response of 5 March 2022 to the Court's request for information in the context of its 1 March 2022 indication under Rule 39 of the Rules of Court (see paragraphs 9 and 140-141 above). At the separate admissibility stage of the present proceedings, they challenged in general terms the evidence submitted

by the applicant Ukrainian Government (*Ukraine and the Netherlands v. Russia* (dec.), cited above, §§ 408-14 and 818).

C. Summary of the relevant evidence

1392. The OHCHR reported that on 1 July 2014 a group of 10 armed men in camouflage who had presented themselves as "self-defence" (*samooborona*) had abducted a local entrepreneur from his parents' home in the Donetsk region. The members of the armed group had tried to extort money from the victim before his abduction. He had been brought to the basement of a seized building being used as the headquarters of the "NKVD Komendatura" armed group. The perpetrators had reportedly invited a notary into the building and forced the victim to rescind ownership over all his property to the leader of the armed group, call-sign "Vasilievich". When the victim had refused to do so, he had been told that Chechen fighters would rape his wife and underage daughters in front of him. On the same day, the leader of the armed group and an unidentified man had stormed into the apartment of the victim's wife, and threatened her and their underage daughter with a knife and had stolen all their valuables (B616).

1393. The OHCHR reported cases in 2014 of armed groups using tank shelling to damage civilian homes, explosive devices to completely destroy a logistics business and grenade launchers to shell houses and shops in occupied areas (A993, 1007 and 1009). For example, on 27 June 2014 a man had allegedly been detained by armed groups and subsequently interrogated and tortured by three persons who had identified themselves as representatives of the Main Intelligence Directorate of the Russian Federation. He had alleged that the armed groups had destroyed his logistics business including 30 trucks, several stocks, garages, cars and equipment worth 20,000,000 Ukrainian hryvnia (UAH) (approximately 780,000 United States dollars (USD)) in total. According to witnesses, the armed groups had used explosive devices jeopardising the lives of peoples residing nearby (A1007 and B583).

1394. The OHCHR reported that in July 2014 a businessman in Druzhkivka had been kept for five days by an armed group and tortured for resisting the expropriation of his business and refusing "to cooperate with new authorities". His wife and daughter had been threatened with sexual abuse and his business and property had been looted (B580).

1395. On 10 August 2014, according to the OHCHR, eight armed men in camouflage without insignia stormed the house of local volunteers who were providing food to Ukrainian soldiers. After searching and looting the house, the armed men had taken away a man and a woman. Over the following ten days the armed men had returned three times to the house and had looted it, holding the 75-year-old father of one of the abducted at gunpoint. In the same village, on 22 August 2014 four members of a family had been executed

outside their house for their alleged assistance to the Ukrainian armed forces, and their property had then been looted (B566).

1396. The OHCHR reported that on 25 September 2014 in a village in the Donetsk region, a woman and two of her colleagues (a man and a woman) had been abducted at their workplace by armed men from the "Bezler group", led by a local resident. They had been taken to the seized administrative building of a coal mine in Horlivka, where one of the women had seen signs like "Horlivka NKVD" and "Smersh", referring to the groups using the site. Both women had been beaten, while interrogated about the whereabouts of their money and valuables. Through the open door, one woman had seen a room full of valuables, among which she had recognised some of her belongings. She had later found out that while she and her colleagues had been tortured, the armed groups had robbed their houses. The perpetrators had later brought an attorney and had forced the victim to rescind ownership over her apartment and land property to the perpetrators (B616).

1397. On 27 October 2014 the president of the "LPR" told the OSCE SMM in Luhansk city that ultimately the "LPR" and the "DPR" would form a single state – so-called "Novorossiya" – and that key economic resources and industries would be "nationalised" (A674). In 2016, 2017 and 2018 the use of housing by the armed groups was reported (B577, 594, 631 and 671).

1398. In 2014-2015 the "Council of Ministers of the DPR" formally introduced "temporary state administrations" of private entities in the "DPR", appointing a temporary administrator to manage property located in the "DPR" belonging to "non-resident legal entities, non-resident individual entrepreneurs, as well as managing economic entities (organisations) that are residents." The grounds which justified such "state administration" varied from "self-removal" of an entity's administration to non-compliance with "DPR Constitution, laws, and resolutions of the Council of Ministers" (B30-36).

1399. According to the OHCHR's report of 15 November 2014, armed groups of "LPR" had organised the sale of about 100 cars stolen from local residents or dealerships and had been forcing local residents of Lutuhyne to sell their homes for as little as USD 100 to USD 1,000 (B545).

1400. A displaced person from Luhansk told the OHCHR how armed groups had looted her son's apartment in February 2015 because he had participated in combat operations against the armed groups and had pro-Government views (B603).

1401. The OHCHR also received reports of armed groups seizing property of religious communities. On 3 March 2015 in the town of Yenakiieve controlled by armed groups, three armed men had ordered the community of Jehovah's Witnesses to hand over the keys to the Kingdom Hall so that they could use them as barracks. On 26 March 2015 armed men had broken into the Kingdom Hall in the town of Brianka, controlled by armed groups, and had taken away all the furniture from the building. They

had reportedly removed the sign "Kingdom Hall of Jehovah's Witnesses" and had put up a new one reading "The All-Great Don Army" (B562. See also the summary of evidence in respect of Article 9 at paragraphs 1193-1263 above).

1402. A local resident reported to the OHCHR that on 22 March 2015, a couple had gone to the home of their 82-year-old grandmother to collect some belongings. Although they had all the documents to prove their ownership of the property, they had been detained by members of the armed group for looting and had been taken to the basement of a seized chemical factory, where they had been kept for several hours. Afterwards, they had visited the apartment building and found that their apartments had been looted (B561). The OHCHR further reported that in August 2015, the "DPR ministry of state security" in Donetsk had abducted a businessman from Novoazovsk, subjected him to torture and ill-treatment, and looted his home and property (B603). In November 2015 a woman travelling with her children from Donetsk city to Ukrainian-controlled territory had been stopped at a checkpoint controlled by the "DPR". The DPR agents had extorted money from her and had taken all of her personal jewellery before raping her (B616). A couple from Alchevsk in the Luhansk region had reported in March 2016 that their neighbour had witnessed the looting of their property by armed groups and had heard them saying that "pro-Ukrainian" were living there, using a derogatory word ("Ukropy"). A similar case had been reported in May 2016 by a man from Sverdlovsk, who was a former serviceman and currently an IDP (B583).

1403. The OHCHR has documented military use of unoccupied houses. For instance, in Donetsk, between December 2015 and January 2016, armed groups had twice occupied and burglarised an empty private house. Military vehicles and equipment had been brought to the courtyard, damaging the property and endangering the residential area (B577).

1404. In its report covering the period from May to August 2016, the OHCHR found that armed groups had continued to loot and use civilian homes and other property for military purpose. During a monitoring visit to Kuibyshevskyi district in Donetsk in May 2016, the OHCHR learned that armed group members had stayed in residential apartments and had looted shops and apartments. Residents had not provided any details, noting that complaints to the armed groups tended to be followed by intimidation (B594).

1405. In September 2016 the OHCHR documented a case of punitive damage to property in Donetsk by members of the armed groups targeting the house of a member of the Ukrainian-affiliated "Dnipro-1" battalion (B603).

1406. Between August and November 2016 the OHCHR received reports that "LPR" armed groups had continued to loot apartments in Luhansk city. Allegedly, in a consistent pattern of conduct, persons in camouflage or in civilian clothes had entered residential buildings and seized private property after breaking into individual apartments. Armed group members had cited "legal" grounds related to searches and collecting evidence for "criminal

investigations". According to the OHCHR's interlocutors, armed groups had actively monitored and targeted apartments whose owners had left Luhansk. Similar concerns existed in respect of the conduct of "DPR" armed groups (ibid.).

1407. Armed group-controlled parallel property registration systems were being developed or already in force by August 2016. According to its internal regulations, the "DPR" recognised only property registration documents issued by their "structures". "Decree No. 17-3 of 2 September 2015" of the "DPR cabinet of ministers" prescribed that property documents issued between 11 May 2014 and 3 September 2015 by Ukrainian authorities had to be legalised by the inter-agency commission at the "ministry of justice" to be regarded as having legal force. On 12 July 2016 the "DPR supreme court" issued an "explanatory letter" providing that property registration documents had to be "legalised" according to this procedure. As a result, the OHCHR explained, people either residing in or owning property in areas controlled by the armed groups had been forced to register it on both sides of the contact line, paying double taxes and administrative fees (B594-95).

1408. According to a public statement of the representative of the "Donetsk city authorities" in 2016, the property of "enemies" who had left the territories under the control of "DPR" armed groups would be confiscated and made communal (B603). On 4 July 2017 the fund of State property of the "DPR" announced the filing of an appeal to the "arbitration court" requesting a declaration of property rights concerning "abandoned" property (B631). On 28 April 2021 regulations were adopted in the "DPR" that allowed for the expropriation of immovable private property considered abandoned or left unclaimed following the owner's death (A1017-18 and 1024; and B713).

1409. In the period between November 2016 and February 2017, the OHCHR reported that armed groups had continued to carry out decisions aimed at regulating property issues in territory under their control, with yet unclear consequences for people's property rights, particularly those of returnees or displaced persons. A moratorium on commercial real estate transactions had continued to be applied. A State unitary enterprise registration centre had been established by armed groups in Luhansk in November 2016 to carry out an inventory of real estate. The so-called territorial offices of the "LPR ministry of justice" had charged citizens for registering real estate (B613).

1410. The OHCHR expressed concerns about the plans of the armed groups, announced on 10 February 2017, to impose "external management" on private enterprises, including metal and coal companies that had not registered as taxpayers with the "DPR" and the "LPR" (ibid.). On 2 March 2017 the "DPR administration" published a list of 43 private companies in respect of which an "external administration" had been appointed (B4199-200). In April 2017 a similar decree was adopted in the "LPR" which ceased its effect only on 31 December 2022 when the "LPR Council of

Ministers" completed the transfer of temporary administered property to a list of companies (B60).

1411. The OHCHR reported in May 2017 that there was an ongoing process of mandatory registration of vehicles under "DPR legislation". The process reportedly included a special fee for registration, paid through the "central republican bank". Owners who failed to "register" their vehicles would be fined between RUB 340 to 510, and their vehicles would be held until the fine was paid (B631).

1412. In July 2017 the OHCHR was informed that a woman who had returned to Luhansk city could no longer access her apartment because the lock had been changed. Interlocutors from Luhansk alleged in August 2017 that apartments were being opened and given to armed groups (ibid.).

1413. On 5 July 2017 a "DPR law" required the registration of real property rights with the "DPR" register and provided that all real estate transactions executed after 11 May 2014 had to be re-registered with the "DPR" (ibid.).

1414. On 5 July 2017 a member of the "people's council" of the "DPR" reported that 109 private markets had passed into State ownership since April 2017 (A1017-18 and 1024).

1415. The OHCHR reported in 2018 that detentions at checkpoints had often been followed by house searches and seizure of property (B644).

1416. According to the OHCHR, in the period from August to November 2017, in both the "DPR" and the "LPR", a number of actions had been taken against Jehovah's Witnesses communities. In Horlivka, one of the Kingdom Halls had reportedly been expropriated by the "DPR" on the basis that it was "abandoned", despite documentation confirming the congregation's ownership of the property as well as its continued use by parishioners. Following the "LPR" announcement in August 2017 of the banning of activities of unregistered organisations of Jehovah's Witnesses, Kingdom Halls in Luhansk, Alchevsk and Holubivka, in territory controlled by the "LPR", had been rendered inaccessible for parishioners, bringing the total number of Jehovah's Witnesses religious buildings which had been seized by armed groups since the beginning of the conflict to 12 (B641). According to the Jehovah's Witnesses, 16 of their buildings had been seized by 29 August 2018 in the "DPR" and the "LPR" (B1495 and 1881).

1417. There are also examples of private religious property being vandalised by armed groups in 2016, 2017 and 2018 (B1491, 1878 and 1881. See also the summary of evidence in respect of Article 9 at paragraphs 1193-1263 above).

1418. On 3 November 2017 the "DPR administration" published a "decree" on the "nationalisation" of harvest planted on land plots included in the "state" or "municipal property funds" which had been "occupied" by legal entities or private persons without authorisation. The "DPR ministry of taxes"

was given unhindered access to the storages of legal entities and private persons to implement the decree, which applied retroactively (B641).

1419. In its report of 19 September 2018, the OHCHR expressed concern about the expropriation of civilian property by the "ministry of state security" in the "DPR" referring to at least five examples of private family apartments being expropriated in Donetsk (A1027 and B653).

1420. In the period between February and May 2019, the OHCHR continued to document cases of pillage of civilian homes. For instance, the OHCHR had received allegations that civilian homes and property had been pillaged in the village of Bezimenne in the "DPR" (B671). In the same village the OHCHR had received allegations of the continued military use of a civilian property, after armed groups had forcibly evicted the owners of the house in December 2014. The armed groups had not provided any protection to the owners, nor adequate housing (ibid.).

1421. In their report for the period from May to August 2019, the OHCHR expressed concern that a civilian family, including a child, who had been forcibly evicted from their apartment in the "DPR" were facing possible expropriation of their property by the "ministry of state security". The family had not been provided with any alternative housing solution (B678).

1422. On 16 May 2019 a man had been detained by "police" in Lutuhyne. The next day, approximately eight men in civilian clothes had searched his house, seizing a number of items, including mobile phones and an e-book. On 16 July 2019 a "police" representative had informed the victim's wife that he had been 'arrested' on suspicion of possession of explosive devices and held in the premises of the "police department" in Lutuhyne (B679).

1423. The OHCHR received information in the period between August and November 2019 that some religious communities in "DPR" and "LPR" had remained unable to conduct worship meetings due to fear of arbitrary arrests or seizure of property, due to persecution after an obligatory "registration" of religious organisations had been rolled out in both "republics" between autumn 2018 and spring 2019 (B687. See also the summary of evidence in respect of Article 9 at paragraphs 1193-1263 above).

1424. In its report of 15 November 2019 the OHCHR continued to report cases of military use of civilian property by armed groups, which had resulted in looting and destruction of property in some cases, and a failure to provide adequate alternative housing and/or compensation. Furthermore, the military had failed to pay the bills stemming from their use of utilities such as electricity, leaving owners with large debts (B684).

1425. After the 2022 invasion, the Commission of Inquiry reported statements by local residents in the places that Russian armed forces had occupied, describing widespread looting and, at times, wanton destruction. Residents had spoken of soldiers stealing food and alcohol, personal belongings, valuables, computers and household items, such as washing machines and microwaves, from stores and houses (C.II.63, C.IV.381 and

C.V.84). The Commission of Inquiry described many incidents of Russian soldiers killing, torturing and raping members of a household in their own homes along with stealing money, food and other belongings (for example, C.II.92; C.IV.378, 581 and 590; and C.V.83-84). Misappropriation of personal belongings was reported as widespread at checkpoints and during filtration and random stops by the Russian military (for example, C.IV.625 and 710; see also B789).

1426. Several sources reported witness statements referring to Russian military vehicles driving in towns, shooting randomly at buildings with machine guns or grenade launchers and Russian soldiers going from house to house, breaking doors and windows, vandalising and setting fire to homes and other private property (B1335, 1373, 1466, 1649, 1838, 2226, 2826, 3895 and 4035).

1427. The OSCE Moscow Mechanism reported in April 2022 that videos had been shared on social networks displaying Russian troops looting grocery stores, supermarkets, gas stations and banks (B1335). In their July 2022 report the OSCE experts cited survivors of the Bucha massacre who had claimed that Russian soldiers had ransacked the city, taking jewellery, electronics, kitchen appliances, clothes and vehicles from the displaced, deceased and those still in the city. In Trostianets, after a month of Russian occupation, looting had become systemic. Similarly, in the village of Berestianka near Kyiv, Russian soldiers had looted clothing, appliances and electronics from homes before the village had been returned to Ukrainian control. The mission experts cited social media posts which reported in early April 2022 that Russian soldiers had been sending large packages to Russia, via a courier service, of what was believed to contain looted items. There had been reports of Russian forces setting up bazaars in Belarus to trade looted goods. Washing machines, dishwashers, refrigerators, jewellery, automobiles, bicycles, motorcycles, dishes, carpets, works of art, children's toys and cosmetics were examples of such items (B1373).

1428. Interlocutors interviewed by the OHCHR consistently reported having experienced or witnessed widespread pillage of private property by members of the Russian armed forces at the outset of the occupation in 2022. One interviewee described how Russian soldiers had "simply [taken] whatever they liked". In several villages and towns of the Kherson and Zaporizhzhia regions, members of the Russian armed forces had asked residents to identify uninhabited houses so that they could loot those houses first. Russian soldiers had also pillaged inhabited houses, arriving when the owners were not at home and continuing to remove belongings and load them onto trucks even if the owners returned. Russian soldiers had pillaged property openly, without any apparent fear of disciplinary measures. In the Kharkiv region, a woman had watched as Russian soldiers had pillaged blankets, alcohol, phones, notebooks, shavers, perfumes, watches, drinks and other belongings during a search of her home. In Zaporizhzhia region,

Russian soldiers had arrested a man and had taken all his belongings in public, even removing the boots from his feet. Members of the Russian armed forces had seized vehicles from homes, private businesses and churches, as well as at checkpoints, for both military and personal use. In Kherson city, the FSB had raided the Toyota dealership and had used the vehicles when intimidating and detaining residents. An interlocutor had described how, as a result, his family members had felt nervous whenever they saw specific Toyota vehicles drive by. An interlocutor from Melitopol had witnessed Russian soldiers blocking a civilian driving in the city centre, ordering him out of his vehicle, pushing him to the ground, and driving off in his vehicle. Russian soldiers had also taken equipment from educational and medical facilities. In the Kharkiv region, computers, multimedia equipment, kitchen appliances and furniture had been pillaged from schools in three different areas where Ukraine had regained control in September 2022. Russian soldiers had also looted and destroyed many pharmacies in the Kharkiv and Kherson regions, and had taken residents' private generators (B789. See also B1456, 2037, 2207, 2269, 2572, 2575, 2623, 2633, 2635, 2725, 2727, 2730, 2810, 2813 and 2826).

1429. In occupied territory in the Donetsk, Luhansk and Kherson regions, the Russian armed forces had raided local print media and had either forced staff to promote narratives of "successful liberation by Russian armed forces" or seized their equipment and premises (B751).

1430. The OHCHR documented a widespread practice of pillage of belongings of POWs. By 31 July 2022 the OHCHR had documented over 52 cases of pillage of personal belongings of Ukrainian servicemen who had been captured by Russian armed forces and affiliated armed groups, at various stages from the moment of their capture to their arrival at places of internment. Money had been stolen from bank accounts with bank cards seized from interned Ukrainian servicemen, either forcing POWs to provide the security codes for their bank cards or using payment terminals in shops to withdraw small amounts of money (B738, 748 and 767).

1431. Numerous other sources (B1439, 1456, 1654, 1661, 1682, 1698-99, 1772-73, 1932, 1962, 2026, 2047, 2051 and 2207), including witness statements (A1356, 1361, 1380, 1393 and 1444; and B3163, 3181, 3215, 3229, 3275 and 3293) as well as criminal investigations and convictions by Ukrainian authorities (B2569, 2572, 2575, 2612, 2623, 2630, 2633, 2635, 2636, 2705, 2725, 2730, 2813, 2826, 2962 and 3018) corroborated these reports.

1432. The OSCE Moscow Mechanism experts assessed that the acts of pillage and looting had been carried out by individual members of the Russian armed forces, making use of the lawless situation in newly occupied territory, to personally enrich themselves and with the knowledge that such behaviour would most likely be tolerated, if not encouraged, by their superiors (B1373). According to the Directorate of Intelligence of Ukraine, Russian commanders

had authorised their soldiers to loot civilian businesses and households and to move to "self-sufficiency" to offset continued supply problems (B1962). Other reports claimed that in certain locations, the looting campaign had been organised, with soldiers following lists of community members to target, including entrepreneurs (B2207).

1433. Other sources of evidence corroborated reports that members of Russian armed forces had seized vehicles accompanying humanitarian aid, ambulances and evacuation buses. From 24 February to 3 April 2022 four civilian vessels had been damaged or destroyed and three had been seized. Residences of military personnel associated with the Mariupol military hospital had been seized by Russian or "DPR" forces (B2388, 2394, 2398, 2418 and 3333).

1434. A similar procedure to the nationalisation process that had occurred in the "DPR" and the LPR" (see paragraphs 1397-1398 above) was applied in 2022 in respect of companies in newly occupied territory. According to the "Head" of the regional Zaporizhzhia government, such a procedure had been used in respect of over 400 companies in his region alone, either because the companies had stopped working, their production had been "intentionally decreased", their owner had been absent from Russian-controlled territory or their owner had carried out an "anti-Russian" activity (B4211-12).

1435. The OSCE Moscow Mechanism reported on organised grain looting with reference to statements made by Russian authorities on 30 May 2022 that they had begun exporting grain from Kherson to Russia and had been working on exporting sunflower seeds (B1374. See also B2343). Media had reported investigations concerning Ukrainian grain from occupied territory being moved to Crimea and exported from there as Russian grain, relying on interviews and on satellite pictures by Maxar Technologies depicting two Russian ships being loaded with grain in Sevastopol, on 19 and 21 May 2022 (B4204-05).

1436. The Commission of Inquiry found a pattern of at least 46 attacks committed against civilians on the move in towns, villages, or on highways, in some of the areas that came under Russian armed forces control, in which soldiers had fired with small arms upon civilian vehicles in 27 locations across Ukraine damaging or destroying civilian cars (C.IV.422-81). These incidents had taken place in February and March 2022, in or around ten towns and villages of the Kyiv, Kharkiv and Sumy regions, with a majority in the Kyiv region. The actual number of attacks on civilian cars and resulting casualties was likely to have been much higher, including in other regions. In all the cases investigated, the victims had been wearing civilian clothes, had not been armed, and had been driving civilian vehicles. All but one attack had occurred in daylight when the civilian status of the victims and of their vehicles would have been apparent to the attacker. In two cases, the cars had signs with the word "children" taped to the windows; some of the attacks had seemed deliberate, for example when soldiers had opened fire on civilian cars

that had posed no risk to them because they had stopped, turned around or were driving away from them (C.IV.429-30). The examples refer to cars with visible damage from attacks by small arms or by automatic firearm, with multiple bullet holes, burned cars and exploded cars caused by light weapons (C.IV.438-39, 443, 445, 447-48 and 458). The Commission of Inquiry documented three incidents on or in the vicinity of E40 highway, also known as the Zhytomyr highway, in the Kyiv region of Russian military convoy shooting at civilian cars, throwing grenades in their direction and setting a field on fire (C.IV.462-73). The Commission of Inquiry has recorded allegations of at least five additional similar incidents that took place close to Kyiv (C.IV.462).

D. The Court's assessment

1. General principles

1437. Article 1 of Protocol No. 1 comprises three distinct rules. The first rule, which is set out in the first sentence of the first paragraph, is of a general nature and enunciates the principle of peaceful enjoyment of property. The second rule, contained in the second sentence of the first paragraph, covers the deprivation of possessions and subjects it to certain conditions. The third rule, stated in the second paragraph, recognises that Contracting States are entitled, amongst other things, to control the use of property in accordance with the general interest, by enforcing such laws as they deem necessary for the purpose. However, the rules are not "distinct" in the sense of being unconnected. The second and third rules are concerned with particular instances of interference with the right to peaceful enjoyment of property and should therefore be construed in the light of the general principle enunciated in the first rule (see *Ukraine v. Russia (re Crimea),* cited above, § 1136).

1438. The Court reiterates that the first condition for any interference to be deemed compatible with Article 1 of Protocol No. 1 is that it should be lawful: the second sentence of the first paragraph authorises a deprivation of possessions only "subject to the conditions provided for by law". The rule of law is inherent in all the Articles of the Convention (see, among other authorities, *Lekić v. Slovenia* [GC], no. 36480/07, § 94, 11 December 2018; *G.I.E.M. S.r.l. and Others v. Italy* [GC], nos. 1828/06 and 2 others, § 292, 28 June 2018; and *Iatridis v. Greece* [GC], no. 31107/96, § 58, ECHR 1999-II). Any interference by a public authority with the rights protected under Article 1 of Protocol No. 1 must also pursue a legitimate aim in the general interest and be reasonably proportionate to the aim sought to be realised (see *Ukraine v. Russia (re Crimea)*, cited above, § 1147).

2. Application of the above principles to the facts of the present case

1439. Pillage is prohibited in all circumstances under Article 28 and 47 of the Hague Regulations and under Article 33 GC IV (B177 and 179). The Elements of Crimes of the ICC Statute specifies that the appropriation must be done "for private or personal use" in order for it to amount to pillage (B73). International humanitarian law prohibits the destruction or seizure of the property of an adversary, unless required by imperative military necessity (B135 and 179). The violation of this rule through "extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly," is a grave breach under GC IV (B138). Article 46 of the Hague Regulations prohibits the confiscation of private property (B147). Article 53 of the Hague Regulations allows an army of occupation to take possession only of cash, funds and securities which are strictly the property of the State, depots of arms, means of transport, stores and supplies, and, generally, all movable property belonging to the State which may be used for military operations. Transmission or transportation appliances (on land, at sea, or in the air) and, generally, all kinds of munitions of war may be seized even if they belong to private individuals, but must be restored and compensation fixed when peace is made (B177). The Hague Regulations provide detailed rules with respect to contributions in kind and services, known as requisitions, demanded from the population and authorities of the occupied territory to satisfy the needs of the occupying forces. Requisition in kind and in services must not be demanded except for the needs of the army of occupation, may be demanded on the authority of the commander and must as far as possible be paid for in cash; if not, a receipt must be given and the payment of the amount due must be made as soon as possible (ibid. For more details on international humanitarian law see B177-79).

1440. The Court observes, first, that certain complaints of the applicant Ukrainian Government refer to energy infrastructure (including gas and oil infrastructure and nuclear facilities), transport infrastructure, medical facilities and civic and cultural property. At least some of this property is held by State authorities or State-owned monopoly enterprises, like Energoatom, the operator of all four nuclear power plants in Ukraine, or the Ukrainian Railways or Ukrzaliznytsia, the State administrator of railway infrastructure and rail transport in Ukraine. In their application no. 11055/22 and submissions of 2 October 2023, the applicant Ukrainian Government explicitly argued that the "victims of the interference with property rights include[d] not only individual residents and citizens of Ukraine, but also privately-owned enterprises and such enterprises which enjoy 'sufficient institutional and operational independence from the State'". Their submissions do not, however, elaborate on the particular situation of the various State-owned companies referred to in their illustrative examples of interferences and on the extent to which it may be said that they enjoy "sufficient institutional and operational independence from the State".

1441. The Court has considered in the past whether it may examine an inter-State application submitted by a High Contracting Party under Article 33 of the Convention with a view to protecting the rights and interests of a legal entity which would not qualify as a "non-governmental organisation" and therefore would not be entitled to lodge an individual application under Article 34 (*Slovenia v. Croatia*, cited above, §§ 60-70 and 76-79). Taking into account the specific nature of the Convention as a human rights treaty and recalling that even in inter-State cases it is the individual who is primarily "injured" by a violation of the Convention, the Court confirmed that only individuals, groups of individuals and legal entities which qualify as "non-governmental organisations" can be bearers of rights under the Convention. Contracting States or any legal entity which had to be regarded as a governmental organisation could not, therefore, be bearers of Convention rights (ibid., § 66).

1442. Accordingly, the Court infers that the applicant Ukrainian Government do not argue that these State-owned monopoly companies qualify as "non-governmental organisations" and that it is therefore not called upon to examine any complaints in so far as they would refer to the interference with property held by entities which do not qualify as a "non-governmental organisations". Consequently, the incidents concerning the destruction of property involving these companies will not be taken into account in the Court's overall assessment of the existence of a pattern of "identical and repetitive" acts which may amount to an administrative practice contrary to Article 1 of Protocol No. 1 to the Convention. This conclusion is, however, without prejudice to the operation of any mechanism for the compensation of damage caused by the invasion of Ukraine by the Russian Federation, including a future international compensation mechanism to be established on the basis of the Register of Damage set up at the 4th Summit of Heads of State and Government of the Council of Europe (see paragraphs 91-92 above) in follow up to the UN General Assembly Resolution of 14 November 2022 (see B202 and 352).

1443. The evidence shows that since May 2014 private property was systemically stolen, looted, misappropriated, nationalised, damaged and destroyed by Russian and Russian-controlled officials and armed forces in the "DPR", the "LPR" and in the Ukrainian territories under the control of Russian forces after the invasion of 24 February 2022. The OHCHR reports referred to numerous accounts of theft and looting and the appropriation of private property throughout the period between 11 May 2014 and 16 September 2022. Armed groups robbed civilians at checkpoints, and broke into people's houses and businesses and looted, seized or destroyed them (see, for example, paragraphs 1392-1396, 1399-1400, 1402-1406, 1420 and 1424 above). The incidents of destruction of property described in the evidence did not take place in circumstances of active hostilities: they depict the intentional vandalism or destruction of civilian cars and other private

property. After February 2022, the widespread pillage of private property by members of the Russian armed forces was commonplace (see, for example, paragraphs 1425-1428, 1430-1431 and 1436 above).

1444. In 2014-2017 "DPR authorities" passed a number of formal decisions on the appointment of loyal administrators to manage private property in the "DPR", representing a *de facto en masse* seizure of private property without any compensation; a similar decree was in force in the "LPR" from April 2017 to December 2022 (see, for example, paragraphs 1398 and 1410 above). A similar process of nationalisation of over 400 private companies was documented in 2022 in Zaporizhzhia (see paragraph 1434 above). Parallel property registration systems were being developed or already in force by August 2016 in the "DPR" and in November 2016 in the "LPR". Failure to "legalise" property under the new rules resulted in property being declared "abandoned" and later nationalised (see paragraph 1407-1409, 1413 and 1418). Failure to register vehicles under the new rules resulted in fines and forfeiture of the vehicle until the fine was paid (see paragraph 1416 above). The seizure of places of worship was also commonplace from 2014 to 2022 (see, for example, paragraphs 1270, 1416-1417 and 1423 above).

1445. It is clear beyond doubt that during the period under consideration there existed a systemic campaign by the separatists and by the Russian armed forces of large-scale expropriation, nationalisation and destruction of and significant damage to the property of civilians and private enterprises in occupied territory. Such measures amounted to interferences with the peaceful enjoyment of property within the meaning of the first paragraph of Article 1 of Protocol No. 1.

1446. The respondent Government have not identified any legal basis for any of the impugned actions.

1447. In respect of thefts and looting, the Court notes that pillage is prohibited under all circumstances under international humanitarian law. Thus regardless of any purported legal basis for such actions, it cannot be said, in light of the provisions of international humanitarian law, that expropriation carried out by Russian and Russian-controlled armed forces in the form of looting for private use was carried out in "conditions provided for by law", pursued a legitimate aim in the general interest or was reasonably proportionate to that aim (see paragraph 1438 above).

1448. Although international humanitarian law permits, under strict conditions, the appropriation of certain property by an occupying Power (see paragraph 1439 above), the Court reiterates that any measures adopted in pursuance of international humanitarian law must be the subject of more specific provisions by the occupying Power that satisfy the "quality of law" requirement inherent in the notion of "lawfulness" (see paragraph 608 above). In respect of expropriation of property carried out based on formal documents adopted by the *de facto* authorities of the "DPR" and "LPR" and by the

Russian military administration in occupied territory, the Court notes that the respondent Government failed to provide any evidence of these formal documents and failed to provide any submissions regarding the validity of any such measures as a matter of international humanitarian law. The Court has already explained why acts of the "DPR and the "LPR" cannot be considered to constitute "law" for the purposes of the Court's lawfulness assessment (see paragraphs 602-605 above). It has also explained why measures taken by the Russian occupying authorities cannot be recognised as providing a valid legal basis for measures taken in occupied territory (see paragraphs 606-609 above). There is therefore no evidence that acts of expropriation by the "DPR", LPR" and other occupation administrations were carried out in "conditions provided for by the law" within the meaning of Article 1 of Protocol No. 1 to the Convention.

1449. The Court moreover observes that general measures in this area could only be considered lawful under international humanitarian law if they complied with the conditions it sets out (see paragraph 1439 above). The Court has not been provided with any evidence that the impugned decrees themselves relied on any grounds permissible under international humanitarian law, that any payment of compensation was made or was envisaged or that any procedure for recording legitimate confiscations of property and enabling subsequent payment of compensation was put in place. On the contrary, it appears that private property was seized and confiscated for opportunistic reasons of plundering available economic resources, sometimes under the political cover of protection against "anti-Russian activity" (see paragraphs 1433-1435 above). The Court therefore considers that the various general measures described above appear to be in breach of international humanitarian law and, as such, do not satisfy the "quality of law" requirement inherent in Article 1 of Protocol No. 1.

1450. In respect of the destruction of private property, the Court notes that Article 53 GC IV prohibits such destruction unless it is rendered absolutely necessary by military operations (see paragraph 1439 above). The respondent Government have not adduced any evidence nor submitted any arguments that the instances of destruction described in the summary of evidence above were absolutely necessary for military operations. The Court underlines that the examples to which the summary of evidence refers occurred in territory which was already under the effective control of the respondent State. There is accordingly no obvious reason why these acts might have been "absolutely necessary for military operations". In any event, the evidence reveals the wanton and deliberate destruction of private property by agents of the respondent State. The Court is therefore equally unable to accept that destruction of property was carried out in "conditions provided for by law" within the meaning of Article 1 of Protocol No. 1 to the Convention.

1451. For these reasons, the interferences with property rights carried out by the "DPR" and the "LPR" and the Russian armed forces and occupation

administrations after 24 February 2022 in occupied territory cannot be seen as carried out in "conditions provided for by law" within the meaning of Article 1 of Protocol No. 1 to the Convention and were therefore in violation of that Article.

1452. The Court accordingly finds, beyond reasonable doubt, that there existed an accumulation of identical or analogous breaches of Article 1 of Protocol No. 1 of the Convention between 11 May 2014 and 16 September 2022 which are sufficiently numerous and interconnected to amount to a pattern or system of interferences with the right to peaceful enjoyment of possessions. The regulatory nature of certain aspects of the alleged practice and its general application confirm the existence of both the "repetition of acts" and "official tolerance" elements of the practice concerning expropriation (see also paragraphs 1617-1621 below).

1453. The Court therefore finds the respondent State responsible for an administrative practice in occupied areas of Ukraine of destruction, looting and expropriation without compensation of the property of civilians and private enterprises from 11 May 2014 to 16 September 2022 in violation of Article 1 of Protocol No. 1 to the Convention. In so far as this practice concerned, from 24 February 2022, the destruction and looting of homes and personal possessions (see paragraph 1127 above), it was also in breach of Article 8 of the Convention.

XX. ALLEGED ADMINISTRATIVE PRACTICE IN VIOLATION OF ARTICLE 2 OF PROTOCOL NO. 1 TO THE CONVENTION

A. The complaint

1454. The applicant Ukrainian Government complained of "suppression of the Ukrainian language" in schools in occupied areas from 11 May 2014 onward. They also complained of the "indoctrination of students" following 24 February 2022.

1455. They invoked Article 2 of Protocol No. 1 to the Convention, which reads:

> "No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions."

B. The parties' submissions

1. The applicant Ukrainian Government

1456. The applicant Ukrainian Government submitted that the alleged administrative practice had begun on 11 May 2014 with the suppression of

the Ukrainian language in schools. The practice had continued and expanded after the invasion by Russia on 24 February 2022.

1457. In respect of the period from 2014 to February 2022, they cited international reports attesting to the replacement in 2014 of the Ukrainian curriculum in Luhansk and in Donetsk with the educational curriculum of the Russian Federation; the replacement of Ukrainian textbooks with Russian textbooks and the discontinuation of education in the Ukrainian language in Luhansk in 2016; and the adoption of new education laws in the "DPR" in March 2020 and in the "LPR" in June 2020 designating Russian as the official language of education in educational institutions in occupied territory.

1458. For the period after 24 February 2022, the Russian Federation had pursued their aim of indoctrination in Ukrainian schools in areas under its control. In particular, the occupation administration had imposed Russian standards and curricula as well as textbooks for teachers from the Russian Ministry of Education with instructions on how to justify Russia's war of aggression in Ukraine; the exclusive use of Russian textbooks and teaching exclusively in the Russian language; and the removal of Ukrainian textbooks from school libraries as well as the coercive re-education of teachers.

1459. The Ukrainian Commissioner for the Protection of the State Language had listed examples of announcements being made about the exclusive use of Russian as the language of instruction. In particular, on 16 May 2022 an announcement from the occupation administration had been posted in a school in Mariupol notifying pupils that the instruction language in that school was Russian. On 22 May 2022 and on 10 July 2022 the head of the "department of education" in Melitopol and the Minister of Education of the Russian Federation had announced that starting from 1 September 2022, education in Melitopol schools would be in the Russian language. On 23 August and 1 September 2022 the head of the Kherson regional "department of education" and the Ministry of Education of the Russian Federation along with the occupation administration of Kherson region had announced that education would be in the Russian language and according to Russian standards and curricula. It had also been announced that the Ukrainian language "would be studied during the native language hours". The Ukrainian Commissioner reported the seizure of Ukrainian books on 12 and 18 August 2022 in Yakovenkove village and in Balakliia city in the Kharkiv region. The applicant Ukrainian Government further referred to the mandatory accreditation with the Russian Ministry of Education of schools in occupied territory.

2. The respondent Government

1460. The respondent Government did not take part in the present proceedings on the merits of application nos. 8019/16, 43800/14 and 28525/20 and the admissibility and merits of application no. 11055/22 (see paragraph 142 above). At the separate admissibility stage of the present

proceedings, they challenged in general terms the evidence submitted by the applicant Ukrainian Government (*Ukraine and the Netherlands v. Russia* (dec.), cited above, §§ 408-14 and 820).

C. Summary of the relevant evidence

1461. The OSCE SMM described attending the opening of a school in Luhansk, on 1 September 2014, at which the self-declared "LPR" president, Mr Plotnitsky, had announced that a new curriculum based on the educational curriculum of the Russian Federation would be followed. Reports from visits to other schools in Luhansk in November 2014 cited school administrations as stating that the schools had already received textbooks from the Russian Federation and would follow the Russian curriculum from 9 November 2014. The school administrations had further confirmed that the language of instruction would be Russian only, whereas it had been both Russian and Ukrainian before the conflict (A1034 and 1038). During monitoring activities in the "LPR" one year later, the SMM was informed by school principals that their schools had been applying mainly the Russian curriculum and that the books had been provided by the Russian Federation (A1042).

1462. In its report of 15 November 2014 the OHCHR observed that in the "DPR" and the "LPR" the curriculum had been altered to exclude the teaching of Ukrainian language and history, which made it problematic to obtain State school diplomas (B546).

1463. In daily reports from September 2015 the OSCE SMM provided information obtained from school administrations about schooling in occupied areas. School textbooks had mainly been supplied from the Russian Federation and most schools had informed the SMM that they were applying the Russian curriculum. In one school, the SMM was told that the curriculum followed had been approved by the "DPR" "authorities", with "My Motherland Donbas" the theme for the first day of classes. Another school headmaster told the SMM that although an adapted Russian Federation curriculum was being used, Ukrainian was being taught, as well as English and German. In other schools, the SMM had been informed that all subjects were being taught in Russian. The SMM also learned from some schools that pupils from grades nine to eleven were to be taught "Military Studies". At one local school in "LPR"-controlled Buhaivka, the SMM had been told by the village council representative that pupils were continuing to use Ukrainian books. During a school visit on 9 September 2016 the SMM was told that compared to the previous year, the number of Ukrainian language classes in a week had decreased from two to one and that the history of the "Motherland" was being taught instead of the history of Ukraine. At one school in "DPR"-controlled Oleksandrivka, located on the contact line, the school director told the SMM that the curriculum in the school was being delivered in both the Ukrainian and Russian languages (B1281-86).

1464. In its report for 1 August 2020 to 31 January 2021, the OHCHR expressed concern that on 6 March 2020 the "people's council" of the "DPR" had amended the law on education, establishing Russian as the official language in educational institutions in territory they controlled. These changes were already in place for the 2020-2021 academic year. In June 2020 the same approach to the Russian language in educational institutions had been introduced in territory controlled by the "LPR" (A1047).

1465. According to the OHCHR, the further escalation of the armed conflict in February 2022 had deeply affected children and their right to education. Occupation of territories by Russian armed forces had led to changes in the type of education provided (B791-92, 795).

1466. Russian occupying authorities had begun approaching teachers and school administrators for their cooperation as early as April 2022. However, as the 2021-2022 school year was almost over, teachers had initially been allowed to continue teaching the Ukrainian curriculum, often via online classes due to the security situation (ibid.). However, in June 2022 the Russian Minister of Education had announced that at the start of the 2022-2023 academic year, all schools in occupied territory of Ukraine would work according to Russian standards (B792).

1467. By September 2022 Russian armed forces and occupying authorities had instructed teachers and school administrators to switch to the Russian curriculum, to conduct classes in the Russian language, and to submit formal documents transferring educational facilities and employment contracts to the Russian education system (B791). Despite initial promises by the Russian deputy Minister of Education in early August 2022 that the Ukrainian language could be used for teaching the Russian curriculum, on 12 August 2022 Russia's Ministry of Education stated that the language of instruction in occupied Ukraine would be Russian, with schools outside the "DPR" and the "LPR" given the option of teaching classes in Ukrainian only as a "native language" or as an "optional" language for a few hours per week. In late August and early September 2022, the authorities in occupied areas of the Zaporizhzhia and Kherson regions had decided that schools would teach at most three hours of Ukrainian language per week. Before the start of the school year in September 2022, Russia's Ministry of Education reportedly shipped 5 million Russian textbooks to Ukraine, and Russian regional authorities had sent another 2.5 million textbooks. Teachers from several regular Ukrainian schools confirmed to HRW that Russian textbooks had arrived during the occupation (B1794).

1468. Teachers had told HRW that in addition to imposing Russian textbooks, occupying authorities had also confiscated and destroyed Ukrainian school materials (ibid.). Similar information was reported by the OHCHR. In particular, in the Kharkiv region orders to seize and put into storage Ukrainian literature, textbooks, teaching aids, "propaganda materials" (such as posters and stands), signs and school documentation had

been carried out in August 2022. In the Luhansk region, the occupying authorities had ordered the removal from educational facilities of items considered to be "extremist" or "portraying the ideology of Ukrainian nationalism", including comic books, literature about events since 2014, teaching guides, literature about the Holodomor and "propaganda of European gender values". Occupying authorities in Melitopol had announced that they had removed "pseudo-historical books promoting the idea of nationalism" from the central library, replacing them with books "that tell the true story" (B792).

1469. Ukrainian teachers had been coerced into implementing the Russian curriculum and holding classes in the Russian language or their employment had been terminated. The Commission of Inquiry documented instances in which Russian authorities had used coercion against school personnel to force them to apply Russian curricula, and against parents to force them to enrol their children in schools operating under the Russian education system. According to school personnel from the Kherson and Zaporizhzhia regions, Russian authorities, or local residents supporting them, had carried out home visits or school visits to seek parents' cooperation. Interlocutors reported threats to detain them, expel them from their localities, harm their families or confiscate their houses. Home visits and fear of being detained had created psychological pressure and had led some teachers to decide to leave for territories under Ukrainian Government control (C.IV.672, 698 and 700-08). The OHCHR documented 13 cases in which school administrators and teachers who had refused to teach the Russian curriculum had been arbitrarily detained, tortured, ill-treated, and/or threatened with violence (B791). The OSCE Moscow Mechanism experts reported in July 2022 that teachers had been under pressure to abandon the original curriculum and become a tool of Russian propaganda and that they had risked measures of retaliation from the occupying forces if they did not yield to that pressure (B1371).

1470. Witness statements described the threats of physical violence and of connections with FSB officers used by the various occupation officials to coerce people into cooperation in implementing the Russian curriculum or "patriotic education" in schools. They also corroborate the allegations of a practice of mandatory vocational training for teaching staff in occupied territory in the Izium, Kupiansk and Vovchansk districts from June to September 2022 (B3070, 3073-75, 3091 and 3097).

1471. The Commission of Inquiry documented cases in which public officials and education personnel had been confined by the Russian authorities in occupied areas in the Kharkiv, Kherson and Zaporizhzhia regions. Detention of education personnel had occurred following accusations that they had refused to cooperate in implementing the Russian-imposed curricula or to teach the Russian language in school. Both women and men had been affected. In one case, a schoolteacher had been

detained together with her 16-year-old daughter and threatened with her daughter's rape unless she cooperated (C.IV.611, 707 and 711).

1472. The Commission of Inquiry also heard from witnesses that the Russian authorities had threatened, intimidated and used psychological pressure against parents to coerce them to send their children to schools run in conformity with the Russian system in occupied territory. It had documented such cases in the Kharkiv, Kherson and Zaporizhzhia regions. School personnel and parents had reported situations in which, during door-to-door home visits, the Russian authorities had requested parents to send their children to schools run by them and threatened otherwise to impose a fine, rescind their parental rights or send their children away to institutions. Such messages had also been communicated by school personnel who had chosen to cooperate with the *de facto* authorities, via text messages or at school meetings. Some parents had been offered RUB 10,000 if their children went to such schools (C.IV.702-04). HRW reported that parents in Mariupol and Melitopol had been threatened with losing custody over their children or fines if it was found that their children had attended online Ukrainian schooling (B1795).

1473. The Commission of Inquiry received reports regarding children who were terrified that they would be caught attending Ukrainian school online. The principal of a school in the Zaporizhzhia region informed the Commission of Inquiry that she had received voice messages from around ten pupils asking if they would be treated as traitors if they attended school. The students had informed her that the Russian armed forces had visited their homes to request them to attend schools run by the Russian authorities and had told their parents that the children would be moved to orphanages and forced to dig trenches in case of non-compliance. One teacher had stated that students had called in distress, fearing that they would be separated from their parents. Parents in Enerhodar city had described situations where Russian soldiers had questioned children they had seen in the streets; as a result, children had tried to stay indoors. Parents and children had created fake accounts and cleared their telephones out of fear that they could be searched. As a result of such threats and intimidations, some parents in territories under Russian control had, out of fear, enrolled their children in schools providing Russian education. Others had enrolled their children in schools operating under the Russian system because that was the only option for in-person school attendance (C.IV.704-06).

1474. HRW reported similar situations of children interrupting online education in the Ukrainian language after the occupation authorities had taken their parents away once it had been discovered that their children attended Ukrainian schools online. HRW also reported statements that children had barely left home in six months to avoid detection by Russian authorities. One boy had left home with a backpack each school day as if he were going to

Russian school, but had actually gone to a relative's house to study the Ukrainian curriculum online (B1795).

1475. In Mariupol, even when Ukrainian educators were willing to risk persecution for teaching the Ukrainian curriculum and even when children had devices and connectivity, access to Ukrainian schools had been disrupted by the blockage of Ukrainian online learning platforms by the Russian authorities (B1796).

1476. In August 2023 the Russian Minister of Education stated that "in the new regions of Russia, we are conducting systematic work, we are trying to integrate them as quickly as possible into a unified educational space". He emphasised the "real war over history" and reported that a new programme had been established to teach history (B792).

1477. HRW referred to the assessment made by Ukraine's education Ombudsperson that Ukrainian and Russian curricula on mathematics and sciences were very close, while the areas of concern were Ukrainian language, literature, history and social sciences (B1796). The imposed curriculum, approved by the Russian Ministry of Education, did not represent Ukraine as an independent and unique country (B792).

1478. This information was corroborated by the OSCE Moscow Mechanism experts in their reports of April and July 2022. The experts expressed concern that since 2022, schools in occupied areas had been turned into places of propaganda with textbooks for teachers from the Russian Ministry of Education, including instructions on how to justify the Russian attack on Ukraine (B1371). In its report of July 2022, the mission corroborated the information that children living in the territories under the effective control of the Russian Federation had been exposed to massive propaganda and militarisation of education. It was, for instance, reported that the Russian armed forces had cancelled school holidays in the occupied city of Mariupol in order to prepare students for the transition to the Russian curriculum. The goal had been to remove the Ukrainian curriculum and prepare students to return to school with a Russian curriculum (B1372). The OHCHR later analysed a 2023 history textbook distributed to 16 and 17-year-old children in occupied territory. The textbook stated that "a junta came to power" in Ukraine in 2014 after "a bloody armed rebellion", and that the goal of the "special military operation" was the "protection of the region of Donbass". The textbook also referred to present-day Ukraine as an "ultra-nationalist State" and declared that "[i]n liberating the cities, our [Russian] soldiers are finding evidence of mass crimes by Ukrainian nationalists who abuse civilians and torture prisoners of war" (B792).

1479. According to HRW, by the start of the 2022 invasion of Ukraine the Russian school-oversight agency (Rosobrnadzor) had accredited 40 schools, colleges and universities in the "DPR" and the "LPR", which used the Russian curriculum and Russian as the language of instruction. From February to July 2022 the agency had accredited an additional seven schools

and a college in newly occupied areas of Ukraine. According to Russia's education minister, a total of 1,300 schools had been opened under the Russian system in Ukraine in 2022. The occupying authorities' imposition of the Russian education system had included prohibiting the Ukrainian curriculum and requiring Ukrainian teachers to be re-certified to teach the Russian curriculum through training in Russia or in occupied Crimea (B1797).

1480. On 26 June 2023 the Committee of Experts on the legal framework for the implementation of the European Charter for Regional or Minority Languages in Ukraine of 26 June 2023 (MIN-LANG(2023) 15) published a statement which included the following comments (B378):

> "The Committee of Experts finds unacceptable the instrumentalization by the Russian Federation of the presence of Russian as a minority language in Ukraine as a pretext for aggression.
>
> ...
>
> The Committee of Experts underlines that, according to the Charter, the teaching in and of minority languages is without prejudice to the teaching of Ukrainian, whichever the model chosen."

D. The Court's assessment

1. General principles

1481. The right to education would be meaningless if it did not imply in favour of its beneficiaries, the right to be educated in one of the official languages of the country concerned (see *Catan and Others v. the Republic of Moldova and Russia* [GC], nos. 43370/04 and 2 others, § 137, ECHR 2012 (extracts), and *Valiullina and Others v. Latvia*, nos. 56928/19 and 2 others, § 122 and 135, 14 September 2023).

1482. Having regard to the internal consistency and harmony between the Convention's various provisions, Article 2 of Protocol No. 1 must be read in the light of Articles 8, 9 and 10 of the Convention which proclaim the right of everyone, including parents and children, "to respect for his private and family life", to "freedom of thought, conscience and religion", and to "freedom ... to receive and impart information and ideas". Parents are primarily responsible for the education and teaching of their children and they may therefore require the State to respect their religious and philosophical convictions. The State, in fulfilling the functions assumed by it in regard to education and teaching, must take care that information or knowledge included in the curriculum is conveyed in an objective, critical and pluralistic manner. The State is forbidden to pursue an aim of indoctrination that might be considered as not respecting parents' religious and philosophical convictions (see *Catan and Others*, cited above, §§ 136-38, recently re-stated in *Ukraine v. Russia (re Crimea)*, cited above, § 1159).

1483. The right to education is not absolute and may be subject to limitations. Provided that there is no injury to the substance of the right, limitations are permitted by implication since the right of access to education by its very nature calls for regulation by the State. In order to ensure that restrictions imposed do not curtail the right in question to such an extent as to impair its very essence and deprive it of its effectiveness, the Court must satisfy itself that they are foreseeable for those concerned and pursue a legitimate aim and that there is a reasonable relationship of proportionality between the means employed and the aim sought to be achieved (see *Catan and others*, cited above, § 140, recently re-stated in *Ukraine v. Russia (re Crimea)*, cited above, § 1159).

2. Application of the general principles to the facts of the case

1484. Under international humanitarian law the occupying Power must facilitate the proper working of all institutions devoted to the education of children in the occupied territory and the education of children should be entrusted, as far as possible, to persons of a similar cultural tradition (B181). At the same time, under Article 45 of the Hague Regulations it is forbidden to compel the inhabitants of occupied territory to swear allegiance to the hostile Power (B174).

1485. The Court notes that according to the 1996 Constitution of Ukraine, the Ukrainian language is the only official language in the country, including in the Donetsk and Luhansk regions. In 2012 the Ukrainian Parliament adopted the Law on the Principles of the State Language Policy, which conferred upon national minority languages the status of a "regional language" of Ukraine where the percentage of persons belonging to national minorities exceeded 10% of the total local population. The law authorised the use of regional languages in courts, schools and other government institutions in those areas, alongside the Ukrainian language. Under this law, the Russian language was recognised as a regional language in nine regions of Ukraine, including in the Donetsk and Luhansk regions. The law was declared unconstitutional in February 2018. The 2017 Ukrainian law on education provides that the Ukrainian language is the language of education at all levels except for subjects that are allowed to be taught in two or more languages, namely English or one of the other official languages of the European Union, which does not include Russian (see the summary of relevant Ukrainian laws in the Venice Commission opinion no. 960/2019 of 9 December 2019 at B376).

1486. The evidence shows that official measures to suppress education in the only official language of Ukraine, namely the Ukrainian language, were implemented by Russian and Russian-controlled officials in the "DPR" and the "LPR" as early as 2014 and in the Ukrainian territories occupied after the invasion of 24 February 2022. The impugned measures replaced all education in the Ukrainian language with education in the Russian language, with the

Ukrainian language being taught, at best, only as a foreign or a minority language (see paragraphs 1461-1464, 1466 and 1468 above). Moreover, the evidence shows that in important respects, and notably in the area of social sciences, the substance of the education provided to Ukrainian children was changed significantly after 24 February 2022 (see paragraphs 1476-1478 above).

1487. Education in the only official language of Ukraine in the "DPR", the "LPR" was stopped in 2014 by the implementation of Russian as the language of education, by the imposition of a Russian curriculum and textbooks, and by the re-accreditation of schools and training of teaching personnel according to Russian educational standards (see paragraphs 1461-1463 and 1479 above). The measures were extended to other occupied areas in 2022. These measures were associated, particularly after 2022, with a form of indoctrination to the official Russian narrative, which denied Ukraine's existence as an independent state in order to legitimise its invasion of Ukraine (see paragraphs 1476 and 1478 above).

1488. Changes made to the education system were thus primarily aimed at replacing the only official language on sovereign Ukrainian territory with the language of the *de facto* occupation authorities, with the overall political objective of enforcing the Russification of the population in the territories under the control of those *de facto* authorities and of separating those territories from Ukraine (see similar Russification policies described in *Catan and Others*, § 144, and *Valiullina and Others*, § 93, both cited above). The Court notes the criticism by the Committee of Experts on the legal framework for the implementation of the European Charter for Regional or Minority languages of the instrumentalisation of the Russian minority language in Ukraine and its insistence that teaching in minority languages must be without prejudice to teaching in Ukrainian (see paragraph 1480 above). Moreover, in the context of the new curriculum and its imposed narrative, pupils received instruction about the history of their country solely from the standpoint of the occupation authorities' interpretation. Many children in occupied areas were thus liable to face a conflict of allegiances between what they were being taught in schools and the convictions and interpretation of information handed down by their parents and the previously established education and values system. There can be no doubt that the views of parents in occupied territory on the history and status of Ukraine attained the level of cogency, seriousness, cohesion and importance required for them to be considered "convictions" within the meaning of Article 2 of Protocol No. 1 (see *mutatis mutandis, Campbell and Cosans v. the United Kingdom,* 25 February 1982, §§ 36-37, Series A no. 48, and *Lautsi and Others v. Italy* [GC], no. 30814/06, § 58, ECHR 2011 (extracts)).

1489. Furthermore, the evidence shows that teaching staff, children and their parents were exposed to harassment and threats relating to the use of the Ukrainian language in the context of education and the attendance of children

at schools run in conformity with the Russian system (see paragraphs 1469-1474 above). The Court accordingly accepts that the changes imposed were not merely unacceptable from the perspective of the Ukrainian authorities but were also not consonant with the convictions of many parents in the territories concerned or with the desire of children and their parents that education be in Ukrainian. It is satisfied that these measures interfered with parents' rights to ensure their children's education and teaching in accordance with their philosophical convictions (see *Catan and Others*, cited above, § 143).

1490. The provisions of international humanitarian law summarised above, read together with the general obligation for the occupying Power to maintain the laws in force in the occupied territory and not modify or suspend or replace them with its own legislation "unless absolutely prevented" (B131), do not authorise the occupying Power to change the educational system in occupied territory. Indeed, the importance of children in occupied territory being educated in line with their language and cultural traditions is reflected in GC IV (see paragraph 1484 above).

1491. The Court notes that similar policies of suppressing the Ukrainian language in schools and of persecuting Ukrainian-speaking children at school, implemented by the Russian Federation in Crimea, were found by the ICJ in its judgment in *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation) (31 January 2024)* to be in violation of the Russian Federation's obligation not to engage in an act or practice of racial discrimination under Article 2(1)(a) and 5(e)(v) of the 1965 International Convention on the Elimination of All Forms of Racial Discrimination (CERD – see B298-302). They were also found by the Court to amount to an administrative practice in breach of Article 2 of Protocol No. 1 to the Convention (see *Ukraine v. Russia (re Crimea)*, cited above, §§ 1152-65).

1492. The respondent Government did not submit any justification for the impugned measures in the "DPR", the "LPR" and other territories under Russian control. They did not provide any counter-arguments regarding the substance of the allegations made, allegations which are supported by multiple concordant pieces of evidence consistently pointing to the suppression since 2014 of teaching in the only official language of Ukraine and the systematic indoctrination of schoolchildren following the 2022 invasion.

1493. The failure of the "DPR", the "LPR" and the occupation administrations of other territories under Russian control to make continuing provision for teaching in the Ukrainian language in the "DPR" and the "LPR" after 2014 and in the other Ukrainian territories under Russian control after February 2022 must be considered in effect to amount to a denial of the

substance of the right under Article 2 of Protocol No. 1 to the Convention (see, *mutatis mutandis*, *Cyprus v. Turkey* [GC], cited above, § 278).

1494. Moreover, from February 2022, the arrangements, made in the "DPR", the "LPR" and other Ukrainian territories under Russian control for advancing the narrative of the occupying Power in schools sought to enforce the Russification of the Ukrainian population living in those territories, in accordance with the overall political objectives of separating these areas from Ukraine and ultimately denying the existence of Ukraine as a sovereign State. Parents of children in these areas were faced with sending their children to be educated in circumstances where their education was, in important respects, to be conducted in a manner wholly inconsistent with their political and philosophical beliefs, or risking severe sanction or no education at all. Given the fundamental importance of education for each child's personal development and future success, it was impermissible to interrupt these children's schooling in the only official language of the territory and force them and their parents to make such difficult choices with the sole purpose of entrenching the separatist and revisionist ideology. The Court finds that such teaching pursued the aim of indoctrination which did not respect the convictions of their parents, an aim prohibited by Article 2 of Protocol No. 1 to the Convention (see, *mutatis mutandis*, *Catan and others*, §§ 141-44, and *Lautsi and Others*, § 62, both cited above).

1495. The Court accordingly finds, beyond reasonable doubt, that there existed an accumulation of identical or analogous breaches of Article 2 of Protocol No. 1 to the Convention which are sufficiently numerous and interconnected to amount to a pattern or system of suppression of the Ukrainian language in occupied areas between 11 May 2014 and 16 September 2022 and of indoctrination in education in occupied areas between 24 February and 16 September 2022.

1496. For the reasons set out below, there is no doubt that the violations of Article 2 of Protocol No. 1 to the Convention described were officially tolerated by the superiors of the perpetrators and by the higher authorities of the respondent State (see paragraphs 1617-1621 below).

1497. The Court therefore concludes that the Russian Federation was responsible for an administrative practice in occupied areas which consisted of suppressing the Ukrainian language in schools between 11 May 2014 and 16 September 2022, and also of indoctrination in education between 24 February and 16 September 2022, in violation of Article 2 of Protocol No. 1 to the Convention.

XXI. ALLEGED ADMINISTRATIVE PRACTICE OF ABDUCTION AND TRANSFER OF CHILDREN IN VIOLATION OF ARTICLES 3, 5 AND 8 OF THE CONVENTION AND ARTICLE 2 OF PROTOCOL NO. 4 TO THE CONVENTION

A. The complaint

1498. The applicant Ukrainian Government's memorial of 2 October 2023 reads:

> "There has been a specific administrative practice in violation of Articles 3, 5 and 8 of the Convention and of Article 2 of Protocol No. 4 to the Convention in respect of the abduction and transfer to Russia of children, and the adoption in Russia of children ... from 11 May 2014 onwards ... in separatist regions of Donetsk and Luhansk, any area which was under the control of Russian forces, however temporarily, during the post-invasion conflict, most notably Mariupol, as well as all sites where military checkpoints were located ..."

1499. The relevant Articles of the Convention read:

Article 3

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

Article 5

"1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law ..."

Article 8

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

Article 2 of Protocol No. 4

"1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

2. Everyone shall be free to leave any country, including his own.

3. No restrictions shall be placed on the exercise of these rights other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of ordre public, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

4. The rights set forth in paragraph 1 may also be subject, in particular areas, to restrictions imposed in accordance with law and justified by the public interest in a democratic society."

B. The parties' submissions

1. The applicant Ukrainian Government

1500. The applicant Ukrainian Government referred to the abduction of children deemed "orphans" and the indefinite separation of children from their parents by refusing their return from summer camps. They contended that the practice had extended throughout the Donbas between 11 May 2014 and 24 February 2022. They explained that on "at least" three occasions, in 2014, groups of children had been taken across the border to Russia by armed representatives of the "DPR" and the "LPR". Since February 2022, the practice of abducting children from Ukrainian territory, forcibly transferring them to Russia and preventing their return to Ukraine had been expanded considerably, with the development of a network of institutions to manage logistically the operation of this policy. The applicant Ukrainian Government relied on various reports which described incidents from different orphanages, cities and regions.

1501. They submitted in particular that the Russian authorities had forcibly removed children from Ukrainian State-run institutions including boarding residences and medical facilities in occupied territory of Donetsk and Luhansk, and had transferred them to facilities in Crimea or in Russia. At the time they had been removed, the children had been in the care of the Ukrainian State for various reasons and had been under the responsibility of entrusted legal guardians. Many of them had had family members who had retained parental authority. There were also children who had been separated from their families at Russian "filtration camps" or elsewhere. These children had been treated as "orphaned", transferred to Russia and even put up for adoption by Russian families. The first removals of this nature had taken place a few days before the February 2022 invasion, followed shortly afterwards by a large campaign in Mariupol, then under siege by Russian forces, to transfer all children to Russian camps.

1502. The applicant Ukrainian Government also described the situation of Ukrainian children whose parents had agreed to send them away to "summer camps" in the summer of 2022. The children had later been prevented by the Russian authorities from returning to their families in Ukraine and had been detained indefinitely in Russia or in occupied territory. Many accounts maintained that Russian officials had extracted the parents' consent to their children's attendance at these camps through duress or intimidation. In any event, the children's stay in the camps had continued in the absence of any formal agreement from their parents. Parents who had wished to recover their children had been invited to do so in person, in spite

of the difficulties and the dangers of travelling from Ukraine to Russia in the midst of an ongoing war between the two States.

1503. This practice was part of a large and systematic programme for the removal of Ukrainian children from Ukraine, in order to "integrate" them into Russian culture and society. The practice was deliberate and methodical and involved the operation of numerous components. The centralised framework operating this programme involved officials from every level of government in Russia, from its President to local authorities, and a close coordination with the occupation administrations in Donetsk, Luhansk and Crimea. The applicant Ukrainian Government referred to 43 identified locations where Ukrainian children had been detained throughout the occupied Ukrainian territories of Donetsk, Luhansk and Crimea, and all the way across Russian territory to Siberia and the Russian Far East. They also referred to Russian Presidential Decree No. 330 of 30 May 2022, which had facilitated access to Russian nationality for Ukrainian children deemed "orphaned" and, implicitly, their rapid adoption by Russian families.

1504. As for the scale of this practice of abduction, separation and adoption, the applicant Ukrainian Government cited reports which provided an estimate of 6,000 children, aged between four months and seventeen years of age, who had been held in Russian custody at camps and other facilities between February 2022 and January 2023. It was however believed that the total number of children forcibly transferred into Russian custody was significantly higher.

1505. The applicant Ukrainian Government invoked Article 3 of the Convention, citing the extreme vulnerability of the victims, the traumatic impact of the abduction on the children and their close relatives, as well as the absence of medical care for the group of children taken in August 2014. They relied on Article 5 of the Convention, asserting that the transfer of children to another country by armed men, and under the threat of physical violence and against their will, constituted an unlawful deprivation of liberty. They also relied on Article 8, notably referring to the alleged unlawful interference with the children's and their relatives' family lives as well as with the children's private lives on account of their displacement, inability to return and changes in their status because of change of nationality and adoption. Finally, they relied on Article 2 of Protocol No. 4 to the Convention.

2. The respondent Government

1506. The respondent Government did not take part in the proceedings on the merits of application nos. 8019/16, 43800/14 and 28525/20 and the admissibility and merits of application no. 11055/22 of the present case (see paragraph 142 above).

1507. In their memorial at the separate admissibility stage of the present proceedings (see paragraphs 5-6 above), the Russian Government submitted that the three groups of children and accompanying adults who had entered

the Russian Federation in the summer of 2014 had been fleeing a dire situation created by Ukraine's armed forces (*Ukraine and the Netherlands v. Russia* (dec.), cited above, § 367). An investigation had been carried out by the Russian investigating authorities into the allegations made in respect of the group that had crossed the border in June 2014 and all necessary steps had been taken to establish the circumstances surrounding the events. The investigation had established that the children had not been abducted; they had gone to Russia voluntarily. The investigation had been thorough and unimpeachable: the 16 children and their 2 teachers had been questioned and examined by doctors and documents drawn up by the Russian border authorities had been examined. In statements, made available to the Court, 2 teachers and 5 of the children were recorded as having stated that they had not objected to going to Russia (ibid., § 733). The respondent Government concluded that the failure of Ukraine to adduce proper evidence over six years carried the implication that it had none (ibid., § 487).

1508. As a result of its failure to participate in this stage of the proceedings, the respondent Government submitted no further observations on the merits of the alleged administrative practice in respect of events in the summer of 2014, and no submissions at all on the alleged extension of the practice after the summer of 2014 or on the alleged escalation of the practice after February 2022.

C. Summary of the relevant evidence

1. Evidence relating to the relocation of children

1509. On 12 June 2014 a bus with 24 children (15 orphans or children without parental care from a care home in Snizhne and 9 children in foster care), one 18-year-old resident of the care home in Snizhne and 3 accompanying adults travelling to a respite centre in eastern Ukraine was stopped at a checkpoint in the "DPR". The 16 residents of the care home and 2 accompanying adults then crossed the border into the Russian Federation, with a "DPR" escort, at the Dovzhanskyi border checkpoint. Once in Russia, the children were met by uniformed personnel of the Russian Ministry of Emergency Situations, who accompanied them to a tent camp (A2084 and 2087). Following the grant of interim measures by the Court, they returned to Ukraine the following day (see *Ukraine and the Netherlands v. Russia* (dec.), cited above, §§ 4 and 94).

1510. On 7 July 2014 the UN in Ukraine received an official communication from the government of Ukraine informing it of possible attempts by armed groups to forcefully transport 206 orphans from the Donetsk region to the Russian Federation. The communication said that it had informed the Embassy of the Russian Federation in Ukraine about the situation and called for the implementation of international obligations to guarantee the rights of children (A892).

1511. The OHCHR reported in July 2014 that children faced particular hazards in the conflict zones. Orphans, many very young or with disabilities, in the Donetsk and Luhansk regions had faced particular difficulties, sometimes being used as pawns in the larger geopolitical dispute. For example, in Donetsk, the chief medical officer had reported difficulties in evacuating children from an orphanage in Kramatorsk because armed groups did not want to send Donbas children "to an enemy country, Ukraine" and wanted them to go to the Russian Federation. All 32 children had eventually been evacuated safely to the Kharkiv region on 28-29 June 2014 with the intervention of a Moscow-based NGO, the representatives of which had briefly been detained by local armed groups on 25 June (A890).

1512. According to the OHCHR, on 13 July 2014 54 children from a Marinka orphanage had been taken to Donetsk by armed groups after attempts to transfer the children to the Russian Federation had been unsuccessful. This had been in spite of intense pressure being placed on the directors of the orphanage. The children remained in Donetsk (A893).

1513. On 26 July 2014 61 children from an orphanage in the Luhansk region (43 of whom were under the age of five), 4 further minors and 22 adult employees of the orphanage crossed into the Russian Federation at the Izvaryne-Donetsk border checkpoint at the Ukraine-Russia border. They were accompanied to the border by "LPR" representatives. They returned to Ukraine the following day (*Ukraine and the Netherlands v. Russia* (dec.), cited above, § 95).

1514. On 8 August 2014 8 children from a care home for babies in Luhansk were transported across the Ukraine-Russia border at the Izvaryne-Donetsk checkpoint. The children were aged between eight months and two years, and six of them had cerebral palsy. They returned to Ukraine on 13 August 2014 (ibid., § 96).

1515. In October 2014 the OSCE SMM attended a regular bi-weekly co-ordination meeting with the OHCHR and the UNHCR in Odesa. The OHCHR representative reported that he had been informed by the head of the Regional Administration Department of Education that orphan IDPs from Luhansk region had been receiving phone calls from their former teachers in Luhansk, enticing them back with promises of Russian citizenship. The OHCHR representative added that the head of the Regional Administration Department of Education had also said that he had received letters demanding that the children be returned (B1288).

1516. In 2015 the "DPR Committee of Ministers" passed a temporary regulation on the adoption of children in the "DPR". The regulation established as adoptable all orphaned children in the "DPR" and children considered "abandoned" in medical facilities or in any other circumstances when the location of their parents was unknown. Only permanent residents of the "DPR" were eligible to adopt children irrespective of their nationality. The adoption decision was to be taken by a "DPR court" (B37-47). In 2017,

the "LPR Committee of Ministers" passed a similar temporary regulation (B48-59).

1517. From 2015 to 2019, the OSCE Border Mission and SMM reported multiple instances of the movement of children in both directions across the Gukovo and Donetsk border crossing points ("BCP").

1518. On 13 June 2015 the mission observed a white minibus and a red Gazelle crossing the BCP from the Russian Federation to Ukraine. On the side of the minibus the words "Search and Rescue Service" were written in the Russian language. There were 10 to 12 children in both vehicles. The drivers were in dark blue uniform (B1289). On 18 June 2015 the Border Mission observed several vehicles and workers from the Russian Federation Ministry of Emergency Situations arriving outside the Donetsk BCP entrance gate on the Russian Federation side. All vehicles bore the inscription "Search and Rescue Service" written on their side in Russian. It was observed that the team from the Russian Ministry of Emergency Situations had set up a camp consisting of two large bright orange-coloured tents and related equipment. On several occasions during the week, the mission observed buses with children coming from Ukraine towards the tents. On one occasion on 23 June 2014, the Border Mission observed approximately 20 buses with children crossing the border crossing point from Ukraine and stopping at the tents. All the children got out of the buses and went inside the tents. After some time, the children got into other buses and continued their journey towards the Russian Federation. On 23 June in the afternoon, Ministry of Emergency Situations staff removed the tents and left towards the Russian Federation (A502).

1519. At the end of June and in early July 2015, the Border Mission observed the movement of buses with children crossing the border in both directions (B1290-91). On 1 July 2015 the mission observed a Ukrainian car entering the BCP from Ukraine. The car was driven by a male dressed in military-style and wearing a *Kubanka* (a traditional Cossack headdress). He was accompanied by a female. The car had a sign displayed on its doors and hood saying "*Комендатура Всевеликое Войско Донское*" (Command of the Almighty Army of the Don). The car appeared to be escorting a bus with 15-17 children on board. The bus displayed a Cossack flag and also a sign stating "children on board." Both vehicles later crossed into the Russian Federation (B1291). On 15 July 2015 the mission noted the arrival at the BCP of 12 buses from the Russian Federation. The buses were carrying a large group of children aged from six to ten years old and they were accompanied by a police escort. A short time later a convoy of 16 empty buses entered the BCP from Ukraine and exited to the Russian Federation. The children then boarded the Ukrainian buses and crossed into Ukraine (B1292). On 22 July 2015 the mission noted the arrival at the Donetsk BCP of a Ukrainian-registered bus. The bus was carrying approximately 30 children and they were accompanied by a number of adults. All of the children were

carrying some documents in their hands and, after having been checked by the Russian Federation Border Guard and Customs Service, the group had proceeded into the Russian Federation on foot. The bus on which they had arrived returned to Ukraine (A505). On 29 July 2015 the mission noted the arrival at the BCP of 21 Ukrainian registered buses from Ukraine carrying approximately 900 children. The children went to the Ministry of Emergency Situations tents that had been set up on the Russian Federation side. There, the children boarded other buses which departed into the Russian Federation. The buses on which they had arrived returned to Ukraine. On 31 July 2015, the mission observed a number of empty buses entering the BCP from Ukraine; a little later 7 buses carrying children arrived from the Russian Federation side. Shortly afterwards, 14 buses crossed into Ukraine (B1293). On 20, 22 and 24 August the mission observed buses transporting children from Ukraine to the tents erected near the BCP gate on the Russian Federation side. Once at the tents, the children boarded other buses which left the BCP to the Russian Federation (B1294).

1520. In 2016 a similar pattern of movement was seen. In February 2016 the Border Mission observed two buses with the sign "children" transporting children aged around ten years old and some adults (B1295). Throughout the summer of 2016 the mission reported on multiple occasions buses with children on board crossing the border in both directions (B1296-98). On 11 June 2016 the mission in Donetsk observed a bus with Ukrainian Ministry of Emergency Situation registration plates carrying children from the Russian Federation to Ukraine. The bus bore the inscription "Search and Rescue Service" in Russian (B1296). On 21 July 2016 at the Donetsk BCP the mission observed the arrival of 10 small buses which parked at the BCP's customs control area. Approximately twenty minutes later 6 buses full of children arrived at the BCP from the Russian Federation side. After the children had been transferred from one bus to another, the buses had returned in the direction from which they had come (B1298). On 23 July 2016 the mission observed Russian Ministry of Emergency Situations personnel setting up tents at the entrance gate of the border crossing point on the Russian Federation side. The next day, the mission observed 8 buses with children coming from Ukraine and parking near the camp. The children boarded other buses and travelled to the Russian Federation. Later in the day, the tents were disassembled (A523).

1521. In August and September 2016 the Border Mission reported on several occasions that it had observed at the Donetsk BCP numerous buses with children likely travelling to/from summer camps. In these cases, representatives of the Russian Ministry of Emergency Situations had installed tents in the vicinity of the BCP for carrying out medical checks of children leaving and entering the Russian Federation (B1299 and 1301). Later, on several occasions the mission had observed groups of buses with children that likely travelled back to Ukraine from summer camps in Russia (B1300 and

1302). Movement of buses with children from Ukraine to the Russian Federation and back were also reported in October 2016 (B1304).

1522. In 2017 this pattern of movement continued. In June 2017 the mission reported a few buses with children on board crossing the border in both directions at the Gukovo BCP (B1305). In August 2017 the mission reported observing more buses with children on board crossing the border (B1306). Throughout the week of 15 August 2017, the mission observed buses (with "School Bus" signs in Ukrainian) with children on board, crossing the border at the Donetsk BCP. The children were being brought to the recently erected tents within the BCP area and from there, after going through formalities, were boarded on other passenger buses and proceeded towards the Russian Federation (B1307). On 28 August 2017 an organised bus convoy with approximately 450 children was observed at the Donetsk BCP. The children were travelling to Ukraine from a Russian summer camp. Another bus convoy with approximately 250 children travelled the next day from Ukraine to the Russian Federation (B1308).

1523. On 30 August and 1 September 2017 organised bus convoys (35 buses in total) were observed at Donetsk BCP transporting children to Ukraine from Russian summer camps. Another bus convoy (19 buses) was observed on 4 September transporting children from Ukraine to the Russian Federation. In all cases the border crossings were supported with food and medical assistance by Russian Ministry of Emergency Situations teams in specially installed tents inside the technical area of the BCP (B1309). On 18 September 2017 a convoy of 4 buses was observed at the Donetsk border crossing point transporting children to Ukraine from the Russian Federation (A566). On 24 September 2017 a convoy of 26 buses arrived from Ukraine at Donetsk BCP. All buses were empty and with "LPR" plates or Ukrainian licence plates issued in the Luhansk region. All buses bore the inscription "school children" (in Russian). Two convoys of 8 buses each (16 in total) with children on board then arrived from the Russian Federation at the Donetsk BCP. After delivering the children to the BCP, the buses returned empty to the Russian Federation. All children underwent individual checks, after which they were taken to the 26 empty buses. By early afternoon, all buses had left for Ukraine (B1310).

1524. The OSCE Border Mission reports from 2018 to 2021 do not report on any movement of children through the monitored border crossings as had been observed in the preceding years. However, on 26 August 2018 while at a border crossing point near Izvaryne, south-east of Luhansk, the OSCE SMM saw a bus with "LPR" plates and a group of children on board entering Ukraine (B1311).

1525. In 2019 the OSCE Border Mission reported on 1 October that it had observed at the Donetsk BCP 10 empty minibuses without licence plates crossing in a group from the Russian Federation into Ukraine. The minibuses bore the inscription "children" (in Russian) on the windscreen (B1312). On

1 November 2019 the mission at the Donetsk BCP observed a group of 10 small buses entering the BCP from the Russian Federation. The buses were yellow in colour and had the word "children" printed in Russian on the windshields and on the sides of the vehicles. The buses did not have any licence plates and were empty except for the driver and one passenger in each. All buses subsequently crossed the BCP into Ukraine (B1313).

1526. The OSCE Border Mission discontinued its operations on 30 September 2021.

1527. The OSCE Moscow Mechanism mission experts reported accounts that Russia had begun to transfer children from the occupied territories of Crimea, Donetsk and Luhansk regions in 2014. In particular, the mission experts cited a statement of the Ukrainian Ombudsperson to the effect that only two dozen out of 4,323 orphans and children deprived of parental care residing in social care institutions on the Crimean Peninsula at the time of its occupation and annexation had reportedly been able to return to mainland Ukraine. While the OSCE experts were not in a position to confirm that statement, they shared the concern that "a practice and pattern of unlawful transfer and assimilation of various categories of unaccompanied Ukrainian children into Russia dating back to 2014 ha[d] multiplied and gained substantial traction" in 2022 (B1378).

1528. Governments, international, regional and local organisations and the media have reported on transfers and removals of Ukrainian children by the Russian authorities several days before the start of the invasion on 24 February 2022, from about 18-19 February 2022 (for example B1612, 2276 and 4217-18).

1529. International reports have noted the absence of reliable data from the Russian Federation about the transfer of children, the absence of a mechanism for the return of transferred children and the absence of a Russian National Information Bureau concerning civilians and of children, in line with the requirements of international humanitarian law (B1379; and C.V.94 and 96). In July 2022 the OSCE Moscow Mechanism experts noted that around 2,000 children from institutions in Ukraine had been transferred to Russia "even though they ha[d] living relatives and were in the institutions only for medical care" (B1366). Other reports said that at least 6,000 children had been concerned by the said practice (B2210). A portal operated by the Ukrainian government (childrenofwar.gov.ua) recorded that by 30 September 2022 a total of 7,890 children had been removed from Ukraine. It further recorded that by the beginning of 2024 a total of 19,546 children had been removed, with 388 children being returned (B2536-37).

1530. The Commission of Inquiry described the following situations in which Russian authorities had transferred children from territories in Ukraine which had come under their control to other occupied areas in Ukraine or removed them to the Russian Federation: (1) children who had lost a parent or had temporarily lost contact with them during the hostilities; (2) children

whose parents had been detained at filtration points; (3) children in institutions; and (4) children who had travelled to "vacation camps" with the consent of their parent but had subsequently encountered difficulties in establishing contact and reuniting with their parents (C.III.95-102, C.IV.715 72 and C.V.90-102). The situations investigated involved transfers of 195 children between four and eighteen years of age from the Donetsk, Kharkiv, Luhansk, Mykolaiv, Zaporizhzhia and Kherson regions.

1531. In none of the situations examined by the Commission of Inquiry did transfers of children appear to have satisfied the requirements of international humanitarian law. The transfers had not been justified by safety or medical reasons. There seemed to be no indication that it would have been impossible to allow the children to relocate to territory under the control of the government of Ukraine. It also did not appear that the authorities of the Russian Federation had sought to establish contact with the children's relatives or with the Ukrainian authorities. While the parents had been led to believe that the transfers would be temporary, for a variety of reasons most had become prolonged, and parents or legal guardians and children had encountered an array of obstacles in establishing contact, achieving family reunification and achieving the return of the children to Ukraine (C.III.98-99 and C.IV.729-33). In some of the cases investigated, the Commission of Inquiry found that such transfers had occurred "in violation of international humanitarian law and qualified as unlawful transfers or deportations, which is a war crime" (C.V.90).

1532. The OSCE Moscow Mechanism experts referred to the three most commonly indicated grounds for the organised displacement of these children as being: (1) evacuation for security reasons; (2) the transfer for the purpose of adoption or foster care; and (3) temporary stays in "recreation camps". While in the temporarily occupied territories or in the Russian Federation, Ukrainian children had been placed in institutions or in Russian families. The forms of the placement included adoption, which had been applied mainly to children from Crimea (at least since 2015) or custody, guardianship or foster families which had been more common for other Ukrainian children (mainly since 24 February 2022) (B1379-85). Contact between parents and their children was sometimes re-established in a process based on coincidence and luck at the initiative of parents, or guardians, with the support of various outside actors (B1383 and C.V.96). When parents were released from filtration, no information was provided to them as to the whereabouts of their children nor was any assistance rendered to ensure the reunification of the family (B1381). The mission further pointed out that, unlike other forms of child placements, adoption was carried out based on a judicial decision and it might entail the change of the child's name, surname and date and place of birth. It was, moreover, protected by the principle of secrecy (ibid.). The cases investigated by the mission referred to transfers of children from the Donetsk, Kherson, Zaporizhzhia and Mykolaiv regions.

1533. The Commission of Inquiry noted that in most of the situations of transfers of children it had examined, the stay of the children in Russian-occupied areas or in the Russian Federation had been prolonged owing to a variety of reasons. Regardless of the large number of transfers of children which had been reported, the Commission of Inquiry was not made aware of measures taken by the Russian authorities to facilitate the establishment of family contacts or to facilitate the return of the children to territories controlled by the government of Ukraine. In fact, the onus of finding family members rested upon the children themselves or their families. When contacts were established, the Russian authorities required individual family members to pick up their children in person. This involved long and complicated travel, with considerable security and logistical difficulties. These factors prolonged the duration of the family separations. In some situations, it took weeks and up to several months for children and families to be reunited (C.IV.734). In some documented cases, the children had taken the initiative and managed to locate their family members. In some incidents, family members had only learned about the children's whereabouts through media reports. Witnesses had informed the Commission of Inquiry that some of the children transferred to institutions in occupied areas or deported to camps in the Russian Federation had not been able to establish contact with their families (C.IV.736). Parents and relatives encountered serious challenges in organising travel to pick up their children due to the dire security situation and logistical difficulties. In many cases, travel was long and complicated, up to one week one way, at times requiring transit through the Russian Federation and several other countries. Some family members lacked the financial means or adequate travel documents, or were afraid of being detained in the Russian Federation. The Commission of Inquiry observed that in the absence of any pro-active effort from the Russian authorities, the children were at high risk of losing contact with their parents indefinitely and remaining permanently separated (C.IV.738).

1534. NGO reports corroborated the specific allegations of the applicant Ukrainian Government and provided open-source investigations into the 43 locations where children had been taken, including locations as far as to the Russian Far East. They noted the absence of consent of children's caregivers for their transfer and/or their "indefinite stay" in "summer camps". The reports detailed the complexity of the administrative arrangements at different levels of government in the Russian Federation put into operation for the reception of Ukrainian children across Russian Federation's territory (B2213-16 and 2274-78).

1535. There have also been reported transfers of children to Belarus after October 2022 and of the conscription of Ukrainian children into the Russian army once they acquired Russian nationality and turned 18 (B795, 1437, 2274, 2510 and 4227-28).

1536. In the situations examined by the Commission of Inquiry, Russian authorities transferred the children to areas occupied by the Russian Federation in Ukraine, including the Donetsk and Luhansk regions and Crimea, or deported them to regions in the Russian Federation, such as Moscow or Krasnodar. Once across the border, Russian authorities at federal and regional level accommodated the children in hospitals, social institutions, or "camps" throughout Russia (C.IV.726 and B2210). Parents were encouraged and even pressured by the "DPR" and "LPR" authorities to send their children to "summer camps" in the summer of 2022, the trips often being funded by Russia's regional and republican governments under the so-called "patronage" system under which, by July 2022, more than 40 regions and cities in Russia had assumed a declared "patronage" over different parts of occupied territory in Ukraine (B1378 and 2215). Subsequently, children were retained in the "camps" by the Russian authorities operating the camps and moved between various camps, all without the consent of, and without information being sent to, their parents or legal guardians (B1383).

1537. In respect of the treatment to which these children were subjected, international reports noted that Ukrainian children found themselves in an entirely Russian environment, including language, customs and religion, and were exposed to a pro-Russian information campaign often amounting to targeted re-education. They were also involved in military education (B1384 and 1449).

1538. Other reports described ill-treatment and neglect (B1774-77; C.IV.721, 737, 754, 768 and 769; and C.V.100-02). Parents and relatives informed the Commission of Inquiry that the children had been accommodated in camps and institutions where conditions had been inadequate, with poor food, hygiene and medical care, as well as bad treatment by the local staff. Family members or legal guardians who had retrieved children reported that uncertainties regarding the prospects of finding and reuniting with parents or relatives had led to immense psychological suffering. This experience had deeply affected the children and they expressed a profound fear of being permanently separated from parents, guardians or relatives (C.IV.723). During the period of separation, social services in occupied territory or in the Russian Federation had told the children that they would be placed for adoption, with foster parents or in an institution. This had been a source of considerable psychological pressure and fear for the children. In some situations, parents had additionally conveyed to the Commission of Inquiry that in places of transfer, children had been screamed at, meals had been poor and children had otherwise not been provided with adequate accommodation or hygiene. Some children with disabilities had not received adequate care and medication, which could be life threatening in some situations (C.IV.737). Children had been locked up in an "isolator" in the "camp" for four to five days for alleged misbehaviour, such as listening to the Ukrainian anthem, removing the Russian flag or

missing their parents; hit and threatened; told that they would be given weapons and would need to stand at checkpoints; and bullied by Russian children. A child aged ten had been placed in a psychiatric hospital because he missed his mother and had cried (see the detailed description of individual cases at B1774-77; C.IV.754 and 768-69; and C.V.100-02).

1539. The evidence set out in various reports describes the lasting trauma the children suffered, such as nightmares, screaming at night, refusal to speak about their experience and refusal to speak at all for several days after reunification. It was also reported that upon separation, children had been told that they were to be given to other families and that they should forget their own parents or that they would never see them again (see the detailed description of individual cases at B1774-77; C.IV.754 and 768-69; and C.V.100-02).

1540. Parents, relatives and legal guardians interviewed by the Commission of Inquiry emphasised that these experiences had had a severe impact on the children. The uncertainty and fear of being permanently and forcibly separated from their loved ones in a foreign country had been highly traumatising. The children who had been transferred reported how they had missed their parents, relatives and friends in Ukraine. The Commission of Inquiry observed that studies on children separated from their parents during wartime, with the intention of sparing them from hostilities, had shown that the trauma of separation was often more harmful and long lasting than remaining with the families and enduring war related traumas together (C.IV.740).

1541. In July 2022 the Council of Europe Commissioner for Human Rights noted with concern reports that children born in Mariupol had been issued with Russian birth certificates. She further expressed concern at the announcement by the regional administration in occupied areas of Kherson region that children born there after 24 February 2022, as well as orphans, would be granted citizenship of the Russian Federation (B1457).

1542. At least 15 Ukrainian children in Crimea on whom Russian nationality had been imposed were subsequently included in the "Train of Hope" Russian adoption programme (B1385 and 1449). The OSCE reported that the official Russian webportal on adoption (Усыновите.ру), which contained a database of children from various regions of the Russian Federation who were available for adoption (*усыновление*) or foster care (*опека – попечительство*), also included data on children from the annexed regions of Ukraine (B1386).

1543. On 21 July 2022 Maria Lvova-Belova, the Russian Presidential Commissioner for Children's Rights, was included in the sanctions list of the European Union for "initiat[ing] the simplification of the procedure for granting citizenship to orphaned children in Ukraine, [and being] the most involved person in the illegal transportation of Ukrainian children to Russia and their adoption by Russian families" (B390).

1544. On 17 March 2023 a pre-trial chamber of the ICC issued an arrest warrant for Ms Lvova-Belova and for President Putin, charging them with "the war crime of unlawful deportation of population (children) and that of unlawful transfer of population (children) from occupied areas of Ukraine to the Russian Federation" (see paragraph 112 above and B328). In his statement on the issuance of the arrest warrants, the ICC Prosecutor said the following (B329):

> "... On the basis of evidence collected and analysed by my Office pursuant to its independent investigations, the Pre-Trial Chamber has confirmed that there are reasonable grounds to believe that President Putin and Ms Lvova-Belova bear criminal responsibility for the unlawful deportation and transfer of Ukrainian children from occupied areas of Ukraine to the Russian Federation ...
>
> Incidents identified by my Office include the deportation of at least hundreds of children taken from orphanages and children's care homes. Many of these children, we allege, have since been given for adoption in the Russian Federation. The law was changed in the Russian Federation, through Presidential decrees issued by President Putin, to expedite the conferral of Russian citizenship, making it easier for them to be adopted by Russian families.
>
> My Office alleges that these acts, amongst others, demonstrate an intention to permanently remove these children from their own country. At the time of these deportations, the Ukrainian children were protected persons under the Fourth Geneva Convention.
>
> We also underlined in our application that most acts in this pattern of deportations were carried out in the context of the acts of aggression committed by Russian military forces against the sovereignty and territorial integrity of Ukraine which began in 2014."

1545. In his report on children and armed conflict published in June 2023, the UN Secretary General explicitly confirmed the verification of the transfer of 46 children to the Russian Federation from occupied areas of Ukraine. This number included children forcibly separated from their parents, children removed from schools and institutions without the consent of their guardians and a child who had been given Russian citizenship (B1437). The Secretary General urged "the Russian Federation to ensure that no changes are made to the personal status of Ukrainian children, including their nationality". Similar findings and calls were made by the UN High Commissioner for Human Rights, the Council of Europe Parliamentary Assembly and Commissioner for Human Rights and the Committee of the Parties to the Council of Europe Convention on the protection of children against sexual exploitation and sexual abuse (Lanzarote Committee) (B231-33, 365, 377 and 1449).

2. Evidence of the acknowledged activities of the respondent State in respect of the relocation of children

1546. According to the official media report of 22 February 2022 (B1612), Ms Lvova-Belova, in her address to regional children's commissioners, noted that since 18 February 2022 there had been "an

intensive relocation process" and that the number of people who had arrived in Russia from the "LPR" and the "DPR" had already exceeded 80,000. Most were women and children. Ms Lvova-Belova noted that the experience was not new for the country, explaining:

> "[I]n 2014, people also moved *en masse* to Russia from these territories, and at that time, children's rights commissioners were also actively involved in meeting, accommodating, and supporting children and families. Now, from the very first days, children's ombudsmen from different regions were immediately getting involved in the work."

1547. All officials attending the meeting confirmed that (B1612):

> "[The] process is taking shape – operational headquarters have been established in the regions, temporary accommodation points have been set up, medical and social workers are providing support, psychological assistance and other types of help are being offered, social payments are being made, and humanitarian aid collection points have been opened."

1548. The report referred to the fact that children had been transported to Russia from several orphanages in Donbas. Special attention was given at the meeting to the issues of providing support to orphans and children left without parental care. The Commissioner for Children's Rights from the Kursk region shared a story about a child who had been frightened by the move and had cried, but volunteers had quickly come to the rescue. They had brought a kitten and the boy had immediately cheered up. Ms Lvova-Belova emphasised (B1612):

> "Children in this situation require our special attention and care because this is the most difficult stage for them – they have urgently left their homes, arrived in another country, and found themselves in new conditions. This is an immense stress even for adults, and it is important for us to ensure that this experience is not traumatic."

1549. On 9 March 2022, during a meeting with the Russian President regarding "families evacuated from Donbass and children", Ms Lvova-Belova evoked the possibility of Russian families temporarily accommodating orphan children and inquired about the legislative delays linked to their acquiring Russian nationality. President Putin replied that relevant legislative amendments would be made (B1613).

1550. According to an official media report of 23 April 2022 (B1614), Ms Lvova-Belova stated that she and the Moscow Governor had transferred orphans from the "DPR" to the care of ten families from various Russian regions; the families had been carefully selected and some of them had already cared for children from Donbas since 2014. Ms Lvova-Belova reported:

> "[A]fter the start of the special military operation in the territories of the Donetsk and Luhansk People's Republics ... more than a thousand orphans and children left without parental care [had] arrived in Russia from various boarding institutions in Donbas."

1551. One hundred and sixty children from the "DPR" had already been placed in Russian families and 133 of them had already acquired Russian nationality. Ms Lvova-Belova emphasised that President Putin supported the proposal to place orphaned children and children without parental care from the "DPR" and the "LPR" with Russian families (ibid.).

1552. On 30 May 2022 the President of the Russian Federation signed a decree facilitating the acquisition of Russian nationality by orphaned children or children without parental care from the "DPR", the "LPR" and the occupied areas of Zaporizhzhia and Kherson regions. The decree authorised the heads of orphanages and other State institutions located in the "DPR" and the "LPR", as well as those in the occupied areas of Zaporizhzhia and Kherson, to apply for Russian nationality for children under their care, granting them a wide discretion in determining whether a child was orphaned or without parental care (B18).

1553. In June 2022 the Commissioner for Children's Rights in the Moscow Region stated, with reference to the children from the "DPR", that the Presidential decree on nationality had "remov[ed] the last obstacles for children to live and be brought up in Russian families." In a media interview in July 2022, Ms Lvova-Belova declared that "now that the children have become Russian citizens, temporary guardianship can become permanent" (B1776 and C.IV.745).

1554. In July 2022 the Advisor to the Head of the "DPR" on Children's Rights reported to the media that all children who had been in institutions in the "DPR" were by that point already in Russia (B1775).

1555. The Russian Federal constitutional laws of 4 October 2022 purporting to integrate the four Ukrainian regions of Donetsk, Luhansk, Kherson and Zaporizhzhia into the composition of the Russian Federation granted Russian nationality to everyone in those regions and to everyone who had moved from those regions to the Russian Federation, exempting children under fourteen from the duty to pledge an oath, thus automatically making them Russian nationals (B6).

1556. In her activity report on the protection of children for 2022 (B1617), Ms Lvova-Belova stated that about 2,000 children from boarding institutions for orphans and children without parental care had arrived in Russia in February 2022, at the request of the "DPR" and "LPR" leadership. A total of 380 orphans had been placed in foster care with Russian families across 19 regions of Russia, while others had been transferred to other children's institutions in Russia or returned to the "LPR".

1557. The report further stated that in the late summer and autumn of 2022, parents from the Kherson, Zaporizhzhia and Kharkiv regions and other territories had voluntarily sent their children on "vacation", including with a view to protecting them from military action. The situation on the front line had not allowed all children and their chaperones to travel safely home at the end of the programme. A significant number of families had been reunited

independently or with the help of volunteer organisations. Reunification was difficult because not all parents could come to pick up their children on their own. Conscript-age fathers were not permitted by the Ukrainian authorities to leave Ukraine. Mothers had other children in their care and sometimes the state of their health prevented the parents from travelling. Not everyone had been able to find a trusted person to pick up their children and the necessary funds for the travel. Out of the 2,360 children who had been sent by their parents to Crimea, all but one had returned by October 2023 (ibid.).

1558. The report further explained that during the spring of 2022 the Russian military in Mariupol had discovered children without parental care and turned them over to the social services of the city. Subsequently, the children had been taken to the Children's Social Center in Donetsk as "neglected" children. In May 2022 a group of 31 children had been sent to recover in a sanatorium in the Moscow region with the consent of their legal representative, the head of the Children's Social Center. Upon completion of the recovery, the "authorised bodies in the sphere of guardianship and custody of the DPR" had petitioned the child protection authority of the Moscow region for their further placement under provisional guardianship in Russian families. Out of the total group of 31 children, 3 had been reunited with their father, who had arrived after filtration measures; 6 children had been placed in family centres at their request and almost all of them had subsequently wished to be placed with foster families; and 22 children had been placed in the provisional guardianship of residents of the Moscow region. One girl had later been placed in the custody of a neighbour who had lived next door to her family in the "DPR" (ibid.).

1559. Ms Lvova-Belova's activity report explained that the children did not perceive Russia as an enemy and expected protection and help from Russia. Being placed in safe territory with Russian foster families was not a traumatic circumstance for them. All the children who had been placed in foster care had acquired Russian citizenship while retaining the citizenship of the "LPR", the "DPR" or Ukraine. Between April and October 2022, adoption had not been used as a form of family placement with respect to children from the "DPR" and the "LPR" while "the republics were sovereign states" (ibid.).

1560. Finally, the activity report stated that there were no re-education camps in Russia, including camps for children from the military conflict zone. The camp programme involved educational and developmental activities. In November 2022 at the initiative of the Commissioner and the head of the Chechen Republic, a new format of camp for teenagers in conflict with the law had been held for the first time. The content of the programme had been sports and patriotic education. There had been 30 teenagers from the "DPR" and 15 from the "LPR", all of whom had come with the consent of their parents who had a pro-Russian stance and were interested in the patriotic upbringing of their children (B1618).

1561. In an interview on 2 November 2022, Ms Lvova-Belova referred to the fact that 380 children from Ukraine were already in foster families in Russia noting, "Isn't this unity, isn't this a patriotic feeling, when there are no other people's children and all of them are ours?" (B4225).

1562. In a meeting with the Russian President on 16 February 2023, Ms Lvova-Belova disclosed that she had adopted a 15-year-old child from Mariupol (B1616). She also stated:

> "The favourite part of my work ... is placing these children in families. Mr President, it was the most joyful thing that happened in this entire period of time. Because when I met with you in March [2022], you said, 'Without delay'. We accommodate everyone who wants it, who are desperate, children who want it."

1563. During her meeting with President Putin on 31 May 2024, Ms Lvova-Belova referred to 206 children from occupied territory in Ukraine receiving welfare benefits in Russia. She also referred to ongoing efforts to reunite Ukrainian children with their families in Ukraine. She said that on one occasion 70 children had been returned to their families and on another occasion 6 had been returned, from a list of 29 missing children (B1619).

D. The Court's assessment

1. General principles

1564. The Court will have regard to the general principles cited above in respect of Articles 3, 5 and 8 of the Convention (see paragraphs 1060-1064, 1109-1111 and 1154 respectively above).

1565. In so far as the family life of a child is concerned, the Court moreover reiterates that there is a broad consensus, including in international law, in support of the idea that in all decisions concerning children, their best interests are of paramount importance (see, among other authorities, *Neulinger and Shuruk v. Switzerland* [GC], no. 41615/07, § 135, ECHR 2010). Indeed, the Court has emphasised that in cases involving the care of children and contact restrictions, the child's interests must come before all other considerations (see *Jovanovic v. Sweden*, no. 10592/12, § 77, 22 October 2015, and *Gnahoré v. France*, no. 40031/98, § 59, ECHR 2000-IX).

1566. Regard for family unity and for family reunification in the event of separation are inherent considerations in the right to respect for family life under Article 8. Accordingly, in the case of imposition of public care restricting family life, a positive duty lies on the authorities to take measures to facilitate family reunification as soon as reasonably feasible (see *Strand Lobben and Others v. Norway* [GC], no. 37283/13, § 205, 10 September 2019).

2. Application of the general principles to the facts of the case

1567. Relevant provisions of international humanitarian law have been summarised above, notably in paragraphs 1165-1566. However, additional provisions are also relevant in respect of this complaint. Article 78 AP I prohibits the evacuation of children, other than a Party's own nationals, to a foreign country except for a temporary evacuation where compelling reasons of the health or medical treatment of the children or, except in occupied territory, their safety so require. Where the parents or legal guardians can be found, their written consent to such evacuation is required. If these persons cannot be found, the written consent to such evacuation of the persons who by law or custom are primarily responsible for the care of the children is required. With a view to facilitating the return to their families and country of children evacuated, the authorities of the Party arranging for the evacuation and, as appropriate, the authorities of the receiving country must establish for each child a card with photographs which must be sent to the Central Tracing Agency of the International Committee of the Red Cross (B185). Under Article 50 GC IV, the occupying Power is required to take all necessary steps to facilitate the identification of children and the registration of their parentage. It may not, in any case, change their personal status, nor enlist them in formations or organisations subordinate to it. Should the local institutions be inadequate for the purpose, the occupying Power must make arrangements for the maintenance and education, if possible by persons of their own nationality, language and religion, of children who are orphaned or separated from their parents as a result of the war and who cannot be adequately cared for by a near relative or friend (B181). A special section of the Information Bureau set up in accordance with Article 136 GC IV is responsible for taking all necessary steps to identify children whose identity is in doubt, in line with Article 26 of the GC IV, whereby States must facilitate enquiries made by members of families dispersed as a result of armed conflict. Article 74 AP I requires that the Parties to the conflict facilitate in every possible way the reunion of families dispersed as a result of armed conflicts (see the summary of relevant international humanitarian law in B182-85. See also B1379).

1568. At the admissibility stage of the present proceedings, the Court declared admissible "the complaint of an administrative practice in violation of Articles 3, 5 and 8 of the Convention and Article 2 of Protocol No. 4 to the Convention in respect of the alleged abduction and transfer to Russia of three groups of children". The three groups of children were those transferred to Russia on 12 June, 26 July and 8 August 2014. The Court considered, in the particular circumstances of the present case, that the short period in which the events occurred and the number and characteristics of the children involved supported the finding of an administrative practice (*Ukraine and the Netherlands v. Russia* (dec.), cited above §§ 896-98). The applicant Ukrainian Government have now submitted that the alleged administrative practice

started in the summer of 2014 and was ongoing following that date, with an increase in its scale and organisation after the invasion on 24 February 2022.

1569. It is undisputed that in the summer of 2014, three groups of a total of 85 residents of children's homes in eastern Ukraine were escorted by armed "DPR" and "LPR" representatives across the Ukrainian-Russian border, on three separate dates and from different parts of the "DPR" and "LPR". All three groups were returned to Ukraine, the first group having been returning following an indication of interim measures by this Court (*Ukraine and the Netherlands v. Russia* (dec.), cited above, §§ 94-96). The disagreement between the parties related to whether the border crossings were voluntary or involuntarily (ibid., § 897. See also A2081-107).

1570. At the admissibility stage, the Court found that the applicant Ukrainian Government had provided sufficiently substantiated prima facie evidence that the transfer to and crossing of the border of these three groups had been involuntary and had occurred with the intervention of armed separatists (*Ukraine and the Netherlands v. Russia* (dec.), cited above, § 897). The respondent Government have not made any further submissions or provided any further evidence in respect of these three incidents. The documents produced by the respondent Government at the admissibility stage show the limited nature of the inquiry by the Russian domestic authorities into the allegations. The only investigation conducted concerned the June 2014 incident. No steps appear to have been taken to further elucidate the circumstances of the two later incidents. Moreover, although the respondent Government claimed that all 16 of those resident in the care home in Snizhne who had crossed the border in June 2014 had been interviewed, witness statements by only 4 of the children, the 18-year-old resident of the home and the 2 accompanying adults were provided to the Court (see paragraph 1507 above and A2081-87). None of the investigation materials reveal any consideration of the question of consent, given the context of duress involving the presence of armed persons during ongoing military operations and the fact that most or all of the children were travelling without their parents or legal guardians. The Court has not been provided with copies of valid travel documents used and there is no evidence of any forms confirming the consent of those with legal responsibility for the children to their crossing of an international border. The investigation does not appear to have examined why it was necessary, even assuming that the children were evacuating from danger linked to armed hostilities, for the group to have crossed the border into Russia instead of relocating elsewhere within occupied territory. If all formalities had been properly complied with in respect of the crossing of the border by the three groups of children concerned, including those related to parental or other legal consent, it is also unclear why this was not quickly established following the complaints of the applicant Ukrainian Government, permitting the children to continue their journeys in Russia. The respondent

Government have not provided any, let alone a satisfactory and convincing, explanation on these points.

1571. The Court considers that in view of the prima facie evidence in support of the applicant Ukrainian Government's allegations, the burden was on the respondent Government to provide further evidence to support their position that the crossings had been voluntary. Given the inadequacies of the investigation discussed above, the Court is unable to draw any benefit from its results. The failure of the respondent State to engage with the present proceedings means that no credible and substantiated explanation has been given by the respondent Government to enable any serious challenge to the account of the applicant Ukrainian Government. In the circumstances, the Court considers that it can draw inferences from the available material. It finds the applicant Ukrainian Government's allegations that the border crossings in the summer of 2014 were involuntary sufficiently convincing and established beyond reasonable doubt (see *El-Masri*, cited above, §§ 165-67).

1572. Before turning to examine the evidence for the continuation of the practice of transferring Ukrainian children across the border to Russia in the subsequent years, the Court considers it appropriate to review the evidence regarding the alleged escalation of the practice from 24 February 2022.

1573. The circumstances from February 2022 are documented in detail. While reported numbers of transferred children vary greatly, it is undisputed that children from the "DPR", the "LPR" and subsequently from other occupied territory were removed to the Russian Federation or to other occupied areas in Ukraine, separated from their legal caregivers and prevented from reuniting with them. Indeed, the evidence establishes clearly that there were such transfers in the "DPR" and the "LPR" shortly before the invasion, as purported "evacuation" measures (see paragraphs 1528 and 1546-1548 above). In the following months, countless children from institutions and children attending holiday camps were transferred to Russia from occupied territory and were subsequently unable to return to their homes in Ukraine. Some were retained in holiday camps while others were placed in foster care with Russian families across various regions in Russia and adopted once they acquired Russian nationality (see paragraphs 1529-1536 above). Numerous public statements by Russian officials do not dispute the mass removal of children from Ukraine and the ongoing presence of such children in Russia (see paragraphs 1546-1563 above). The Commission of Inquiry was able to review the transfers of 195 such children (see paragraph 1530 above). The "DPR authorities" themselves said that "all children previously in 'DPR' institutions" had been removed to Russia by July 2022 (see paragraph 1554 above). The Russian Commissioner for Children's Rights has claimed that 2,000 children arrived in Russia in February 2022 alone (see paragraph 1556 above). The portal operated by the Ukrainian Government recorded that, by

30 September 2022 a total of 7,890 children had been removed from Ukraine (see paragraph 1529 above).

1574. The Commission of Inquiry and the OSCE Moscow Mechanism mission experts concluded that in the Donetsk, Kharkiv, Kherson, Luhansk, Zaporizhzhia and Mykolaiv regions, the displacement of children was an organised process. Their reports concluded that the transfers were not justified by safety or medical reasons and lacked proper consent from the children's legal caregivers. They further found that subsequent actions and omissions by the Russian authorities prevented the children's reunification with their legal caregivers (see paragraphs 1530-1531 above). The evidence shows that parents in Ukraine were not provided with information concerning their children's location in Russia and that where contact was re-established it was often through coincidence or luck (see paragraphs 1532 and 1533 above).

1575. Official communications illustrate that Russian officials put in place dedicated legislative and policy measures for the removal and placement of Ukrainian children in Russia. Removal of allegedly orphaned Ukrainian children from Ukraine was carried out by the Russian armed forces and authorities, including by the Presidential Commissioner for Children's Rights in person as well as by "DPR" and "LPR" armed groups, in coordination with the "DPR" and "LPR" "child protection authorities". Once across the border, Russian authorities at federal and regional level accommodated the children in hospitals, social institutions or "camps" throughout Russia (see paragraph 1536 above). The trips were often funded by Russia's regional and republican governments, under the so-called "patronage" system (see paragraph 1536 above). Official statements referred to the support of President Putin himself to the placement of Ukrainian children in Russian families (see paragraphs 1445, 1536, 1549, 1551-1553 and 1562 above).

1576. In respect of the children's legal status, the Court notes the legislative amendments in the Russian Federation to make it easier for Ukrainian children to acquire Russian citizenship and be adopted by Russian families (see paragraphs 1552, 1553 and 1559 above). After 24 February 2022 children born in occupied territory were issued Russian birth certificates and Russian nationality (see paragraph 1541 above). This practice was subsequently formalised with the annexation of the four Ukrainian regions of Donetsk, Luhansk, Kherson and Zaporizhzhia in October 2022 (see paragraph 1555 above). The automatic change in the children's nationality facilitated their adoption in Russia (see *Ukraine v. Russia (re Crimea)*, cited above, §§ 1032-39). Perceived to be Russian citizens, children from occupied territory in Ukraine could be adopted by Russian families from anywhere in Russia (see paragraphs 1553 and 1555 above). The evidence shows that they were listed for adoption or foster care in Russia (see paragraphs 1532 and 1542 above).

1577. The legislative measures to which the evidence refers are indicative of a systematic programme of long-term, indeed permanent, removal of these children from their legal guardians in Ukraine (see paragraphs 1552 and 1555 above). Public statements made by Russian officials referred to the acquisition by Ukrainian children of Russian nationality under the decree of 30 May 2022 as "the last obstacle" to be overcome (see paragraphs 1549 and 1553 above).

1578. It has been widely reported, and confirmed in the activity reports of her mandate, that Ms Lvova-Belova, the Russian Federation's Presidential Commissioner for Children's Rights, spearheaded a wide range of initiatives aimed at transferring and accommodating Ukrainian children in the Russian Federation. She herself travelled to the Russian-controlled territories of the Donetsk and Luhansk regions to coordinate the transfers and placements of children in Russian families. She also accompanied a group of children to Russia and reported on more groups of children being ready to travel to Russia for placement in Russian families (see paragraph 1556 above). She further adopted a child from Mariupol herself (see paragraph 1562 above). On 17 March 2023 a pre-trial chamber of the ICC issued arrest warrants for her and for President Putin, charging them with the war crime of unlawful deportation of children and that of unlawful transfer of children from occupied areas of Ukraine to the Russian Federation (see paragraph 1544 above).

1579. The Court finds that there is overwhelming evidence of a systematic practice from shortly before the invasion of 24 February 2022 of transferring Ukrainian children in occupied areas to Russia, without parental or legal consent, and facilitating their adoption there.

1580. The factual question that remains is whether there is evidence between August 2014 and February 2022 of an ongoing practice of transferring Ukrainian children from "the "DPR" and the "LPR" to Russia, as alleged by the applicant Ukrainian Government.

1581. There is some evidence of further attempts by armed groups to send children from orphanages in the Donetsk region to the Russian Federation in the summer of 2014 (see paragraphs 1509-1514 above). There is also evidence of attempts to secure the return to occupied territory of orphan IDPs in government-controlled territory to enable them to acquire Russian nationality (see paragraph 1515 above). Official decisions of the "DPR" and "LPR", in 2015 and 2017 respectively, authorising the adoption of any orphaned or "abandoned" children, including children separated from their parents, and enabling Russian nationals resident in separatist entities to adopt such children, are indicative a cavalier attitude towards the importance of reuniting with their families children who had been separated from them by the conflict (see paragraph 1516 above).

1582. There is, moreover, ample evidence, notably from the OSCE Border Mission, of the movement of a large number of children back and

forth across the border between Ukraine and the Russian Federation between 2014 and 2018. It can be inferred from the regular presence of vehicles and personnel of the Russian Ministry of Emergency Situations and the preparations for, and carrying out of, medical checks that the transfers were organised by the Russian Federation and involved significant logistical arrangements (see paragraphs 1517-1526 above).

1583. It is significant that the Border Mission was present at only two border crossing points covering approximately one kilometre of the lengthy land border separating the occupied territory of Ukraine from the Russian Federation. The border crossings detailed in the evidence above are those that took place in the knowledge that international observers were present and were recording and publishing on a weekly basis their observations on events at the border crossing point. The absence of observers at other border crossing points means that there is almost no evidence as to whether similar transfers of children were also occurring at those crossings (see, for example, paragraph 1524 above). It also prevents the drawing of any conclusions as to the overall numbers involved and whether more children left Ukraine than entered. The Court has no information from the respondent Government as to the number of children transferred in groups across the border between 2014 and 2022, or the identities, nationalities and backgrounds of the children.

1584. The observations of the Border Mission moreover do not themselves allow any conclusions to be drawn as to why the children were crossing the border. No explanation has been provided by the respondent Government of the purpose of the transfers. In their memorial at the separate admissibility stage of the present proceedings, they claimed that the children crossing the border in summer 2014 had been fleeing the conflict in eastern Ukraine. The material before the Court indicates that the children transferred across the border from February 2022 were those in institutions, those whose parents had been detained, those who were orphans or had lost contact with parents, and those who had travelled to holiday camps and were subsequently unable to return.

1585. The Court observes that the border crossings recorded by the Border Mission followed a similar procedure to that applied to the crossing of the border by the first group of children, who were resident in a care home in June 2014 (see paragraphs 1509 and 1518-1526 above). As on that occasion, groups of children crossing the border from 2015 to 2019 were greeted by personnel from the Russian Ministry of Emergency Situations and were examined in tent camps before entering the Russian Federation. The medical procedure applied during the border crossing observed by the OSCE was consistent with the children having come from institutions in Ukraine. In such circumstances, the question arises whether the appropriate consents had been obtained and formalities complied with. The respondent Government have not informed the Court of the legal arrangements for children resident in care homes in eastern Ukraine or otherwise separated from those holding

parental responsibility for them. In view of the post-2022 practice, there are also legitimate concerns as to whether such children who crossed the border into Russia subsequently returned to Ukraine.

1586. The Court further notes that the transfers observed by the Border Mission took place largely, but not exclusively, in the summer months. This is consistent with some of the children having crossed the border to attend "holiday camps" in the Russian Federation. However, the evidence for the post-2022 period shows that even where children crossed the border with parental consent to attend camps, their stay in Russia was frequently prolonged and parents encountered difficulties in reuniting with their children. Some of the difficulties described in 2022 in this respect appear to have been linked to the intensity of the armed conflict and restrictions on travel as a result. But there are also descriptions of transfers between camps and of temporary stays becoming indefinite stays, without parental consent (see paragraph 1534 above).

1587. The Court considers that in the context of the overwhelming evidence of a systematic practice from shortly before the invasion of 24 February 2022 of transferring Ukrainian children in occupied areas to Russia and facilitating their adoption there (see paragraph 1579 above), the evidence described above in respect of the period between 2014 and 2022 gives rise to a real concern that the practice of transferring children to Russia established in the summer of 2014 continued throughout the intervening years. The reference in statements made in 2022 by the Russian Presidential Commissioner for Children's Rights to experience with caring for children from Donbas "since 2014" (see paragraphs 1546 and 1550 above) corroborates the allegation that relocations from the "DPR" and the "LPR" took place in 2014 and in subsequent years. In this respect the Court underlines that the children involved in the three incidents which occurred in June, July and August 2014 cannot conceivably be those cared for by Russian families given the short duration of their stay in Russia. The Court infers from this statement that, since 2014, other children from the "DPR" and the "LPR" have been placed with families in Russia.

1588. All of these elements called for an explanation from the Russian Federation. No explanation has been forthcoming. In these circumstances, the Court does not consider that the overall examination of the complaint about the existence of an administrative practice of the transfer of children between 2014 and 2022 is to be confined in the present case only to the three groups of children transferred in the summer of 2014 and the numerous children transferred in 2022. It is satisfied that a continuous sequence of acts in a pattern between 2014 and 2022 aimed at removing Ukrainian children from occupied territory in Ukraine and integrating them potentially indefinitely in families or institutions in Russia has been demonstrated beyond reasonable doubt (see, for a similar approach in respect of the repetition of acts, *Ukraine v. Russia (re Crimea)*, cited above, § 970). The temporal breaks between such

sequences of acts and the development of additional elements, such as the provisions facilitating changes of nationality and adoption in the Russian Federation, are not factors which affect the continuity of the overarching pattern and the intention behind it (see paragraph 588 above).

1589. The applicant Ukrainian Government have alleged that this practice breached Articles 3, 5 and 8 of the Convention and Article 2 of Protocol No. 4 to the Convention. The Court considers it appropriate to address, first, the complaint under Article 8 of the Convention.

1590. The Court is satisfied that the children's removal from their homes, their separation from their parents and caregivers, their transfer to Russia and the absence of any steps by the Russian authorities to secure their reunification, while active arrangements were being made for their temporary or permanent placement in foster families or adoption, amounted to interferences with the children's right to respect for their private and family lives, as guaranteed under Article 8 of the Convention.

1591. The respondent Government have not, in the present proceedings, identified any legal basis for the various measures taken. Russian officials have described transfers as a humanitarian undertaking to rescue children from war zones and to bring them to safety (see paragraph 1557 above). The Court notes that evacuation is permitted under international humanitarian law in certain circumstances (see paragraphs 1165 and 1567 above). However, as explained above, the powers granted by international humanitarian law must be reflected in the domestic legal order through relevant legal instruments and appropriate guidance that satisfy the quality of law requirement inherent in the notion of "lawfulness" (see paragraph 608 above). The respondent Government have not identified any legal basis for these measures and the evidence does not refer to any specific legal framework authorising evacuation measures. Insofar as the evidence suggests that at least some measures may have been based on "legal acts" of the "DPR" and the "LPR", the Court has already explained that such "legal acts" cannot provide a legal basis for the measures taken (see paragraphs 602-609 above).

1592. It is, in any event, questionable whether the measures described in the evidence could satisfy the "quality of law" requirement inherent in the concept of lawfulness. The respondent Government have not argued that the legal provisions applied incorporated adequate safeguards to ensure protection of the children's best interests (see paragraph 1507 above) and there is nothing in the evidence to suggest that this was the case.

1593. Moreover, for transfers of children to qualify as lawful evacuations under international humanitarian law, they would have had to comply with a number of requirements (see paragraph 1567 above). Evacuations may be carried out only in case of "imperative military reasons" or for the "safety of the population"; within the bounds of occupied territory unless impossible; and only temporarily. There are extensive procedural rules concerning the need for written consent from parents or legal guardians and the obligation to

make arrangements to facilitate the return and reunification with their families of evacuated children. Changes in their personal status are prohibited. The respondent Government have not provided evidence that the children's removal from Ukraine in the circumstances complied with any these provisions. There is nothing to show that any of the purported evacuations of children were carried out for the reasons provided for by international humanitarian law. It is also significant that the essence of the present complaint is that the children were transferred from occupied territory to the Russian Federation, which is in clear breach of international humanitarian law in the absence of evidence showing that transfer within occupied territory would have been impossible. The Court has, furthermore, not been informed of any measures having been undertaken by the respondent Government to secure the return to Ukraine and the family reunification of children purportedly evacuated, and no such measures are described in the various reports before it. On the contrary, numerous credible reports identify cases where Ukrainian children were themselves left to try and contact their parents, often with the manifest non-cooperation of the persons in whose custody they were (see paragraph 1533 above). The policy put in place for the mass acquisition of Russian nationality by children in occupied areas after the 2022 invasion, in breach of international humanitarian law, was nothing less than the automatic imposition of Russian nationality (see paragraphs 1552 and 1577 above). The Court has already found a similar policy in Crimea implemented in respect of adults to be in breach of Article 8 of the Convention (see *Ukraine v. Russia (re Crimea)*, cited above, §§ 1031-39). This change in nationality facilitated the adoption of the children in Russia. In view of the secrecy of adoption proceedings, once adopted a child is virtually impossible to trace. Given the evidence of changes to nationality and adoption in the Russian Federation, the children's transfer to Russia cannot be seen as a temporary measure. In view of these considerations, the children's transfer from Ukraine to the Russian Federation would not appear to qualify as lawful "evacuation" under international humanitarian law.

1594. The Court therefore finds that the transfer to Russia of Ukrainian children and, in many cases, their subsequent adoption in Russia was not "in accordance with the law" within the meaning of Article 8 § 2 of the Convention.

1595. The Court further finds that the treatment of the children concerned attained the threshold of severity required to engage Article 3 of the Convention, for the following reasons. First, the case concerns an official policy of removing children from their legal caregivers in occupied territory and placing them in the care of a hostile occupying State potentially indefinitely and in defiance of international law (see paragraph 1533 above). Second, the impugned acts occurred against the backdrop of military operations which on their own have a long-lasting and traumatising impact (see paragraphs 1538 and 1540 above). Third, the separation of children from

their families and caregivers in the context described above had a traumatising effect on the children concerned, in particular considering the uncertainty and the fear of being permanently and forcibly separated from their families (see paragraphs 1539-1540 above).This has been acknowledged by the Russian authorities themselves (see paragraph 1548 above). Finally, there are credible reports of ill-treatment to which some of these children were subjected after relocation (see paragraphs 1537-1538 above). These considerations, combined with the children's inherent vulnerability resulting from their age and in certain cases their disabilities or special health needs and the absence of parental care or institutionalisation, are sufficiently serious to fall within the scope of application of Article 3 of the Convention. The Court therefore concludes that the removal of Ukrainian children to Russia or Russian-controlled territories, in the conditions described above, resulted in a violation of Article 3 of the Convention.

1596. As regards Article 5 of the Convention, the Court notes that the incidents described concern not only acts of removing children from their habitual residence but also acts of holding them in Russia or Russian-controlled territories either by facilitating their placement in foster-care or their adoption or by placing an excessive burden on children and their caregivers to enable their reunion (see paragraphs 1532 and 1533 above). While, according to reports provided by credible sources, a total of over 300 children were returned to Ukraine in the days, weeks and months after their removal to Russia, many more children remain unidentified and stranded in Russia, sometimes thousands of kilometres away from Ukraine and from their families or caregivers (see paragraph 1529 above). The exceptional circumstances of the present case – the coercive element of the children's removal from and stay outside Ukraine, the lack of opportunity to contact their family members, the excessive difficulties faced by caregivers seeking to reunite with the children, the holding of a number of children in various facilities and institutions throughout Russia or Russian-controlled territories and the evident impossibility for them to leave those facilities alone and travel back to Ukraine – lead the Court to conclude that the children were "deprived of their liberty and security" within the meaning of Article 5 of the Convention (see among other authorities, *Salayev v. Azerbaijan*, no. 40900/05, §§ 40-43, 9 November 2010; *Tarak and Depe v. Turkey*, no. 70472/12, §§ 52-61, 9 April 2019; *M.A. v. Cyprus*, no. 41872/10, §§ 185-95, ECHR 2013 (extracts); *Khlaifia and Others v. Italy* [GC], no. 16483/12, §§ 64-72, 15 December 2016; and *Bozano v. France*, 18 December 1986, § 54, Series A no. 111). The respondent Government have not made any submissions arguing that such deprivation of liberty complied with any of the permitted grounds under Article 5 § 1 (a) to (f) of the Convention or that it constituted internment or any other security measures in conformity with international humanitarian law. The Court is also unable to identify any legal ground for such deprivation of liberty. For

this reason, the Court concludes that there was also a breach of Article 5 of the Convention.

1597. Finally, the applicant Ukrainian Government have relied on Article 2 of Protocol No. 4 to the Convention in the context of this complaint. However, in light of its findings above, and notably its conclusion in respect of Article 5, the Court does not consider necessary to examine separately this complaint.

1598. In conclusion, the Court is satisfied, beyond reasonable doubt, that there existed an accumulation of identical or analogous breaches of Articles 3, 5 and 8 of the Convention between June 2014 and 16 September 2022 which are sufficiently numerous and interconnected to amount to a pattern or system of unjustified interferences with the rights of Ukrainian children. Given the systemic and regulatory nature of these violations, there is no doubt that they were officially tolerated by the superiors of the perpetrators and by the higher authorities of the respondent (see paragraphs 1576-1578. See also paragraphs 1617-1621 below).

1599. The Court therefore finds the respondent State responsible for an administrative practice in the period between June 2014 and 16 September 2022 of the transfer to Russia and, in many cases, the adoption there of Ukrainian children in occupied areas of Ukraine in violation of Articles 3, 5 and 8 of the Convention.

XXII. ALLEGED ADMINISTRATIVE PRACTICE IN VIOLATION OF ARTICLE 14 OF THE CONVENTION

A. The complaint

1600. The applicant Ukrainian Government complained of an administrative practice of targeting civilians of Ukrainian ethnicity or those perceived to support Ukrainian territorial integrity, in breach of Article 14 of the Convention, in conjunction with Articles 2, 3, 4 § 2, 5, 8, 9, 10 and 11 of the Convention and Articles 1 and 2 of Protocol No. 1 to the Convention.

1601. Article 14 of the Convention reads:

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

B. The parties' submissions

1. The applicant Ukrainian Government

1602. The applicant Ukrainian Government submitted that the clearly discriminatory nature of Russia's violations of the substantive Articles of the Convention and its Protocols justified the separate examination of their

complaints under Article 14 of the Convention. The respondent Government's unlawful invasion of Ukraine had involved an attack on the Ukrainian people on a vast scale. The numerous Convention violations had by their very nature targeted the victims on grounds of their Ukrainian nationality, ethnicity and politics or language or on grounds of their residence in the sovereign nation of Ukraine. Virtually all of the violations had been committed because of the ethnicity or perceived political affiliation of the victims: the armed groups had systematically attacked civilians of Ukrainian ethnicity or citizens who supported Ukrainian territorial integrity.

2. The respondent Government

1603. The respondent Government did not take part in the present proceedings on the merits of application nos. 8019/16, 43800/14 and 28525/20 and the admissibility and merits of application no. 11055/22 (see paragraph 142 above). At the separate admissibility stage of the present proceedings, they challenged in general terms the evidence submitted by the applicant Ukrainian Government (*Ukraine and the Netherlands v. Russia* (dec.), cited above, §§ 408-14 and 820).

C. The Court's assessment

1604. The Court has referred, in its preliminary remarks, to the broader context of the armed conflict in Ukraine and to the general attitude and objectives of the Russian Federation. It has referred to the deliberate and strategic circulation by senior Russian political figures of a narrative seeking to undermine Ukraine's statehood, which asserted Ukraine's history as part of Russia and claimed that it was "entirely a product of the Soviet era" (see paragraph 174 above). It has observed that the objective of the Russian Federation appears to be no less than the destruction of Ukraine as an independent sovereign State, through the forcible acquisition of Ukrainian territory and the subjugation of any remaining Ukrainian nation to Russian influence and control (ibid.).

1605. In its judgment in *Application of the International Convention for the Suppression of the Financing Of Terrorism and of the International Convention on the Elimination of all Forms of Racial Discrimination (Ukraine v. Russian Federation)* (B298-302), the ICJ addressed allegations by Ukraine that 13 acts of violence in Crimea had targeted ethnic Ukrainian activists and Crimean Tatars. The ICJ accepted that the evidence confirmed that several targeted persons were pro-Ukrainian activists, as well as members and affiliates of the Mejlis, and observed that reports of intergovernmental organisations and other publications indicated that the victims had been attacked for their political and ideological positions, in particular for their opposition to the March 2014 referendum held in Crimea and their support for the Ukrainian Government. However, it observed that

"the political identity or the political position of a person or a group is not a relevant factor for the determination of their 'ethnic origin' within the meaning of Article 1, paragraph 1, of CERD". It was, moreover, not convinced by the evidence placed before it that Crimean Tatars and ethnic Ukrainians had been subjected to acts of physical violence based on their ethnic origin. It observed, "In fact, any disparate adverse effect on the rights of Crimean Tatars and ethnic Ukrainians can be explained by their political opposition to the conduct of the Russian Federation in Crimea and not by considerations relating to the prohibited grounds under CERD".

1606. Article 14 of the Convention, as well as prohibiting discrimination on the grounds of race and national origin, prohibits discrimination on the grounds of political opinion. The Court has found the respondent State responsible for a number of administrative practices in violation of the Convention in Ukraine between 11 May 2014 and 16 September 2022. Aside from the acts of violence directed against civilians in Ukraine, and often targeted more particularly at those expressing political views in support of Ukrainian unity, there is also extensive evidence of regulatory measures applied in occupied areas intended to undermine Ukrainian ethnicity and history, including through the blocking of Ukrainian broadcasting, the forced transfer of Ukrainian children to Russia, the suppression of the Ukrainian language in schools and the indoctrination of Ukrainian schoolchildren (see, notably, paragraphs 1346, 1352, 1356, 1486-1491, 1494 and 1569-1588 above).

1607. The Court is therefore persuaded that the Russian Federation has violated Article 14 of the Convention by failing to secure the rights and freedoms set forth in Articles 2, 3, 4 § 2, 5, 8, 9, 10 and 11 of the Convention and Articles 1 and 2 of Protocol No. 1 to the Convention without discrimination on the grounds of political opinion and national origin.

XXIII. OFFICIAL TOLERANCE AND ALLEGED ADMINISTRATIVE PRACTICE IN VIOLATION OF ARTICLE 13 OF THE CONVENTION

A. Introduction

1608. In the context of their application no. 11055/22 the applicant Ukrainian Government complained that the respondent Government had failed to investigate credible allegations of the administrative practices alleged or to provide any redress (see paragraph 572 above). They submitted that this amounted to an administrative practice in breach of Article 13 of the Convention. In view of the evident factual and legal overlap between this issue and the question of official tolerance, the Court considers it appropriate to examine these two matters together.

B. The parties' submissions

1. The applicant Ukrainian Government

1609. The applicant Ukrainian Government argued that the Court's observations and findings regarding official tolerance in its admissibility decision (*Ukraine and the Netherlands v. Russia* (dec.), cited above, §§ 827 and 882-88) and in the admissibility decision in *Ukraine v. Russia (re Crimea)* (cited above, §§ 402, 417 and 449) applied *a fortiori* to application no. 11055/22 and to the prolonged, ongoing and extreme violations of the Convention with which it was concerned. There had not merely been official tolerance of such conduct, but an express direction of it coupled with repression of any persons seeking to question it.

1610. The applicant Ukrainian Government relied on a number of factors to support their argument. First, they referred to the sheer scale of the violations, which "is itself an indication of a tolerant environment which enabled such acts to be carried out again and again" (*Ukraine and the Netherlands v. Russia* (dec.), cited above, § 826). Second, they highlighted the widespread public reporting of the violations from authoritative sources (including the UN and the OSCE). As a result of such reporting, Russia's political and military authorities (including at the highest levels) must have been well aware of the violations but had taken no or no sufficient action to put an end to them. Third, the applicant Ukrainian Government emphasised the lack of evidence of any investigation of the violations "coupled with Russia's failure, despite repeated invitations, to engage with the present proceedings and to assist the Court in accordance with Articles 34 and 38 of the Convention and Rule 44A of the Rules of Court". Finally, they referred to "Russia's deliberate decision to commence and continue the invasion and take up arms against Ukraine and its population, as President Putin has made clear in statements pre-dating 16 September".

1611. The respondent Government's failure to ensure an effective remedy, as required by Article 13 of the Convention, had taken many forms and included the failure to carry out any investigations into the circumstances surrounding the many allegations presented in the application; to establish a system for dealing with complaints concerning the conduct of their forces in the course of this war or to put in place a procedure by which allegations of human rights abuses by Russian military personnel could be investigated; to pay reparations to the victims of the military action launched in February 2022; or to take any measures to put an end to those breaches.

1612. There was no evidence that the Russian Federation had undertaken any investigations into the alleged violations of the Convention, which were clearly "arguable" for the purposes of Article 13. Nor had the Russian Federation contended otherwise, let alone provided sufficient particulars of relevant investigations. Instead, they had sought to deny involvement in the impugned events. While the Code of Criminal Procedure and other legal

provisions in the Russian Federation provided a theoretical possibility for injured parties to bring a claim for civil compensation, such proceedings were contingent upon the prior initiation of criminal proceedings. Since criminal proceedings had never been initiated, it would be futile to resort to those civil remedies.

1613. The resolute inaction of the Russian and separatist authorities itself satisfied both of the requirements for establishing an administrative practice in violation of Article 13 in accordance with the Court's case law; the administrative inertia was consistent and systemic and it amounted also to, at a minimum, official tolerance of the overwhelming number and range of wrongs which were attributable to the Russian Federation. As such, this administrative practice violated Article 13 in its own right, as well as in conjunction with the other Convention provisions referred to above.

2. The respondent Government

1614. The respondent Government did not take part in the proceedings on the merits of application nos. 8019/16, 43800/14 and 28525/20 and the admissibility and merits of application no. 11055/22 of the present case (see paragraph 142 above). At the separate admissibility stage, they challenged the evidence relied upon by the applicant Ukrainian Government in respect of the administrative practices alleged and made no submissions on whether there had been "official tolerance" in respect of them (see the summary of their submissions in *Ukraine and the Netherlands v. Russia* (dec.), cited above, §§ 408-14 and 818-20).

C. The Court's assessment

1. General principles

1615. In its admissibility decision in the present case (*Ukraine and the Netherlands v. Russia* (dec.), cited above), the Court set out what was required in order to demonstrate official tolerance for the purposes of alleged administrative practices in breach of the Convention as follows:

> "826. By official tolerance, what is meant is that illegal acts are tolerated in that the superiors of those immediately responsible, though cognisant of such acts, take no action to punish them or to prevent their repetition; that a higher authority, in the face of numerous allegations, manifests indifference by refusing any adequate investigation of their truth or falsity; or that in judicial proceedings a fair hearing of such complaints is denied. It is inconceivable that the higher authorities of a State should be, or at least should be entitled to be, unaware of the existence of such a practice. Any action taken by the higher authority must be on a scale which is sufficient to put an end to the repetition of acts or to interrupt the pattern or system. Furthermore, higher authorities of the Contracting States are under a duty to impose their will on subordinates and cannot shelter behind their inability to ensure that it is respected ...."

1616. The general principles under Article 13 of the Convention are set out above (see paragraphs 508-509).

2. Application of the general principles to the facts of the present case

(a) Official tolerance

1617. In its admissibility decision in the present case, the Court concluded that there was sufficiently substantiated prima facie evidence of official tolerance in respect of the repetition of acts carried out in violation of the Convention in the relevant parts of Donbas (*Ukraine and the Netherlands v. Russia*, cited above, § 888). It referred to the early reports from credible authors, including the OHCHR and the OSCE, of widespread, grave human rights abuses committed by armed separatists (ibid., § 883-85). These reports commented on the prevailing climate of impunity and general lawlessness in eastern Ukraine and the absence of legitimate and effective judicial services. The Court further referred to the sheer scale of the impugned acts which it considered was, in itself, an indication of a tolerant environment which enabled these acts to be carried out again and again (ibid., § 886).

1618. These observations apply with even greater force to the period following the invasion of Ukraine on 24 February 2022. The reports of the Commission of Inquiry show starkly the huge scale of the grave violations of human rights perpetrated across Ukrainian territory by the agents of the respondent State (Annex C). The material available and summarised in this judgment attests to the erosion of the rule of law in the areas under the control of the Russian forces and the atmosphere of fear and intimidation in the areas under their control or affected by their military attacks. It illustrates the prevailing coercive environment through the displacement and organised transportation of people, the organised system of filtration measures and the organised reception system in Russia for those who passed filtration.

1619. There is no evidence that the respondent Government have sought to investigate alleged breaches of the Convention by its own agents or put in place a remedy for the victims of such breaches. In its admissibility decision, the Court noted that the Investigative Committee of the Russian Federation had opened a number of investigations into events in Ukraine since 24 February 2022 but that all concerned alleged war crimes committed by Ukrainian nationals (see *Ukraine and the Netherlands v. Russia* (dec.), cited above, § 804). The respondent Government have not provided details of any investigations opened into war crimes committed by its own agents despite extensive publicly available information quite clearly requiring further examination.

1620. Moreover, as the Court has explained, the invasion of Ukraine on 24 February 2022 has brought transparency to the objectives of the Russian Federation in Ukraine (see paragraph 174 above). It has confirmed the close involvement of senior government figures of the Russian Federation,

including its President, in the oversight and management of events in Ukraine since spring 2014. As already noted (see paragraphs 1617-1618 above), there is no shortage of reports during the period under examination in the present judgment providing examples of conduct in violation of the Convention on the basis, in many instances, of primary evidence. On the basis of the evidence, the Court has found repeated violations of Articles 2, 3, 4 § 2, 5, 8, 9, 10, 11 and 14 and of Articles 1 and 2 of Protocol No. 1 with many of the violations having been perpetrated over a period of more than eight years. In these circumstances, it is inconceivable that the higher authorities of the respondent Government were unaware of the existence of practices in violation of Convention rights and freedoms. The Court further emphasises in this respect the erosion of the rule of law in the areas under the effective control of the Russian Federation and the atmosphere of fear and intimidation in both the areas under their control and the areas affected by their military attacks. It highlights the climate in which the Russian military forces and those under their control operated and carried out the sheer number of violations referenced in this judgment, with complete impunity; and the repression of any persons, both in Russia and elsewhere, seeking to question the abuses carried out by Russian armed forces. It further underlines the regulatory nature of many of the impugned measures, which were applied on the basis of "laws" of the "DPR", the "LPR" or other occupation administrations or Russian law itself, and the necessary implication of the central authorities in Russia in respect of some of the general, systemic measures applied such as the transportation of prisoners and civilians in occupied territory and the system of filtration. The Court considers that the unprecedented abuses described could not have been carried out without the direct authorisation, encouragement and support of these higher authorities.

1621. In the light of the above, the Court finds beyond reasonable doubt that the requirement to show official tolerance has been satisfied in respect of the repetition of acts in breach of Articles 2, 3, 4 § 2, 5, 8, 9, 10, 11 and 14 and of Articles 1 and 2 of Protocol No. 1 to which this judgment refers.

(b) Article 13 of the Convention

1622. The Court has already referred to the significant factual and legal overlap between the complaint of an administrative practice in violation of Article 13 of the Convention and the question of official tolerance (see paragraph 1608 above). Moreover, it is inherent in an administrative practice that any remedies would clearly be ineffective at putting an end to it (see *Ukraine and the Netherlands v. Russia*, cited above, § 775). In view of the reasons for its conclusion as to the existence of official tolerance (see paragraphs 1617-1621 above), the Court also finds that there was an administrative practice in breach of Article 13 of the Convention, taken in conjunction with Articles 2, 3, 4 § 2, 5, 8, 9, 10, 11 and 14 and Articles 1 and 2 of Protocol No. 1, between 11 May 2014 and 16 September 2022.

XXIV. CONCLUDING REMARKS

1623. In previous decisions and judgments relating to the conflict in Ukraine, the Court has emphasised the practical difficulties associated with gathering evidence in occupied territory, not least due to the denial of access of officials and independent monitors and the fact that the Russian Federation was in exclusive possession of substantial evidence relating to the administrative practices complained of. These difficulties were heightened in the present case by the fact that military attacks were intensifying during the period under examination and by the scale and nature of the administrative practices alleged. The Court's difficulties related not only to the volume of evidence eventually submitted in relation to the eight-year period at issue and its varied nature, provenance and probity, but also to the deplorable failure by the Russian Federation, since but also before its expulsion from the Council of Europe, to abide by the fundamental duty of cooperation with the Court (see paragraphs 1630 et seq. below). This failure inevitably affected the Court's examination of the case.

1624. The Court has found that there have been violations of Articles 2, 3 and 13 in respect of the downing of flight MH17 and administrative practices in breach of Articles 2, 3, 4 § 2, 5, 8, 9, 10, 11, 13 and 14 and Articles 1 and 2 of Protocol No. 1 in respect of the conflict in Ukraine. Taken as whole, the evidence to which the Court has had regard when reaching these conclusions presents a picture of interconnected practices of manifestly unlawful conduct by agents of the respondent State on a massive scale. This lawlessness is clearly reflected in the Court's findings of violations of the Convention, in which it has frequently highlighted the absence of any basis in law for the measures taken. It is also inherent to its finding that there was official tolerance for this conduct by the superiors of those directly responsible and by the high authorities of the Russian Federation.

1625. The concerns expressed by the Court regarding the quality of the law when finding violations of the qualified rights in the Convention moreover make it plain beyond doubt that the reprehensible conduct of the respondent State falling within the scope of the relevant Articles went well beyond the question of "lawfulness". There is no evidence of any constraints applied to agents of the Russian Federation in the exercise of the functions carried out by them on behalf of the respondent State. Extensive human rights violations were committed on a huge scale not only without sanction but frequently as part of a far-reaching administrative system put in place by the authorities of the respondent State without any apparent safeguards whatsoever. It is, therefore, important to record that the evidence overwhelmingly shows conduct by the agents of the respondent State that, as well as being unlawful, was clearly disproportionate to any aims that might be considered legitimate under the qualified rights in the Convention.

XXV. ARTICLE 38 OF THE CONVENTION

1626. Article 38 of the Convention provides:

> "The Court shall examine the case together with the representatives of the parties and, if need be, undertake an investigation, for the effective conduct of which the High Contracting Parties concerned shall furnish all necessary facilities."

A. The parties' submissions

1. The applicant Ukrainian Government

1627. The applicant Ukrainian Government submitted that there had been a clear and manifest violation of Article 38 of the Convention by the respondent State. The observations of the Court in its admissibility decision (*Ukraine and the Netherlands v. Russia* (dec.), cited above, §§ 456-59) applied *a fortiori* in the present context given the complete absence of any engagement. The respondent State's sole engagement in application no. 11055/22 had been to file a single round of brief, inaccurate and misleading submissions in response to one of the applications for interim measures. In a case involving the most serious allegations to reach the Court in its history, the respondent State's breach of Article 38 had been sustained and flagrant.

2. The applicant Dutch Government

1628. The applicant Dutch Government referred to the general principles set out by the Court in *Georgia v. Russia (I)* ([GC], no. 13255/07, § 99, ECHR 2014 (extracts)), *Georgia v. Russia (II)* (cited above, § 341), *Janowiec and Others* (cited above, § 202) and *Carter* (cited above, § 92). The meaning and intention of Article 38 was that the Court was responsible for the establishment of the facts and could conduct an investigation on the understanding that the parties furnished the Court with all the relevant information. Failure to submit information in the hands of a respondent State could result in a violation of Article 38. The obligation to furnish the evidence requested by the Court was binding on the respondent Government from the moment such a request had been formulated. Moreover, the requested material was to be submitted in its entirety and any missing elements properly accounted for. Furthermore, the conduct of the parties when evidence was being obtained could also be taken into account and inferences drawn from such conduct.

1629. The applicant Dutch Government referred to the Court's admissibility decision in the present case (*Ukraine and the Netherlands v. Russia* (dec.), cited above, § 469). They reiterated that the Russian Federation had yet to provide a convincing and comprehensive account of the events surrounding and leading up to the downing of flight MH17. Some

information was within its exclusive knowledge. The respondent Government's obligation to cooperate with the Court had continued after the cessation of the respondent State's membership of the Council of Europe (citing *Georgia v. Russia (II)* (just satisfaction), cited above, §§ 26-27). The applicant Dutch Government invited the Court to find that the Russian Federation had failed to engage constructively with the proceedings in this case and had violated Article 38 of the Convention.

B. The Court's assessment

1630. Article 38 of the Convention imposes a procedural obligation on High Contracting Parties to "furnish all necessary facilities" for the Court's examination of the case, whether it is conducting a fact-finding investigation or performing its general duties as regards the examination of applications before it. In view of the Court's continuing jurisdiction over the present applications under Article 58 of the Convention, Article 38 and the corresponding provisions of the Rules of Court continue to be applicable to the case after 16 September 2022 (*Georgia v. Russia (II)* (just satisfaction), §§ 24, 27 and 38, and *Ukraine v. Russia (re Crimea)*, § 906, both cited above).

1631. This obligation is of the utmost importance for the effective operation of the Convention system. In its recent Declaration on the effective processing and resolution of cases relating to inter-State disputes, adopted on 5 April 2023, the Committee of Ministers called on member States which were parties in inter-State proceedings and related individual applications to fully comply with their obligations under Article 38 as interpreted by the Court at all stages of the proceedings (see *Ukraine v. Russia (re Crimea)*, cited above, § 907).

1632. As far as the content of the obligation is concerned, the principle outlined in Article 38 is reflected in the Rules of Court, notably, in the context of the present case, in Rules 44A and 44C (see, for example, *Georgia v. Russia (II)* (just satisfaction), cited above, § 37; *Ukraine v. Russia (re Crimea)*, cited above, § 908; and, *mutatis mutandis*, *Janowiec and Others*, cited above, § 202).

1633. Rule 44A imposes a duty on the parties to cooperate fully in the conduct of the proceedings and to take such action within their power as the Court considers necessary for the proper administration of justice.

1634. Rule 44C provides that where a party fails to adduce evidence or provide information requested by the Court or to divulge relevant information of its own motion or otherwise fails to participate effectively in the proceedings, the Court may draw such inferences as it deems appropriate. The Court has found that a failure on a government's part, without a satisfactory explanation, to submit information in their hands capable of corroborating or refuting allegations may not only give rise to the drawing of inferences as to the well-foundedness of the applicant's allegations, but may also reflect

negatively on the level of compliance by a respondent State with its obligations under Article 38 of the Convention (see *Janowiec and Others*, § 202, and *Georgia v. Russia (I)*, § 99, both cited above). Where confidentiality or security considerations are advanced as the reason for a failure to produce the material requested, the Court must be satisfied that there were reasonable and solid grounds for treating the documents in question as secret or confidential. Moreover, even where there are legitimate confidentiality or security concerns, this will not justify the failure to submit a document in its entirety if these concerns could have been met by editing out the sensitive passages or supplying a summary of the relevant factual grounds (see *Janowiec and Others*, §§ 205-06, and *Georgia v. Russia (II)*, §§ 343-46, both cited above).

1635. In its admissibility decision in the present case, the Court explained that both the applicant Ukrainian Government and the respondent Government had been asked to address a number of specific matters and to provide supporting evidence (see *Ukraine and the Netherlands v. Russia* (dec.), cited above, § 455). However, the Court noted, the respondent Government had declined to provide submissions or evidentiary material in respect of a number of the aspects identified, citing national security concerns and lack of relevance of the material to the questions under judicial consideration. This was despite the fact that the information and supporting material sought was wholly or in large part within the exclusive knowledge of the respondent State (ibid.). The Court then made the following observations:

> "456. The Court considers that through various sets of memorials, there has been a distinct lack of frankness and transparency in the written submissions provided by the respondent Government. For example, the evidence clearly demonstrates the importance of information concerning Igor Girkin, who was a key player in the events in Crimea and in eastern Ukraine and is one of the defendants in the Dutch criminal proceedings concerning the downing of flight MH17 ... The allegation is that he was an agent of the FSB. The respondent Government in their submissions appeared to be deliberately vague when discussing Mr Girkin ... They did not confirm whether the allegation was true and referred merely to press reports that Mr Girkin had retired by April 2014. There can be no doubt that they are in a position to clarify whether Mr Girkin was employed by the FSB and, if so, whether and when he retired. Furthermore, given the Court's finding of Russian extraterritorial jurisdiction over Crimea from 27 February 2014, the respondent Government were also in a position to explain Mr Girkin's involvement in the events there and the nature of the instructions given to him ...
>
> 457. Moreover, the Court takes the view that the respondent Government's responses to the specific request for further information and material in the supplementary memorials were superficial and evasive. For example, when asked about the parties and individuals involved in the negotiations concerning the retreat of the Ukrainian army at Ilovaisk in late August 2014, they responded simply that they 'cannot comment' on the existence of any negotiations. They did not clarify whether such inability was alleged to arise from a lack of knowledge, or from an unwillingness to disclose the requested information. The Court does not find it credible that the respondent Government would

> be ignorant of the detail of the events at Ilovaisk, not least because they occurred shortly before the Minsk negotiations in early September 2014 in which Russia played a central role ... While national security concerns may be relevant in respect of some of the information sought, where they have been invoked by the respondent Government they have been deployed with a broad brush to justify a refusal to provide information and material which was necessary to assist the Court. There has been no attempt to engage with the Court with a view to finding a suitable manner of providing the information sought while protecting any justified national security concerns ...
>
> 458. The Court underlines the special relationship that the respondent State enjoyed with the separatist entities at the relevant time, as evidenced by its involvement in the ceasefire discussions, by the participation of members of its military in the Joint Center for Control and Coordination, by the humanitarian aid it has allegedly supplied, by the recognition of identity and other official documents issued by the 'DPR' and 'LPR', by the links between Russia and a number of prominent separatists and by the comments made by separatist leaders ... By virtue of this special relationship alone, the respondent Government could have obtained material which would have been of substantial assistance to the Court in resolving the matters it is asked to address. However, no material from the separatist entities has been provided.
>
> 459. The Court finds that the approach taken by the respondent Government does not represent a constructive engagement with the Court's requests for information or, more generally, with the proceedings for the examination of the case. It considers that the respondent Government have fallen short of their obligation to furnish all necessary facilities to the Court in its task of establishing the facts of the case, as required under Article 38 of the Convention and Rule 44A of the Rules of Court. It will therefore draw all the inferences that it deems relevant ..."

1636. On 1 March 2022, in the context of a Rule 39 indication made in application no. 11055/22, the respondent Government were asked to inform the Court as soon as possible of the measures taken to ensure that the Convention was fully complied with (see paragraph 9 above). The reply by the respondent Government failed to provide the requested information and contained only bare assertions that the Convention had been complied with (see paragraph 141 above). A subsequent request for a further update and responses to specific requests for information remains unanswered (see paragraphs 12 and 142 above). The Court reiterates that the insertion into the Rules of Court in September 2023 of Rule 44F on the treatment of highly sensitive documents facilitated the provision of relevant evidence to the Court while protecting any national security interests of the respondent State (see paragraph 757 above).

1637. On 3 May 2023 the respondent Government were asked to submit by 2 October 2023 their memorial on the merits of application nos. 8019/16, 43800/14 and 28525/20 and on the admissibility and merits of application no. 11055/22. In view of their lack of response to previous communications from the Court and in order to facilitate planning of the future procedure in the case, they were invited to confirm by 14 June 2023 whether they intended to submit a memorial and supporting information (see paragraph 19 above). The respondent Government did not reply to that invitation and did not subsequently submit a memorial (see paragraph 21 above). The respondent

Government also did not appear at the oral hearing before the Court on 12 June 2024 (see paragraph 27 above). By failing to respond to the Court's communication and by failing to submit their memorial or appear at the oral hearing, the respondent Government demonstrated their intention to abstain from participation in the examination of the outstanding admissibility issues and the merits of the present case.

1638. The Court reiterates the utmost importance of compliance with the obligation under Article 38 for the effective operation of the Convention system (see paragraph 1631 above). This obligation is even more important where the Court is required itself to establish the facts underlying complaints brought before it in a context of armed conflict where the establishment of facts may be particularly difficult. The lack of cooperation on the part of the respondent Government has unnecessarily rendered more difficult the task of the Court to determine whether violations of fundamental human rights protected by the Convention have occurred. As can be seen from the Court's analysis of the alleged administrative practices, the Court has had to identify and consider the application of relevant international humanitarian law provisions *ex proprio motu*. The time and resources expended by the Court on seeking to ensure that the respondent State has not suffered prejudice in the application of the Convention to the facts of the present case have been considerable (see, similarly, *Ukraine v. Russia (re Crimea)*, cited above, § 909).

1639. Having regard to the respondent Government's failure to provide information requested by the Court, its lack of constructive engagement with the examination of the case at the separate admissibility stage of the proceedings and its failure to participate at all in the examination of the outstanding admissibility issues and the merits of the present case, the Court finds that the respondent State has failed to comply with its obligations under Article 38 of the Convention.

XXVI. APPLICATION OF ARTICLE 41 AND 46 OF THE CONVENTION

A. Article 46 of the Convention

1640. The relevant parts of Article 46 of the Convention read as follows:

> "1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.
>
> 2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution.
>
> ..."

1641. The Court reiterates that its judgments are essentially declaratory in nature and that, in general, it is primarily for the State concerned to choose the means to be used in its domestic legal order to discharge its legal

obligation under Article 46 of the Convention, provided that such means are compatible with the conclusions and the spirit of its judgment. This discretion as to the manner of execution of a judgment reflects the freedom of choice attaching to the primary obligation of the respondent States under the Convention to secure the rights and freedoms guaranteed (see, *inter alia*, *Kurić and Others v. Slovenia* (just satisfaction) [GC], no. 26828/06, § 80, ECHR 2014).

1642. Nevertheless, where the nature of the violation found is such as to leave no real choice as to the measures required to remedy it, the Court may decide to indicate individual measures as it has done in individual cases (*Ilaşcu and Others*, cited above, § 490; *Aleksanyan v. Russia*, no. 46468/06, §§ 239-40, 22 December 2008; *Fatullayev v. Azerbaijan*, no. 40984/07, §§ 176-77, 22 April 2010; *Del Río Prada v. Spain* [GC], no. 42750/09, §§ 138-39, ECHR 2013; *Kavala*, cited above, § 240; and *Selahattin Demirtaş (no. 2)*, cited above, § 442) and in the inter-State case of *Ukraine v. Russia (re Crimea)* (cited above, §§ 1384-85).

1643. The Court has expressly acknowledged that Article 46 of the Convention requires that the Committee of Ministers set forth an effective mechanism for the implementation of the Court's judgments also in cases against a State which has ceased to be party to the Convention. The Court has observed in this connection that the Committee of Ministers continues to supervise the execution of the Court's judgments against the Russian Federation and that the Russian Federation is required, pursuant to Article 46 § 1 of the Convention, to implement them despite the cessation of its membership of the Council of Europe (*Georgia v. Russia (II)* (just satisfaction), cited above, § 46).

1644. In the present case, the Court reiterates that there has been a violation of the right to liberty and security stemming from an administrative practice contrary to Article 5 of the Convention on account of the unlawful and arbitrary detention of civilians in Ukraine from 2014 until 16 September 2022. In the light of this finding and the case-law set out above, the Court considers that the respondent State must without delay release or safely return all persons who were deprived of their liberty on Ukrainian territory under occupation by the Russian and Russian-controlled forces in breach of Article 5 of the Convention before 16 September 2022 and who are still in the custody of the Russian authorities (see, similarly, *Ukraine v. Russia (re Crimea)*, cited above, § 1387).

1645. In addition, the Court reiterates that there has been a violation of the rights of Ukrainian children stemming from their abduction and transfer from Ukraine to the sovereign territory of the Russian Federation or to territory in Ukraine controlled by separatists or by the Russian forces, in breach of Articles 3, 5 and 8 of the Convention. It underlines that the Russian authorities have rejected all international calls to create a transparent mechanism for the identification of transferred children and for facilitating

the restoration of contact and ties with their legal guardians or surviving family members.

1646. In the light of the administrative practice found to have been established and the case-law set out above, the Court considers that the respondent State must without delay cooperate in the establishment of an international and independent mechanism to secure, as soon as possible and with due consideration of the children's best interests, the identification of all children transferred from Ukraine to Russia and Russian-controlled territory before 16 September 2022, the restoration of contact between these children and their surviving family members or legal guardians and the children's safe reunification with their families or legal guardians.

B. Article 41 of the Convention

1647. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

1648. The Court reiterates that Article 41 applies to inter-State cases (see *Cyprus v. Turkey* (just satisfaction), § 43; *Georgia v. Russia (II)* (just satisfaction), § 30; and *Ukraine v. Russia (re Crimea)*, § 1391; all cited above). It refers to the three criteria it has set out for establishing whether an award by way of just satisfaction was justified in an inter-State case, namely "(i) the type of complaint made by the applicant Government, which had to concern the violation of basic human rights of its nationals (or other victims); (ii) whether the victims could be identified; and (iii) the main purpose of bringing the proceedings" (*Ukraine v. Russia (re Crimea)*, cited above, § 1391).

1649. The unprecedented nature of the present case is further underlined by the fact that, in May 2023, the Council of Europe established a Register of Damage Caused by the Aggression of the Russian Federation against Ukraine. The express purpose of this Register is to "serve as a record, in documentary form, of evidence and claims information on damage, loss or injury caused to all natural and legal persons concerned, as well as the State of Ukraine (including its regional and local authorities, State-owned or controlled entities), caused on or after 24 February 2022 in the territory of Ukraine within its internationally recognised borders, extending to its territorial waters, by Russian Federation's internationally wrongful acts in or against Ukraine" (see paragraph 91 above and B352). According to its Statute, the work of the Register is intended to constitute the first component of a future international compensation mechanism to be established by a separate international instrument in co-operation with Ukraine (B352). On

2 April 2024 the Register of Damage opened the claims submission process (see paragraph 92 above).

1650. Against this background and given the nature of many of the violations found, the Court considers that the question of the application of Article 41 of the Convention is not yet ready for decision. Moreover, the Court considers that any future award made in respect of the applicant Ukrainian Government in the present case pursuant to Article 41 of the Convention must have due regard to the establishment of the Register of Damages and the ongoing discussions concerning a future compensation mechanism.

1651. As regards the downing of flight MH17, the applicant Dutch Government have invoked the State responsibility of the Russian Federation and the ICAO Council has recently found that State to have failed in its international law obligations in respect of the downing; it is now considering what form of reparations are in order (see paragraphs 131 and 134-137 above) and it will be important to take any further developments in this respect into account when making an award for just satisfaction in respect of the applicant Dutch Government. It will also be important to have regard in this context to the processing of the individual applications lodged before this Court by relatives of those who lost their lives on flight MH17 (see paragraph 18 above).

1652. For these reasons, the Court finds it appropriate to disjoin application no. 28525/20 lodged by the applicant Dutch Government from the remainder of the case to permit the examination of the just satisfaction claims in that application separately.

FOR THESE REASONS, THE COURT

1. *Holds*, unanimously, that it has jurisdiction *ratione temporis* to deal with the case in so far as it concerns events that took place before 16 September 2022;

2. *Finds*, unanimously, that the complaints by the applicant Ukrainian Government concerning events which took place in the territory under separatist control in the Donetsk and Luhansk regions from 26 January 2022 to 16 September 2022 fall within the jurisdiction of the Russian Federation within the meaning of Article 1 of the Convention;

3. *Finds*, unanimously, that the complaints by the applicant Ukrainian Government concerning events which took place in the Russian Federation or in territory in the hands of the Russian armed forces from 24 February 2022 to 16 September 2022 fall within the jurisdiction of the Russian Federation within the meaning of Article 1 of the Convention;

4. *Finds*, unanimously, that the complaints by the applicant Ukrainian Government concerning military attacks by separatists or by the Russian armed forces fall within the jurisdiction of the Russian Federation within the meaning of Article 1 of the Convention and *dismisses* the preliminary objection raised by the respondent Government in that regard;

5. *Holds*, unanimously, that there has been a violation of Article 2 of the Convention under its substantive limb in respect of the downing of flight MH17;

6. *Holds*, unanimously, that there has been a violation of Article 2 of the Convention under its procedural limb in respect of the downing of flight MH17;

7. *Holds*, unanimously, that there has been a violation of Article 13 taken together with Article 2 in respect of the downing of flight MH17;

8. *Holds*, unanimously, that the suffering of the next of kin of the victims of the downing of flight MH17 fell within the scope of Article 3 of the Convention and that there has accordingly been a violation of that Article, and *dismisses* the preliminary objection raised by the respondent Government in that regard;

9. *Holds*, by sixteen votes to one, that it is not necessary to examine separately the complaint under Article 13 of the Convention, taken together with Article 3, in respect of the downing of flight MH17;

10. *Declares*, unanimously, admissible the applicant Ukrainian Government's new complaints in application no. 11055/22, namely
    (a) the complaint of an administrative practice under Article 3 consisting of causing suffering exceeding the minimum level of severity through unlawful military attacks and abductions and forced disappearances;
    (b) the complaint of an administrative practice under Article 8 of the Convention consisting of the forced displacement and transfer of civilians, the involuntary displacement of civilians and prevention of their return home, the application of filtration measures, the destruction of homes and personal possessions and the theft and pillage of personal possessions;
    (c) the complaint of an administrative practice under Article 11 of the Convention consisting of unlawful interference with the right to peaceful assembly;
    (d) the complaint of an administrative practice under Article 2 of Protocol No. 1 to the Convention consisting of a failure to ensure a right of access to educational facilities and indoctrination of students;

(e) the complaint of an administrative practice under Article 14 of the Convention, taken in conjunction with the above Articles in respect of the above complaints;
(f) the complaint of an administrative practice under Article 13 of the Convention in respect of administrative practices in breach of Articles 2, 3, 4 § 2, 5, 8, 9, 10 and 11 of the Convention, Articles 1 and 2 of Protocol No. 1 to the Convention and Article 2 of Protocol No. 4 to the Convention;

and the remainder of the new complaints inadmissible;

11. *Holds*, unanimously, that there has been an administrative practice of military attacks in violation of Articles 2, 3 and 8 of the Convention and Article 1 of Protocol No. 1 to the Convention and that it is not necessary to examine separately complaints under Articles 9 and 10 of the Convention and Article 2 of Protocol No. 4 to the Convention in respect of this practice;

12. *Holds*, unanimously, that there has been an administrative practice of extrajudicial killing of civilians and Ukrainian military personnel hors de combat in violation of Article 2 of the Convention;

13. *Holds*, unanimously, that there has been an administrative practice of torture and inhuman and degrading treatment in violation of Article 3 of the Convention;

14. *Holds*, unanimously, that there has been an administrative practice of forced labour in violation of Article 4 § 2 of the Convention;

15. *Holds*, unanimously, that there has been an administrative practice of unlawful and arbitrary detention of civilians in violation of Article 5 of the Convention;

16. *Holds*, unanimously, that there has been an administrative practice of the unjustified transfer and displacement of civilians and application of filtration measures in violation of Article 8 of the Convention;

17. *Holds*, unanimously, that there has been an administrative practice of intimidation, harassment and persecution of religious groups aside from the UOC-MP in violation of Article 9 of the Convention;

18. *Holds*, unanimously, that there has been an administrative practice of unjustified interference with the freedom to impart and receive information and ideas in violation of Article 10 of the Convention;

19. *Holds*, unanimously, that there has been an administrative practice of unjustified interference with the right to peaceful assembly in violation of Article 11 of the Convention;

20. *Holds*, unanimously, that there has been an administrative practice of destruction, looting and expropriation of the property of civilians and private enterprises in violation of Article 1 of Protocol No. 1 to the Convention and, in so far as this practice concerned the destruction and looting of homes and personal possessions, in violation of Article 8 of the Convention;

21. *Holds*, unanimously, that there has been an administrative practice of suppressing the Ukrainian language and indoctrination in education in violation of Article 2 of Protocol No. 1 to the Convention;

22. *Holds*, unanimously, that there has been an administrative practice of the transfer to Russia and, in many cases, the adoption there of Ukrainian children in violation of Articles 3, 5 and 8 of the Convention and that it is not necessary to examine separately the complaint under Article 2 of Protocol No. 4 to the Convention;

23. *Holds*, unanimously, that there has been an administrative practice of failing to secure the rights and freedoms set forth in Articles 2, 3, 4 § 2, 5, 8, 9, 10 and 11 of the Convention and Articles 1 and 2 of Protocol No. 1 to the Convention without discrimination on the grounds of political opinion and national origin, in violation of Article 14 of the Convention;

24. *Holds*, unanimously, that there has been an administrative practice in breach of Article 13 of the Convention, taken in conjunction with Articles 2, 3, 4 § 2, 5, 8, 9, 10, 11 and 14 of the Convention and Articles 1 and 2 of Protocol No. 1 to the Convention;

25. *Holds*, unanimously, that the respondent State has failed to comply with its obligations under Article 38 of the Convention;

26. *Holds*, unanimously, that the respondent State must without delay release or safely return all persons who were deprived of liberty on Ukrainian territory under occupation by the Russian and Russian-controlled forces in breach of Article 5 of the Convention before 16 September 2022 and who are still in the custody of the Russian authorities;

27. *Holds*, unanimously, that the respondent State must without delay cooperate in the establishment of an international and independent mechanism to secure, as soon as possible and with due consideration of

the children's best interests, the identification of all children transferred from Ukraine to Russia and Russian-controlled territory before 16 September 2022, the restoration of contact between these children and their surviving family members or legal guardians and the children's safe reunification with their families or legal guardians;

28. *Holds*, unanimously, that the question of the application of Article 41 of the Convention is not ready for decision and *adjourns* consideration thereof;

29. *Disjoins,* unanimously, application no. 28525/20 from application nos. 8019/16, 43800/14 and 11055/22 for the purposes of the further proceedings only.

Done in English and French and delivered at a public hearing in the Human Rights Building, Strasbourg, on 9 July 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Abel Campos Deputy Registrar	Mattias Guyomar President

ANNEX A

ANNEX B

ANNEX C