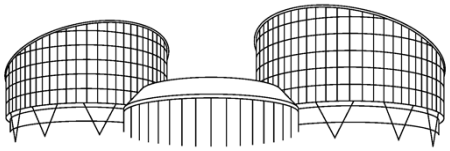

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

GRAND CHAMBER

DECISION

Applications nos. 20958/14 and 38334/18

UKRAINE v. RUSSIA (*RE* CRIMEA)

STRASBOURG

16 December 2020

TABLE OF CONTENTS

LIST OF ABBREVIATIONS

ARC	Autonomous Republic of Crimea
BSF	Black Sea Fleet
BTR	Armoured personnel carrier
CSDF	Crimean Self-Defence Forces
FSB	Federal Security Service of the Russian Federation
HRC	United Nations Human Rights Committee
HRMMU	United Nations Human Rights Monitoring Mission in Ukraine
ICJ	International Court of Justice
OHCHR	Office of the United Nations High Commissioner for Human Rights
OSCE	Organization for Security and Co-operation in Europe
PACE	Parliamentary Assembly of the Council of Europe
SAM	Surface-to-air missile
VDK	Landing craft (BDK in Russian)
VDV	Russian Airborne Troops

The European Court of Human Rights, sitting on 16 December 2020 as a Grand Chamber composed of:

Robert Spano, *President*,
Linos-Alexandre Sicilianos,
Jon Fridrik Kjølbro,
Ksenija Turković,
Angelika Nußberger,
Síofra O'Leary,
Vincent A. De Gaetano,
Ganna Yudkivska,
Aleš Pejchal,
Krzysztof Wojtyczek,
Stéphanie Mourou-Vikström,
Pere Pastor Vilanova,
Tim Eicke,
Latif Hüseynov,
Jovan Ilievski,
Gilberto Felici, *judges*,
Bakhtiyar Tuzmukhamedov, ad hoc *judge*,

and Søren Prebensen, *Deputy Grand Chamber Registrar*,

Having deliberated in private on 11 September 2019, 28 September 2020 and 16 December 2020, and adopted its decision in full on the last-mentioned date,

Decides as follows:

PROCEDURE

1. The case originated in two applications (nos. 20958/14 and 42410/15) 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 Ukraine on 13 March 2014 and 26 August 2015 respectively. Both applications concerned events in Crimea (for the purposes of the present decision, "Crimea" refers to both the Autonomous Republic of Crimea (ARC) and the City of Sevastopol) and Eastern Ukraine.

2. The applications were assigned to the Third and First Sections of the Court respectively, pursuant to Rule 51 § 1 of the Rules of Court. Subsequently, application no. 20958/14 was transferred to the First Section of the Court.

3. The Ukrainian Government ("the applicant Government") were represented by their Agent, Mr Ivan Lishchyna, Representative of the Ukrainian Government at the European Court of Human Rights and Deputy Minister of Justice of Ukraine.

4. The Russian Government ("the respondent Government") were initially represented by their former Agent, Mr Georgy Matyushkin, who was succeeded by their current Agent, Mr Mikhail Galperin, Representative of the

Russian Federation at the European Court of Human Rights and Deputy Minister of Justice of the Russian Federation.

5. On 13 March 2014 the President of the Third Section decided to indicate an interim measure under Rule 39 calling upon both the High Contracting Parties concerned to refrain from taking any measures, in particular military action, which might entail breaches of the Convention rights of the civilian population, including putting their life and health at risk, and to comply with their engagements under the Convention, notably in respect of Articles 2 and 3 of the Convention.

6. The same day it was also decided to give the case priority under Rule 41.

7. As far as events in Crimea are concerned, the applicant Government maintained that from 27 February 2014 the Russian Federation had exercised extraterritorial jurisdiction over Crimea and had been responsible for an administrative practice entailing numerous violations of the Convention. The applicant Government relied on several Articles of the Convention, in particular Article 2 (right to life), Article 3 (prohibition of inhuman treatment and torture), Article 5 (right to liberty and security), Article 6 (right to a fair trial), Article 8 (right to respect for private life), Article 9 (freedom of religion), Article 10 (freedom of expression) and Article 11 (freedom of assembly). They also complained under Article 14 (prohibition of discrimination), Article 1 of Protocol No. 1 (protection of property), Article 2 of Protocol No. 1 (right to education) and Article 2 of Protocol No. 4 (freedom of movement).

8. On 20 November 2014 and 29 September 2015 the respondent Government were given notice of the applications and were invited to submit observations on the admissibility of the complaints before the Chamber. After the time-limit for doing so had been extended, the respondent Government filed their observations on 31 December 2015 and 22 January 2016, and the applicant Government submitted their observations in reply on 23 March 2017. In addition, third-party comments were received from the McGill Centre for Human Rights and Legal Pluralism, Faculty of Law, McGill University, Canada, which had been given leave by the President to intervene in the written procedure (Article 36 § 2 of the Convention and Rule 44 § 3).

9. On 9 February and 29 November 2016 the Chamber divided application nos. 20958/14 and 42410/14 into four separate cases. All complaints concerning events in Crimea remained registered under the above case numbers, while the complaints concerning events in Eastern Ukraine were registered under different case numbers.

10. On 20 February 2018 a Chamber of the First Section composed of Linos-Alexandre Sicilianos, President, Kristina Pardalos, Ganna Yudkivska, Robert Spano, Aleš Pejchal, Dmitry Dedov and Jovan Ilievski, judges, assisted by Abel Campos, Section Registrar, decided to give notice to the parties of its intention to relinquish jurisdiction to deal with the case in favour of the Grand Chamber. On 7 May 2018 the aforementioned Chamber decided

to relinquish jurisdiction in favour of the Grand Chamber, having regard to the fact that neither party had objected to such relinquishment (Article 30 of the Convention and Rule 72 §§ 1 and 4).

11. On 11 June 2018 the two applications were joined, under Rule 42 § 1, and given the new name *Ukraine v. Russia (*re *Crimea)* under application no. 20958/14.

12. On 27 July 2018 the Court decided, under Rule 51 § 3, to obtain the parties' written and oral submissions on the admissibility of the case. The parties were instructed that their memorial on the admissibility of the case "must constitute an exhaustive outline of the party's position on the complaints raised". The Court set the date of the hearing for 27 February 2019 and also invited the parties to reply in writing to a list of questions before the date of the hearing.

13. The applicant Government and the respondent Government each filed observations on the admissibility of the complaints before the Grand Chamber ("memorials").

14. Dmitry Dedov, the judge elected in respect of the Russian Federation, withdrew from sitting in the case as from 1 January 2019 (Rule 28). In accordance with Rule 29, the President decided to appoint Bakhtiyar Tuzmukhamedov, as of 1 January 2019, to sit as an *ad hoc* judge in the case to replace Judge Dedov.

15. On 21 January 2019 the Grand Chamber rejected, under Rule 71 § 1 and, *mutatis mutandis*, Rule 28 § 4, a challenge by the respondent Government to the capacity of Judge Ganna Yudkivska to sit in the Grand Chamber in the present case.

16. On 11 February 2019, ruling on a request by the *ad hoc* judge Bakhtiyar Tuzmukhamedov under Rule 28 § 4, the Grand Chamber held that certain articles published in the press under his authorship were not objectively capable of adversely affecting his impartiality in the present case (Rule 28 § 2 (d)).

17. On 12 August 2019, in reply to a question by the respondent Government about the continued participation in the proceedings of Judge Ganna Yudkivska in view of the expiry of her term of office, the President of the Court ruled that there were no grounds under Article 23 of the Convention and Rule 28 which could justify her withdrawing from the case.

18. After the adjournment of the hearing scheduled for 27 February 2019, the President of the Grand Chamber set the new date of the hearing for 11 September 2019.

19. 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.

20. A hearing on admissibility took place in public in the Human Rights Building, Strasbourg, on 11 September 2019 (Rule 71 § 1 and, *mutatis mutandis*, Rule 51 § 5).

21. There appeared before the Court:

(a) *for the respondent Government*

Mr Mikhail GALPERIN,	*Agent*,
Mr Michael SWAINSTON QC,	*Counsel*,
Ms Iana BORISOVA,	
Mr Pavel SMIRNOV,	
Mr Edward HARRISON,	
Mr Vasily TORKANOVSKIY,	
Ms Sofia SARENKOVA,	
Mr Vadim ZAPIVAKHIN,	
Mr Grigory PROZUKIN,	
Ms Mariia ZINOVEVA,	
Ms Alana SIUKAEVA,	
Ms Kseniia SOLOVEVA,	
Ms Valeriia GRISHCHENKO,	*Advisers*;

(b) *for the applicant Government*

Mr Ivan LISHCHYNA,	*Agent*,
Mr Ben EMMERSON QC,	*Counsel*,
Ms Marharyta SOKORENKO,	
Mr Dmytrii PETRYSHYN,	
Mr Andrii LUKSHA,	*Advisers*.

22. The Court heard addresses by Mr Galperin and Mr Swainston for the respondent Government, and by Mr Lishchyna and Mr Emmerson for the applicant Government, and their replies to questions put by the judges.

THE FACTS

23. The facts as presented by the applicant Government are set out in Section I below (paragraphs 24-141) and those as presented by the respondent Government in Section II below (paragraphs 142-97).

I. THE APPLICANT GOVERNMENT

A. Evidentiary material submitted by the applicant Government

24. In support of their submissions, the applicant Government relied on various documents and other evidence. The relevant parts of some of the reports published by various intergovernmental and non-governmental organisations referred to by the applicant Government are reproduced under "V. Other materials" below (see paragraphs 225-32). A number of bilateral agreements signed between Ukraine and the Russian Federation concerning the presence of the Black Sea Fleet (BSF) of the Russian Federation on the territory of Ukraine are summarised under "II. Relevant bilateral agreements between Ukraine and the Russian Federation" (see paragraphs 201-08 below).

25. The remaining items of documentary evidence relied on by the applicant Government in their submissions are listed immediately below, namely witness statements (see paragraphs 26-27 below); official documents emanating from the Ukrainian national authorities (see paragraph 28 below); various other documents (see paragraph 29 below); and CCTV footage and other visual materials (see paragraph 30 below). It is to be noted that, unless otherwise specified, unnamed or unidentifiable materials (such as articles, internet links, etc.) are not listed below.

1. Witness statements

26. Some of the witnesses' statements relied on by the applicant Government were made in March 2017, specifically for the purpose of supporting the present application. They were taken by the Office of the Agent of the Ukrainian Government before the Court and included the statements made by the following persons:

i. Ihor Voronchenko, deputy commander of the Naval Forces of the Armed Forces of Ukraine for Coastal Defence at the time of the events;

ii. Anatoliy Burgomistrenko, captain of the first rank of the Naval Forces of the Armed Forces of Ukraine and Chief of the Intelligence Headquarters of the Naval Command of the Armed Forces of Ukraine;

iii. Oleksandr Kalachov, a captain in Military Unit 1145 of the Naval Forces of the Armed Forces of Ukraine;

iv. Refat Chubarov, Chairman of the Mejlis of the Crimean Tatar people;

v. Alona Kushnova, judge in the District Administrative Court of the ARC in Simferopol at the time of the events;

vi. Yaroslav Pilunskii, a cinematographer, co-founder of the "Vavylon 13" organisation (association of directors, operators and cinematographers);

vii. Andrii Shchekun, an organiser of the "Euromaidan Crimea" movement;

viii. Anatolii Kovalskii, former member of the Crimean Council of Ministers;

ix. Viktor Get, Head of the Counterintelligence Department of the Security Service of Ukraine in Crimea at the time of the events;

x. Mykhaylo Koval, Director of the Department of Personnel of the State Border Guard Service of Ukraine at the time of the events;

xi. Yulii Mamchur, a former commander of the 204th Tactical Aviation Brigade named after Alexander Pokryshkin – the Air Combat of the Air Command "South" of the Air Forces of the Armed Forces of Ukraine, military unit A 4515;

xii. Olena Maksymenko, a journalist, photographer and writer;

xiii. Dmitriy Delyatytskyy, colonel, commander of the First Separate Battalion of the Marine Corps in Feodosiya, the ARC, at the time of the events;

xiv. Vladyslav Polishchuk, who describes himself in his witness statement as "an active participant in the Revolution of Dignity";

xv. Dmytro Malitskii, Military Commissar of the ARC with the military rank of colonel at the time of the events; and

xvi. Andrii Senchenko, member of the Batkivshchyna Party, former Member of Parliament of Ukraine, former Member of Parliament of the ARC and former Deputy Head of the Presidential Administration appointed by the President of Ukraine.

27. The remaining witness statements relied on by the applicant Government in their submissions were taken in October 2014 and December 2015 by investigators who worked for the offices of the Prosecutor General of Ukraine and the Chief Military Prosecutor, and who were responsible for investigating "crimes against the national security of Ukraine, peace, human security and international legal order", identified as "criminal proceedings no. 42014010470000019 of 3 October 2014". These included the statements made by the following persons:

i. Mykola Obidnyk, Assistant to the Operational Division Chief of Military Unit 4515;

ii. Artem Orlyk, Assistant to the Communications and Radio Support Chief at Military Base A4515;

iii. Oleksandr Zhylin, Deputy Chief of Staff at Military Base A4515;

iv. Oleksandr Kustanovych, Deputy Commander of Military Unit A0959 of the Air Forces of the Armed Forces of Ukraine;

v. Viktor Kukharenko, colonel, Chief of Staff and Deputy Commander of Military Unit A0959 of the Air Forces of the Armed Forces of Ukraine; and

vi. Vasyl Sereda, Chief of the Navigation and Communication Department, Senior Warrant Officer, at Military Unit no. 3053 of the Ukrainian Naval Forces.

2. Official documents emanating from the Ukrainian national authorities

28. The official documents emanating from various Ukrainian national authorities and referred to by the applicant Government in their submissions include the following:

i. Protest notes, sent by the Ministry of Foreign Affairs of Ukraine to the Ministry of Foreign Affairs of the Russian Federation between 26 February and 6 June 2014, in which they detailed the deployment of Russian troops and movements of armaments to Crimea and asked the Russian Federation to withdraw them from the territory of Ukraine. In these notes the Ministry of Foreign Affairs of Ukraine alleged that the actions of the Russian Federation were in breach of Article 6 § 1, Article 8 § 2 and Article 15 §§ 1 and 5 of the Agreement on the Status and Conditions of the Presence of the BSF of the Russian Federation in the Territory of Ukraine (Kharkiv Agreement), dated 28 May 1997 (see paragraphs 202-03 below). The Ministry of Foreign Affairs of Ukraine also emphasised in these notes that it had not approached "the

Russian party with any suggestions or requests for the use of military units of the BSF of the Russian Federation, temporarily stationed in the territory of Ukraine for establishment of public order, the introduction of any anti-terrorist or other security measures" or the provision of any "humanitarian aid from the Russian Federation or the Government of the Russian Federation". In a protest note sent in March 2014 the Ukrainian Ministry of Foreign Affairs referred to the Resolution of 1 March 2014, pursuant to which the Federation Council of the Russian Federal Assembly had given its consent to the President of the Russian Federation for the use of the Armed Forces of the Russian Federation in the territory of Ukraine to normalise the social and political situation in the country (see paragraph 199 below). The Ukrainian Ministry underlined in the same note that, in accordance with the current Constitution of Ukraine and Ukrainian legislation, the approval of decisions on the admission of foreign armed forces in the territory of Ukraine belonged exclusively within the scope of the powers of the *Verkhovna Rada of Ukraine* (Ukrainian Parliament) and that the *Verkhovna Rada* had not taken any such decision;

ii. Letter from the Administration of the State Border Guard Service of Ukraine of 28 February 2014 (reference no. 0.42-1476/0/8-14) addressed to "the First Deputy Minister of Foreign Affairs of Ukraine and the First Deputy Head of the Security Service of Ukraine", providing information on military equipment, including a number of helicopters, entering Crimea;

iii. Letter from the Administration of the State Border Guard Service of Ukraine of 7 March 2014 (reference no. 0.232-1711/0/6-14) addressed to "the Ministry of Foreign Affairs of Ukraine", stating, *inter alia*, that on "7 March 2014 at Crimea-Kuban checkpoint, thirty-seven military vehicles of the Russian Federation illegally entered the territory of Ukraine without passing specified types of State control, using the fact that the border patrol conducting border control had been blocked by a group of armed soldiers of the RF";

iv. Letter from the Ministry of the Interior of Ukraine on 22 March 2014, (reference no. 1/7/-903) addressed to "the Prosecutor General's Office of Ukraine", providing "operational information about the situation in the Autonomous Republic of Crimea and the city of Sevastopol";

v. Letter from the General Staff of the Armed Forces of Ukraine of 24 March 2016 (reference no. 314/5/436) addressed to the "Main Military Prosecutor's Office and the office of the Prosecutor General of Ukraine". Together with this letter, information was provided "about the military units and detachments of the Russian Federation BSF which were stationed in the territory of the ARC before its annexation" and a copy of the Diplomatic note of the Russian Federation (no. 143n/2dsng) of 30 December 2013 was forwarded to the prosecutors;

vi. Letter from the Department of Counterintelligence of the Security Service of Ukraine of 18 April 2014 (reference no. 17/2/1-434-12016) addressed to "the Prosecutor's General's Office", providing information

"regarding the damage and destruction of military objects, property and equipment in the ARC during the period from February to March 2014";

vii. Letter from the Administration of the State Border Guard Service of Ukraine of 30 September 2015 (reference no. 55/1935) addressed to "the Offices of the Chief Military Prosecutor and the Prosecutor General of Ukraine", providing information on troops and military equipment entering Crimea in March 2014;

viii. Letter from the Department of Information and Analytical Support of the Security Service of Ukraine of 4 December 2015 (reference no. 4/3085) addressed to "the Offices of the Prosecutor General and the Chief Military Prosecutor of Ukraine", providing information on "the subversive activity of the RF BSF Commander A. Vitko and Russian military formations subordinate to him";

ix. Letter from the Prosecutor General's Office of Ukraine of 28 November 2016 (reference no. 10/4/1-22437-16-746 Ref.-16) sent to "the Government Commissioner for the European Court of Human Rights" in an apparent response to a request made by the latter, providing information which had been collected in the course of the criminal proceedings concerning "the unleashing and conduct of an aggressive war against Ukraine by the representatives of the authorities of the Russian Federation and the Armed Forces of the Russian Federation";

x. Letter from the Security Service of Ukraine of 9 December 2016 (reference no. 4/3590) and appendices addressed "to the Government Commissioner for the European Court of Human Rights", providing information "regarding illegal activities of the RF in the territory of the AR of Crimea and Sevastopol City";

xi. Letter from the Head of the Department of Special Information Processing of the State Border Guard Service of Ukraine of 14 February 2017 (reference no. 784/12.9.3/17-17) addressed to "the Government Commissioner for the European Court of Human Rights". In this letter information was provided "regarding the crossing of the State border of Ukraine by the indicated persons for the period from 2013 to April 2014"; and

xii. Letter from the Ukrainian Prosecutor's Office of the ARC of 1 March 2017 (reference no. 14/19-11 ref-17) addressed to "the Government Commissioner for the European Court of Human Rights", providing information regarding applications made to the Ukrainian courts "in the interests of children to establish the fact of birth in the temporarily occupied territory". The letter also states that "[i]n the temporarily occupied territory of Ukraine, citizens (who permanently reside on the peninsula) are in fact deprived of important social rights, the possibility of obtaining medical services, certain benefits, etc. without a Russian document".

3. Various other documents

29. The remaining documentary material referred to by the applicant Government in their submissions includes the following:

i. Report of the International Expert Group, published in 2017 and entitled "Case of 26th February. Part 1: Reconstruction and legal analysis of events near the building of the *Verkhovna Rada* of the Autonomous Republic of Crimea in the city of Simferopol on 26th February 2014";

ii. Translation of an article from Russian into English, entitled "The Annexation of Crimea. Anatomy. Part I", written by Andrey Klimenko and published on 7 December 2014 in the online newspaper *Black Sea News*;

iii. Decision of the *Verkhovna Rada* of the ARC (no. 1631-6/14), "On the expression of no confidence in the Council of Ministers of the Autonomous Republic of Crimea and the termination of its activities";

iv. Decision of the *Verkhovna Rada* of the ARC (no. 1656-6/14), "On the appointment of S.V. Aksenov (also referred to as "Aksyonov" or "Aksionov" in some documents, hereinafter referred to as "Aksenov"; leader of the Russian Unity Party) to the post of Chairman of the Council of Ministers of the Autonomous Republic of Crimea";

v. Regulation of the *Verkhovna Rada* of the ARC (no. 1630-6/14), "On the organisation and holding of a republican (local) referendum concerning the improvement of the status and power and authority of the Autonomous Republic of Crimea";

vi. Regulation of the *Verkhovna Rada* of the ARC (no. 1727-6/14) of 11 March 2014 "On the declaration of independence of the Autonomous Republic of Crimea and Sevastopol";

vii. Regulation of the State Council of the Republic of Crimea (no. 1745-6/14) of 17 March 2014 "On the independence of Crimea";

viii. Judgment of the Lutsk Municipal and District Court of Volyn Region of 23 February 2016, in which it found it established that the defendant, S.V., a Ukrainian citizen, had been "awarded the Medal of the Ministry of Defence of the Russian Federation 'For the return of Crimea' for activity in the interests of a foreign country";

ix. Letter from the Ukrainian Helsinki Human Rights Union of 22 March 2017 (reference no. 22/03-02) addressed to "the Ukrainian Government Agent for the European Court of Human Rights", providing information about "gross violations of human rights and international humanitarian law in the peninsula by the authorities of the Russian Federation";

x. Newspaper article entitled "Masked Russians seized our gear: Norwegian journos", published on 11 March 2014 in the online newspaper *The Local*;

xi. The United States Department of State's *Ukraine 2014 International Religious Freedom Report*;

xii. Article published by the Committee to Protect Journalists on 3 March 2014, entitled "Independent media, journalists obstructed in Crimea";

xiii. Crimean Field Mission on Human Rights, Analytical Review, "Brief Review of the Situation in Crimea (June 2014)";

xiv. Reporters Without Borders article "Two journalists released safely after abduction in Crimea", published on 12 March 2014;

xv. Article published by the Committee to Protect Journalists on 13 March 2014, entitled "More journalists obstructed on the job in Crimea";

xvi. Office of the United Nations High Commissioner for Human Rights (OHCHR), "Report on the Human Rights Situation in Ukraine, 15 November 2014";

xvii. Newspaper article entitled "Another Crimean Tatar detained by Russian authorities in Crimea", published on 11 March 2015 in an online newspaper (Censor.net.ua);

xviii. Newspaper article entitled "Ukraine is under a ban in Crimea", published on 5 May 2016 in an online newspaper (podpricelom.com.ua);

xix. Crimean Human Rights Group report, "Crimea: Ukrainian identity banned", published on 5 March 2016;

xx. Press release issued by the International Federation of Journalists on 18 March 2015, entitled "IFJ and EFJ (European Federation of Journalists) Condemn Repressive Actions against Journalists in Crimea";

xxi. Crimean Human Rights Field Mission, "Brief Review of the Situation in Crimea (April 2015)";

xxii. OHCHR, "Human rights situation in Ukraine, 1 December 2014 to 15 February 2015";

xxiii. Award of the Permanent Court of Arbitration of 2 May 2018 in the case of *Everest Estate LLC et al. v. the Russian Federation* (PCA Case No. 2015-36) and award of the Permanent Court of Arbitration of 26 November 2018 in the case of *Oschadbank v. the Russian Federation* (PCA Case No. 2016-14);

xxiv. Award of the Arbitral Tribunal constituted under Annex VII to the 1982 United Nations Convention on the Law of the Sea of 21 February 2020 concerning the Preliminary Objections of the Russian Federation in respect of the *Dispute concerning Coastal State Rights in the Black Sea, Sea of Azov, and Kerch Strait between Ukraine and the Russian Federation* (PCA Case No. 2017-06)

xxv. OHCHR, "Report on the Human Rights Situation in Ukraine, 15 December 2014";

xxvi. OHCHR, "Report on the Human Rights Situation in Ukraine, 16 May to 15 August 2017";

xxvii. Briefing note entitled "Human Rights Violations in Crimea: Ending Impunity", published by the Crimean Human Rights Group for the 72nd session of the United Nations General Assembly;

xxviii. Amnesty International Report entitled "One Year On: Violations of the Rights to Freedom of Expression, Assembly and Association in Crimea", published in 2015;

xxix. Organization for Security and Co-operation in Europe (OSCE) press release of 18 August 2014: "OSCE media freedom representative concerned about ban on journalist from entering Crimea";

xxx. Article entitled "Russia Violates Civil Rights Of Crimean Tatars In Occupied Crimea" published in *Forbes International* on 18 May 2015;

xxxi. Report entitled "The Situation of the Crimean Tatars since the Annexation of Crimea by the Russian Federation" prepared on the basis of information obtained during interviews conducted by an "unofficial Turkish delegation in Crimea", published on 5 June 2015;

xxxii. Crimean Field Mission on Human Rights, Analytical Review, "Brief Review of the Situation in Crimea (April 2014)";

xxxiii. Press release issued by the Office of the OSCE Representative on Freedom of the Media on 5 March 2015;

xxxiv. Diplomatic note of the Russian Federation (no. 143n/2dsng) dated 30 December 2013; and

xxxv. Note by the Ministry of Foreign Affairs of the Russian Federation No. 2770/2deng.

4. CCTV footage and other visual materials

30. The applicant Government also made copies of the following material available to the Court:

i. Several sets of CCTV footage. One set contains footage recorded by over twenty different security cameras positioned, according to the applicant Government, in various locations inside and outside the buildings of the Supreme Council and the Council of Ministers of the ARC. Another set consists of both CCTV footage and footage recorded by, *inter alia*, journalists, of various locations, according to the applicant Government, inside and outside Simferopol Airport;

ii. A documentary, entitled *Crimea: The way home*, aired by the television channel Rossiya, including an interview with President Vladimir Putin of the Russian Federation conducted on 17 April 2014;

iii. A video-conference, broadcast by RIA Novosti, 17 April 2014;

iv. Video-footage of speeches by Sergey Aksenov as Head of the ARC Council of Ministers (see paragraph 29 (iv) above) aired on television at various times;

v. Various sets of footage aired by the ATR television channel; and

vi. An interview with Ihor (Igor) Girkin.

B. The facts of the case as submitted by the applicant Government

31. The applicant Government's version of the facts is mostly drawn from their memorial and partly from their earlier observations. They set it out separately under the headings "The evidence of effective control" and

"Alleged violations of the Convention" and the same order will be followed below.

1. The evidence of effective control

(a) Background

32. In 2010, four operational brigades of elite troops with the most modern weaponry and equipment were formed in the territory of the Russian Federation. In November 2013 they were attached to the Southern Operational Command of the Russian Armed Forces. Formally they were created to ensure safety during the twenty-second Olympic Winter Games in Sochi, Russia. Subsequently, these military forces were moved to Crimea and participated in its "occupation". In his statement of 17 March 2017 Mr Ihor Voronchenko stated that "I am surely aware that the seizure of Crimea was carried out precisely by these military units of the Armed Forces of the Russian Federation". Being among the first Russian units to be fitted in the new uniform, they became known as the "green men" (see paragraph 26 (i) above).

33. From late 2013 onwards, pro-Russian paramilitary actors, including members of the disbanded Berkut Elite Police Unit loyal to former Ukrainian President Yanukovych, began to organise into the Crimean Self-Defence Forces (CSDF). Among the leaders of the CSDF was Ihor (also referred to as "Igor", "Strelkov" or "Shooter" in some documents) Girkin, a former officer of the Russian Federal Security Service (FSB) and subsequently the "Minister of Defence" of the so-called "Donetsk People's Republic".

34. The Russian President Vladimir Putin, in comments to journalists (as quoted in footnote 5 of the Report on the situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol (Ukraine), dated 25 September 2017 ("the OHCHR 2017 report"), asserted, *inter alia*, that "behind the backs of the Crimean self-defence units, there were our soldiers. They acted in a very polite, but decisive and professional manner. There was no other way to help the people of Crimea to express their free will" (see paragraph 30 (ii) above).

35. By the beginning of 2014, in accordance with the bilateral agreements between Ukraine and the Russian Federation (see paragraphs 201-08 below), the Russian BSF was deployed in Sevastopol and certain other, specified, locations in the Crimean Peninsula. According to these agreements, the 810th Separate Marine Brigade and the 1096 Anti-Aircraft Rocket Regiment were lawfully stationed in Crimea. However, the presence of Russian troops and military equipment in Crimea was subject to various conditions and restrictions.

36. With effect from 1 January 2014, the maximum number of Russian troops permitted in Crimea was 10,936. In addition, Russia had authorisation for thirty-two combat waterborne ships; eight combat cutters; four special function ships; fifty-four logistics vessels; eleven logistics cutters; 114 units;

103 armoured combat vehicles; seventy-seven aircraft; and forty-five artillery systems (see paragraphs 28 (v) and 29 (xxxiv) above). Under the relevant agreements, the express consent of Ukraine's Ministry of Foreign Affairs was required for the deployment of additional troops or equipment and for the movement of troops or equipment outside designated Russian bases. Russian units were not allowed to carry out any policing or public order functions.

37. On 24 January 2014 a meeting of the Tavrytska Sotnia of the Tereskii (*Таврицька сотня Терського* – the Cossack Military Union) took place in Sevastopol. During the meeting a statement was issued, affirming the need to create groups to "maintain order" in Sevastopol and noting that the Cossacks were ready to participate actively in aiding the "Law Enforcement Agencies" (see paragraph 29 (ii) above).

38. At around the same time, the Russian Federation began to strengthen its military presence in Crimea by transporting troops by air, land and sea. In summary, in late January 2014 transport aircraft brought contingents of paratroopers to the BSF naval base in the village of Gvardiyske (see paragraph 26 (i) above). On 2 February 2014 nine military aircraft transported further unauthorised military personnel to the airbases at Kacha, Gvardiyske and Khersones. On the same day Russian troops arrived at the ports of Kerch, Feodosiya, Ordzhonikidze and Sevastopol. Up to eight large landing crafts (VDK), unloading further unauthorised troops, entered the ports of Kerch.

39. In relation to unauthorised movement by the BSF between 21 and 23 February 2014, the Ministry of Foreign Affairs of Ukraine sent a formal note of protest to the Russian Federation (see paragraph 28 (i) above). In its response of 28 February 2014 (see paragraph 29 (xxxv) above) the Russian Federation replied that the movement of vehicles had been due to the increased emergency measures for the protection of the BSF deployment locations (airbases of Kacha and Gvardiyske).

40. On the night of 22 to 23 February 2014, during a meeting with the heads of security agencies, the President of the Russian Federation, Vladimir Putin, said that he had taken "the decision to start working on the return of Crimea to the Russian Federation" (see paragraph 30 (ii) above).

41. The following day a column of up to 400 men, in Russian paratrooper (VDV) uniforms, was seen moving from the BSF ships and support vessels located in Sevastopol, towards the training grounds of the 810th separate marine brigade of the BSF (see paragraph 26 (ii) above).

(b) Seizure of control over Crimea (26 and 27 February 2014)

42. On 27 February 2014, over 100 heavily armed men stormed the buildings of the Supreme Council and the Council of Ministers of the ARC. CCTV footage of this operation shows heavily equipped uniformed soldiers entering the buildings. According to the CCTV footage, the seizure of the administrative building started at 4.30 a.m. and was carried out by people in

military uniform who were fully equipped (see paragraph 30 (i) above). Witness testimony confirmed that they were Russian Special Forces (see paragraph 26 (i) above). The Russian flag was raised above the parliament building. Russian soldiers guarded its perimeter, and snipers took up positions on the roof (see paragraph 28 (ix) above). Armed Russian troops in uniform patrolled the vicinity.

43. Mr Shchekun, one of the leaders of the Euromaidan Protests, confirmed in a statement (see paragraph 26 (vii) above) that the so-called "green men" had seized the administrative buildings of the Supreme Council and the Cabinet of Ministers of the ARC.

44. According to the letter of 28 November 2016 from the Prosecutor General's Office of Ukraine (see paragraph 28 (ix) above), "... more than 100 military men, armed with automatic rifles, sniper rifles, machine guns and grenade launchers, of the 45th special separate regiment of the AirF of the AF of the RF and the 7th guards airborne assault (mountain) division of the AirF of the AF of the RF, dressed in civilian and special clothing and being fully equipped, using explosive devices to open the front doors and light-and-sound grenades to overcome the resistance of the guards of the premises, illegally entered the buildings of the *Verkhovna Rada* of the ARC ... [They threatened] representatives of the law-enforcement agencies present in the building with [their] weapons, took possession of their weapons, seized control of the named Government agencies and further established control over their daily activities in order to ensure the adoption of favourable solutions for Russia. After the seizure of these buildings, Russian flags were hung there. The territory around the perimeter was taken under the control of military men armed with automatic small arms, machine guns and grenade launchers from the Russian Federation BSF troops, in military uniforms and fully equipped ..."

45. At 9.00 a.m. on 27 February 2014 Mr Anatolii Volodymyrovych Mogilev, the President of the ARC Council of Ministers, approached the building and attempted to negotiate with the Russian military officers. The Russian officers declined to negotiate with him, insisting that they would communicate only with Mr Vladimir Andreyevich Konstantinov, the Chair of the ARC Supreme Council (see paragraph 26 (i) above). At 10.05 a.m. the building was disconnected from all forms of communication (see paragraph 28 (x) above). CSDF paramilitaries then rounded up and transferred members of the ARC Supreme Council to the Parliament building.

46. Thus forcibly assembled, under duress from armed Russian military personnel, cut off from outside communications and without the requisite quorum, the members of the Supreme Council adopted resolutions expressing no confidence in the President of the ARC Council of Ministers, Mr Mogilev, and dismissing all of the individual members of the Council (see paragraph 29 (iii) above); appointing Mr Aksionov [Aksenov] as head of the ARC Council of Ministers (see paragraph 29 (iv) above); and declaring a

"referendum" on improving the status and powers of the ARC, scheduled for 25 May 2014 (see paragraph 29 (v) above).

47. Mr Igor Girkin stated in an interview that the local militia under his authority had been involved in bringing the members of the Supreme Council of the ARC to the session on 27 February 2014 to vote for the new Prime Minister Mr Aksenov and to adopt the decision in favour of the "referendum", while at the same time they had the support of the Russian military forces, which were located in Sevastopol and in the suburbs of Simferopol (see paragraph 30 (vi) above).

48. On the same day, the Russian Federation dramatically increased its direct military presence in Crimea, without notifying the relevant Ukrainian authorities or receiving authorisation from them. VDK *Azov* delivered a further 300 Russian troops to Crimea and around 200 troops landed aboard the vessels *Turbynyst* and *Zhukov* (see paragraph 26 (ii) above). In the late afternoon 4,500 troops arrived at the Gvardiyske airfield on nine separate military flights. The Ukrainian border guard was prevented from carrying out the necessary inspections.

49. Simultaneously, Russian troops and pro-Russian paramilitaries in Crimea took the following steps to block civilian infrastructure and prevent the Ukrainian military from defending its sovereign territory.

a. At 5.30 a.m. thirty troops from the Russian 76th Guards Paratrooper Division and 3rd Guards Special Purpose Brigade surrounded the perimeter of the military unit A3009 "D" of the Air Forces of Ukrainian Armed Forces near Sevastopol (see paragraph 28 (vi) above).

b. Russian troops, accompanied by members of the CSDF, blocked access to the airport at Simferopol (see paragraph 30 (i) above), the ports of Feodosiya and "Krym–Kavkaz" (Crimea-Caucasus, Kerch strait) (see paragraph 28 (iv) above), as well as the headquarters of the Ukrainian Naval Forces in Sevastopol.

c. At 10.30 p.m., 300 troops of the Russian 810th Marine Brigade and 76th Guards Paratrooper Division, along with three armoured vehicles and two armoured "Tiger" military trucks, blocked the Belbek military airport, home of the A4515 military unit (204th Tactical Aviation Brigade of the Air Forces of Ukraine, Sevastopol) (see paragraphs 28 (x), 26 (xi), 27 (iv), 27 (v), 27 (i), 27 (ii), and 27 (iii) above).

d. Berkut armed troops of Sevastopol (loyal to the former President Yanukovych) took over the checkpoint at Armyansk, on the isthmus between mainland Ukraine and the Crimean peninsula, thereby blocking access to Crimea on the main Simferopol-Kherson highway.

e. Armed Cossack paramilitaries from the Krasnodar Region in the Russian Federation established control over the Perekop checkpoint on the road connecting Chaplynka on the Ukrainian mainland to the Crimean Peninsula (see paragraph 30 (ii) above).

50. Thus, by nightfall on 27 February 2014, the legitimate civilian authorities in Crimea had been removed by force and replaced with agents of

the Russian Federation. Russian troops and paramilitaries had prevented the Ukrainian military forces from leaving their barracks and other Ukrainian units from being transferred from the mainland to the peninsula. Major access points via land, sea and air were blocked by Russian military and paramilitary forces.

51. By the end of that day, Russia had thus occupied Crimea and assumed effective control over the territory. In addition, by this time, Russia had successfully installed a subordinate local administration in Crimea which, as events over the coming weeks would demonstrate, was entirely dependent on Moscow for its military, economic and political support and through which Moscow could wield decisive influence and control over the territory.

(c) The immediate aftermath of the "invasion"

52. Immediately after the events of 27 February 2014 Russia further strengthened its military control over Crimea by illegally deploying even greater numbers of troops and further "incapacitating" the Ukrainian military. The following took place on 28 February 2014.

a. In the early hours of the morning, troops of the 810th Marine Brigade together with Russian Special Forces encircled the territory of military unit A4368, the electronic reconnaissance headquarters of the Ukrainian Naval Forces in Sevastopol. They blockaded the compound and demanded that Ukrainian troops surrender their weapons (see paragraph 28 (ix) above).

b. Before 8 a.m. three officials of the Russian BSF attended the offices of Krymaeroruh and demanded that its staff should provide landing arrangements for Russian military aircraft at Simferopol Airport, without customs control. The request was refused and shortly afterwards twenty armed troops from the 810th Marine Brigade seized the building (see paragraph 28 (x) above).

c. At 8 am the entrance checkpoint and territory of the Ukrainian 5th Maritime Border Guard Detachment (Balaklava) was blocked by fifty troopers in Russian uniform. Russian naval officers then attempted to prevent the Ukrainian border guard vessels from leaving (see paragraphs 26 (ii), 28 (viii), 28 (ix) and 28 (x) above).

d. At 8.45 a.m. more than ten armed helicopters flying from Russia to Ukraine were observed at the technical observation post on Cape Takyl (see paragraph 28 (ii) above).

e. At 8.50 a.m. about fifty uniformed Russian soldiers encircled the territory of Sevastopol maritime border guard detachment ("military unit 2382") (see paragraphs 28 (ix) and 28 (x) above).

f. At 1.30 p.m. Russian soldiers belonging to the BSF drove into the Kirovske military scientific-research centre (military unit A-0156, Feodosiya), which shared territory with the 1st Marine Battalion of the Ukrainian Navy (see paragraph 28 (x) above).

g. At 3.50 p.m. uniformed Russian soldiers blocked the checkpoint of the Ukrainian 174 Surface-to-Air Missile (SAM) Brigade (military unit A3009, Sevastopol) (see paragraph 28 (x) above).

h. The Ukrainian military ship *Ternopil*, command vessel *Slavutych* and deep-sea tug *Korets* were blockaded in Sevastopol bay by the Russian Navy.

i. The Ukrainian military ship *Lutsk*, submarine *Zaporozhie*, command vessel *Donbass*, corvette *Khmelnitski*, missile corvette *Pridneprovie* and missile boat *Pryluki* were blockaded in Striletska bay in Sevastopol by the Russian Navy.

j. On the same day, seventeen uniformed Russian soldiers blocked the checkpoint of the 174th Anti-Aircraft Artillery regiment of the Armed Forces of Ukraine (military unit A3009) (see paragraph 28 (viii) above) and more uniformed Russian soldiers blocked the entry checkpoint of the 42nd regiment of Internal Troops of the Ministry of Internal Affairs of Ukraine (military unit 4110, city of Sevastopol) (see paragraph 28 (x) above).

k. Russian forces cut power and communications supplies to the Ukrainian military unit A1698 in Sevastopol (see paragraph 28 (vi) above) and cut the power cable of the command centre to the Ukrainian military unit A4519 (Yevpatoria) (see paragraphs 28 (vi) and 28 (ix) above).

l. Armed men in Russian uniforms blocked the entry checkpoint of the Electronics Warfare Unit of the Ukrainian Air Forces (military unit A-0879, village of Uyutne), the 5th Airfield (military unit A-4519, Yevpatoria) and the *Nytka* landing simulator for ship-based aviation attached to the 10th naval aviation division of the Ukrainian Naval Forces (military unit A-1100, village of Novofedorivka) (see paragraph 28 (x) above).

m. Uniformed Russian servicemen belonging to the BSF blocked the entry checkpoint of the Ukrainian military unit A-1387, at the operating military airfield (Dzhankoi) (see paragraph 28 (x) above).

n. Later that day, soldiers from Russia's 810th Marine Brigade blocked the billeting accommodation ("*військові містечка*") of the Ukrainian 1st Marine Battalion in Feodosiya (see paragraph 26 (iii) above).

53. The activities of the Russian military during these early days of the "occupation" were aimed at consolidating Russia's military control over Crimea. This allowed Russia to deploy ever-increasing troop numbers, and prevented Ukraine from sending military reinforcement. This was achieved by establishing Russian control over the entry and exit points into and from Crimea by land (the checkpoints at Perekop and Armyansk); by sea (the ferry port at Kerch); and by air (Simferopol, Dzhankoi, Yevpatoria and Kerch Airports). It was also achieved by Russian sabotage operations which blocked or disabled Ukrainian Air Force and Air Defence military units and its reconnaissance and radio warfare units; by operations which blocked Ukrainian ground forces (marines and internal troops) and confined them to barracks; and by operations which blocked Ukrainian Naval and Maritime Border Guard vessels. It was also achieved by the undisguised and

unauthorised mass movement of Russian troops to Crimea through all the available entry points.

54. This activity took place simultaneously throughout the territory of Crimea and it was plainly planned and centrally coordinated. Where the Russian forces encountered resistance (for example, by Ukrainian marines in Feodosiya), they took the families of the Ukrainian soldiers hostage. According to the applicant Government, this plainly unlawful military strategy was widely used by the Russian forces during the "annexation" of Crimea, as President Putin had admitted.

(d) Consolidation of control over Crimea (1 to 16 March 2014)

55. Between late February 2014 and 19/20 March 2014, all Ukrainian service personnel were blocked by Russian troops and forces of the CSDF in their barracks, deprived of communication with the outside world. Some Ukrainian officers were captured and deprived of liberty (see paragraph 26 (xv) above). At least nine Ukrainian officers were held in custody by Russian units (Mr Voronchenko, Mr Mamchur, Mr Delyatytskyy, Mr Lomtiev, Mr Kalachov, Mr Nechyporenko, Mr Haidyk, Mr Koval and Mr Demyanenko (see paragraphs 26 (i), 26 (xi), 26 (xiii), 26 (iii) and 26 (x) above).

56. Those deprived of their liberty were unlawfully detained by either the CSDF or by the Russian military. The treatment of many of those taken into custody demonstrated close cooperation between the CSDF, the local collaborators and the Russian military. Thus:

a. The CSDF operated in close cooperation with the Russian FSB and the Russian army. The FSB issued weapons to the CSDF. The latter operated in support of the Russian troops to blockade Ukrainian military units and jointly manned checkpoints. The CSDF militias seized the Ukrainian military personnel, journalists and activists and handed them over to the Russian military; and

b. The Berkut special police unit was stationed at Chongar checkpoint together with CSDF and Russian troops. This unit arrested Ukrainian activists and handed them over to the CSDF.

57. Those who were unlawfully detained were kept in two principal facilities: the Ukrainian Military Commissariat in Simferopol (which was taken by force by the CSDF on 8 March 2014) and the BSF Military Prison in Sevastopol. The hostages in the Commissariat were often kept blindfolded, in an underground sauna, where many of them underwent torture including beatings, electrocution and other forms of abuse. The BSF Military Prison was used to detain Ukrainian civilian activists and military personnel. Detainees were kept incommunicado interrogated by Russian officers wearing balaclavas, ill-treated and subjected to mock executions.

58. During March and April 2014 the Ukrainian authorities negotiated the release of forty hostages. The level of cooperation between the Russian

authorities and the CSDF is illustrated by the fact that the Russian Deputy Minister of Defence conducted the negotiations on the Russian side for the release of hostages held at both locations (see paragraph 26 (xvi) above). His decision to release the hostages was carried out by the CSDF.

59. By 12 March 2014 a total of 18,430 Russian soldiers had been deployed in the Crimean peninsula and controlled it. On 15 March 2014 that figure had increased to 19,908, of whom only 11,370 were servicemen of the Russian Federation's BSF (all the rest were servicemen from other formations and units of the Armed Forces of the Russian Federation who had been transferred illegally to Ukrainian territory). On 18 March 2014 there were over 22,000 servicemen of the Russian Federation in Crimea.

(e) "The annexation of Crimea and the referendum"

60. On 1 March 2014 Mr Aksenov called on the President of the Russian Federation to ensure peace and security in Crimea. At Mr Aksenov's request, armed men in uniform under the direction and control of the Russian Federation established checkpoints at the entry to the peninsula. Further unauthorised movements of Russia's BSF deployed in Crimea under a bilateral agreement took place within Crimea.

61. On 6 March 2014 the ARC Supreme Council purported to take a decision to "annex" the Crimean Peninsula to the Russian Federation without holding any form of plebiscite. However, and in apparent contradiction to that decision, it rescheduled the "referendum", this time for 16 March 2014. On 11 March 2014 (that is, prior to the "referendum") the Supreme Council of the ARC adopted a "declaration of independence of Crimea and Sevastopol" (see paragraph 29 (vi) above). The "declaration" was immediately recognised as lawful by the Ministry of Foreign Affairs of the Russian Federation. That act was, in itself, a violation of international law and a grave infringement of Ukraine's sovereignty.

62. On 15 March 2014 – that is, the day before the "referendum" – representatives of the Russian FSB issued AK-74s and ammunition to the CSDF (see paragraph 28 (iv) above).

63. The "referendum" was held on 16 March 2014. The following day, on 17 March, the Supreme Council of the ARC "proclaimed" the independence of Crimea (for the second time).

64. On 18 March 2014 the Russian Federation, the "Republic of Crimea" and the City of Sevastopol (represented by the "People's Mayor" Aleksey Chalyy) signed the "Treaty of Unification", which referred to the "proclamation" of 17 March 2014. The "treaty" was to take effect on 1 April 2014 (see paragraph 209 below).

65. On 20 March 2014 the State Duma of the Russian Federation voted to "accept" Crimea and Sevastopol and ratified the "treaty" of 18 March 2014. On 21 March 2014 the Federation Council "joined" Crimea and Sevastopol

to the Russian Federation, ratified the "Agreement" of 18 March 2014 and adopted a Constitutional Law to that effect.

66. After the "annexation" of Crimea, the State Council of Crimea passed the Law of the Republic of Crimea of 17 July 2014 (no. 22-ЗРК) on People's Militia, which legalised the CSDF. The Ministry of Defence of the Russian Federation awarded a State medal "For the return of Crimea" to the troops of the CSDF (see paragraph 29 (viii) above).

(f) Chronological list of troop movements and deployment of military equipment in Crimea

67. Concerning their allegations of troop movements and military equipment deployment in Crimea from 1 March 2014, in their memorial the applicant Government referred to their earlier observations on admissibility submitted to the Chamber on 23 March 2017 (which were also submitted to the Grand Chamber in the annex to their memorial), in which they had set out the following.

68. On 1 March 2014 at 5 a.m. signal no. 35 ("military danger") was declared, as a result of which the BSF were brought to the highest level of alert (see paragraph 28 (x) above). As a consequence, from 1 March 2014 up to 6,000 men from the 45th VDV special purpose regiment, the 3rd and 22nd special purpose brigades and the 76th and 98th airborne divisions of the Russian Federation's Armed Forces were already deployed in Crimea (see paragraph 26 (ii) above). Also, twelve MI-24 armoured helicopters were transferred from Russia to the Kacha airbase without the consent of Ukraine (see paragraph 26 (ii) above).

69. Furthermore, on 1 March 2014 at 4 p.m. eleven warships of the Russian Federation were stationed in the outer harbour of Sevastopol. At 9 p.m. a VDK started to unload in Cossack Bay and between 10.20 p.m. and 11.25 p.m. it unloaded four Ural trucks and a BTR–80 with military personnel. At 11.50 p.m. VDK *Ilyinsk* unloaded four Urals, sixteen BTR-80s and up to 400 military personnel. On the same day at 9.10 p.m. two VDKs from the Russian Federation's Baltic Fleet, *Kaliningrad* and *Minsk*, entered the port of Sevastopol without the permission of the State Border Guard Service of Ukraine. Given that it would usually take one month for these ships to reach Sevastopol (see paragraph 27 (vi) above), in order to arrive there on 1 March 2014 the ships must have been dispatched on or around 1 February 2014.

70. At 1.40 a.m. VDK *Nicholay Filchenkov* unloaded up to 600 military personnel. At 6 a.m. ten IL-76 aircraft and one AN-124 landed in Simferopol with approximately 2,000 men and forty BTRs on board. Two SU-24 bomber aircraft provided flight protection for the transport of those aircraft over the Azov Sea and created obstacles to prevent them from being detected by radar (see paragraph 26 (ii) above).

71. At 7 a.m. the landing craft *Olenegorskiy Gornyak* and *Georgy Pobedonosec* entered Kamyshov Bay and unloaded twenty-three Tiger light military trucks, three Kamaz trucks and one Ural truck (see paragraph 26 (ii) above). VDKs of the Baltic Fleet (*Kaliningrad* and *Minsk*) and the Northern Fleet (*Gornyak*) breached the Ukrainian State border, completing their entry into the port of Sevastopol without the permission of the competent authorities of Ukraine (see paragraph 28 (i) above).

72. On 2 March 2014 at 5.50 a.m. VDK "*Gornyak"* was detected moving west, towards Sevastopol. This ship entered the territorial waters of Ukraine without the permission of the State Border Guard Service of Ukraine.

73. On the same day a column of Tiger light military trucks was spotted in Sevastopol, bearing number plates of the Russian Federation.

74. On 3 March 2014 at 6 p.m. up to 100 armed servicemen of the BSF arrived at the "Crimea" (ferry) checkpoint of the Kerch detachment of the Simferopol Border Guard Department (importantly, there were no Russian military units stationed in Kerch). Gunmen took firing positions on the checkpoint's perimeter. Later that day three Kamaz vehicles with armed servicemen of the BSF inside arrived on the ferry *Nikolay Aksenenkov* from Russia. They unloaded despite the Ukrainian border guards' attempts to stop them, and forced their way into Crimea despite the Ukrainian border guards' protests. Subsequently, sixty armed servicemen of the Russian Federation's Armed Forces captured the building of the Border Guard Unit. These events were recorded by the television channel ATR (see paragraph 30 (v) above).

75. From 3 March 2014 servicemen from the Russian Federation's Armed Forces began transferring military personnel and equipment from the Krasnodar Region (Russia) to the territory of Crimea (Ukraine) using civil ferries. They were guarded by BSF servicemen and also by members of the Cossack units (see paragraph 26 (iii) above).

76. On 3 March 2014 armed people arrived on the ferry *Yelsk* and were stopped by Ukrainian border guards. Inside one of the vehicles the border guards found ten armed men, who then captured the ferry. More military vehicles and personnel arrived on the next ferry and, together with the gunmen already at the port, captured the Kerch Department of the State Border Guard Service of Ukraine.

77. On the same day, six BTR–80s and fifty military personnel were observed in Bakhchisaray. Thirty armed VDV servicemen of the Russian Federation's Armed Forces and a Kamaz vehicle were seen near the centre of the registration and examination unit (see paragraph 26 (ii) above).

78. Moreover, four Volvo cars and 120 military personnel moved towards the village of Novoozerne and in the direction of the isthmus connecting Crimea with the continental part of Ukraine. The 96th anti-aircraft regiment of the BSF also made preparations to move towards the Perekop isthmus. Furthermore, ten BTR-80s were seen moving in Chongar. The radio engineering unit of the Ukrainian Air Forces, which was located at Meganom

Cape, was captured by the Russian troops on the same day (see paragraph 26 (ii) above).

79. On 3 March 2014 nine IL-76 aircraft belonging to the Russian Federation's Armed Forces landed at the Gvardiyske airbase without the permission of the relevant authorities and while maintaining radio silence (see paragraph 28 (i) above).

80. On 5 March 2014 four VDKs, namely *Olenegorskiy Gornyak*, *Minsk*, *Kaliningrad* and *Georgy Pobedonosec*, secretly unloaded troops and vehicles in Cossack Bay (Sevastopol city). Subsequently, thirty Kamaz trucks (carrying approximately 900 servicemen) moved from the bay (see paragraph 26 (ii) above). At the same time, the VDK *Azov* unloaded seven BTR-80s, four Urals, one Kamaz and two anti-aircraft warfare "OSAs" (see paragraph 26 (ii) above). On 5 March 2014 at 7 p.m., units in the BSF declared "combat alert" (see paragraph 28 (x) above).

81. The Vostok 1st mechanised battalion of the 18th separate mechanised brigade (whose uniforms bore "chevrons" indicating that they were of Chechen nationality), the VDV 31st airborne brigade (Tolliatty city) and the 22nd special purpose brigade of the Russian Federation's Armed Forces were observed near Dzhankoi. Also on the same day, very large numbers of CSDF personnel and students from Russian universities were observed. Flags were distributed to the students, who, according to the applicant Government, were then deployed to fake popular support for joining the Russian Federation (see paragraph 26 (ii) above).

82. On 6 March 2014 at 12.10 p.m., six Kamaz trucks carrying approximately 150 armed men in black uniforms from the Russian Federation arrived by ferry at the "Crimea" checkpoint. The State Border Service personnel, who were operating out of a checkpoint at the time, were blocked by armed servicemen of the Russian Federation's Armed Forces (see paragraphs 28 (vii) and 26 (iii) above).

83. Also on 6 March 2014 the VDKs *Saratov* and *Yamal* unloaded a number of servicemen and military equipment at Cossack Bay (Sevastopol city) (see paragraph 28 (x) above). Furthermore, a battalion of servicemen from the Chechen Republic (possibly the Vostok special unit) arrived in Crimea the same day. The commander of this battalion liaised personally with S. Aksenov (see paragraph 28 (x) above).

84. On 7 March 2014 thirty-seven military vehicles belonging to the Russian Federation's Armed Forces arrived at the Crimea-Kuban checkpoint (Kerch ferry) and entered the territory of Ukraine without complying with any of the requisite control measures. Border guard patrols were blocked by a group of armed servicemen. Later, at 1 p.m. the operation of the checkpoint was blocked by representatives of the CSDF (seventy-five men), who then facilitated the entry of six military trucks with Russian number plates (see paragraph 28 (iii) and (viii) above). Vehicles moved through the centre of Kerch along the central market, towards Feodosiya (see paragraph 26 (iii) above).

85. At 9.30 a.m. the VDK *Georgy Pobedonosec* unloaded fifty military personnel, three BTR-80s, two UAZ-452s and ten PAZ buses in Sevastopol. The buses then proceeded to the centre of Sevastopol, where they were used for transporting local CSDF members (see paragraph 26 (ii) above).

86. The VDK *Kaliningrad* unloaded seventeen Ural trucks, two BTR-80s and up to 500 military personnel in Cossack Bay between 3.20 p.m. and 4.20 p.m. (see paragraph 26 (ii) above).

87. On 8 March 2014 between 9 a.m. and midday, twenty-five Kamaz trucks and six Ural trucks belonging to the Russian Federation's Armed Forces, which had arrived on two ferries, forced their way through the "Crimea" checkpoint while the border guard patrols at the checkpoint were physically restrained by the servicemen of the BSF (see paragraphs 28 (vii) and 26 (iii) above).

88. On the same day the Russian Army started establishing field camps, in particular in the vicinity of Opuk Cape, with a view to hosting the military personnel and parking the vehicles which had been transferred from the Russian Federation into Crimea. Also, 500 soldiers from the artillery detachment of the 7th VDV division arrived in Novorossiysk in order to move into Crimea. Up to 600 military personnel and vehicles from the 106th paratroopers division waited at the Tula airbase for their transfer to Crimea (see paragraph 26 (ii) above).

89. On 9 March 2014, thirty-six additional Kamaz trucks and six Grad multiple rocket launchers belonging to the Russian Federation's Armed Forces arrived in Crimea via the Kerch ferry (see paragraphs 28 (x) and 28 (vii) above). In addition, five VDKs, including *Saratov*, *Kaliningrad*, *Georgy Pobedonosec* and *Azov*, entered Cossack Bay and unloaded up to 800 servicemen, eighty trucks, fifteen BTR-80s, six UAZ cars, twenty Tiger light military trucks and ten PAZ buses (see paragraph 26 (ii) above). The 17th separate guards motorised rifle brigade units belonging to the Russian Federation's Armed Forces (whose base is in Shali, Chechen Republic) also arrived in Crimea (see paragraph 26 (ii) above).

90. Between 8 and 10 March 2014, the 136th separate motorised rifle brigade (stationed in Buinaksk, Dagestan), 430 servicemen, six BM-21 "Grad" multiple rocket launchers, fifty-four different vehicles and engineering equipment from the 45th separate engineering guards brigade (stationed in the village of Nakhabino, Moscow region), arrived in Crimea and were stationed in the Opuk Cape field camp. Also, up to 1,500 Cossacks arrived at hotels and resorts in the Sevastopol area (see paragraph 26 (ii) above).

91. On 10 March 2014 up to 1,000 military personnel from the Russian Federation's Armed Forces were stationed at the Opuk Cape camp. Another field camp with up to 500 servicemen was also set up near the village of Oboronne. The Kacha airbase hosted up to 750 people, whereas the Gvardiyske airbase hosted up to 1,850 men. The 41st brigade of missile boats hosted 400 military personnel, the anti-aircraft missile regiment of the

Russian Federation's Armed Forces hosted up to 150 men and the hospital ship *Yenisei* hosted up to 500 servicemen. Up to 800 soldiers were stationed at the BSF training camp and up to 500 soldiers at the 810th separate marine brigade (see paragraph 26 (ii) above).

92. At 7 p.m. intensive movements of military vehicles were observed in the north of the base camps at Opuk. In particular, fifty-six Kamaz trucks and twelve multiple rocket launcher Grad BM-21s were observed leaving the camp (see paragraph 26 (ii) above).

93. On 10 March 2014 at 7.30 a.m., ten Kamaz trucks, which had arrived on a ferry, forced their ways through the "Crimea" checkpoint in Kerch. The border guard patrol of the checkpoint was physically restrained by BSF servicemen during the passage of the trucks (see paragraph 28 (vii) above).

94. On 11 March 2014 at 9.50 a.m. nine Kamaz trucks and six BTRs from the Russian Federation's Armed Forces, which had also arrived on a ferry, forced their way through the "Crimea" checkpoint into the territory of Ukraine in the same manner (see paragraph 28 (vii) above).

95. On 11 March 2014 at 1 p.m. a communication control centre (including space communications node) was deployed near the Dzhankoi Airbase.

96. On 11 March 2014 the television channel ATR recorded on video the movements in Crimea of columns of military vehicles (BTRs) without any markings (see paragraph 30 (v) above).

97. On 12 March 2014 the ATR television channel also recorded on video the movements in Crimea of a Russian helicopter MI-24, the reactive rocket system Grad, a column of Russian BTRs moving along a track near Dzhankoi, a column of military equipment without licence plates and also military men in uniform and in full gear (helmets and body armour and armed with assault rifles). In Kerch the ATR channel recorded a column of trucks with Russian flags and adorned with slogans "Humanitarian help. Russian motorcyclist – for Sevastopol" and "Humanitarian help. Stalingrad-Sevastopol", as well as a column of military vehicles without number plates (see paragraph 30 (v) above).

98. Also on the same day, units from the 131st separate motorised rifle brigade of the 7th military unit (from Gudauta city, Abkhazia) were seen in Crimea. At 6.30 p.m. they crossed the Kerch strait (see paragraph 26 (ii) above). Moreover, during the course of the same day forty-four BTRs and fifty-eight Kamaz trucks from the Russian Federation's Armed Forces entered Ukraine via the Kerch ferry crossing after the border guard patrols of the checkpoint were physically blocked by the BSF servicemen (see paragraph 28 (vii) above). During the night a military convoy passed Kerch, continued along the main road, and arrived at the Opuk Cape camp. This was confirmed by a video recording (see paragraph 26 (iii) above).

99. Electronic warfare units on Tiger and Kamaz vehicles were seen near the village of Novoozerne (see paragraph 26 (ii) above).

100. On 13 March 2014 the VDK *Azov* unloaded one BTR-82, two Tiger trucks and eight Kamaz trucks; the VDKs *Saratov* and *Georgy Pobedonosec* unloaded 150 military personnel and seventeen vehicles; and the VDK *Olenegorskiy Gornyak* unloaded 100 servicemen, six Kamaz trucks and nine BTRs in the area of Feodosiya (see paragraph 26 (ii) above).

101. On 14 March 2014, 144 transport vehicles (112 trucks with military personnel, twenty-nine special vehicles, three Tiger trucks) broke through into Ukraine via the Kerch ferry crossing after the border guard patrols were restrained by BSF servicemen (see paragraph 28 (vii) above).

102. Furthermore, on 14 March 2014 the following military vehicles and equipment from the Russian Federation's Armed Forces arrived in Crimea via ferry at the Kerch trading port (see paragraph 28 (vii) above):

– military echelons of 9K57 Uragan multiple rocket launchers. In the echelons there were twelve launchers and ten TZM (transport-charging machines); and

– military echelon with fourteen C-300 long-range, SAM systems; four BTRs of communication equipment; five Kamaz and four Ural trucks and four tilted Urals (see paragraph 28 (vii) above).

103. From 14 March 2014, the Russian Federation's Armed Forces denied the Ukraine Border Guards access to the "Crimea" checkpoint.

104. On 15 March 2014 a train carrying military vehicles belonging to the Russian Federation's Armed Forces travelled through the Kerch ferry crossing. It delivered four batteries of short-range tactical SAM OSAs; engineering equipment; four armoured tractors; mobile diesel generators; tank cars; and four UAZs. While it was moving through Kerch station, the train was filmed by a witness using the camera of his mobile telephone. At about 6 p.m. the same day, the train arrived at the village of Gvardiyske (near Simferopol) and unloaded its cargo at the military airbase of the BSF (see paragraph 26 (iii) above). Military vehicles of the Russian Federation's Armed Forces continued to be transported around Crimea by railway from Kerch (see paragraph 26 (iii) above).

2. Alleged violations of the Convention

105. The applicant Government submitted the allegations set out in the "Complaints" part below (see paragraphs 233-34) as the basis of the present application.

106. The applicant Government described their version of the events under this heading with reference to two time periods, namely "The first phase (17 February to 21 March)" and "The second phase (after 21 March 2014)". The applicant Government's version of the events will be set out below in the same order and with reference to the documents relied on by the applicant Government.

(a) The first phase (17 February to 21 March 2014)

107. During the early stages of the "occupation", Russian soldiers and the CSDF acting in concert focused on violently suppressing all forms of dissent against the Russian "occupation", concentrating particularly on Ukrainian military personnel and pro-Ukrainian and Tatar civilian activists and journalists (see paragraphs 29 (ix) and 26 (iv) above). Forms of repression included threats, beatings, forced disappearances, torture and murders, unlawful arrest and detention, false criminal charges, discrimination on the grounds of political opinion or other prohibited grounds, and expropriation of property.

108. The active operations by Russian military and paramilitary groups, using lethal force in Crimea in February and March 2014 resulted in deaths, disappearances and bodily harm of Ukrainian citizens. Examples include the following.

a. On 3 March 2014 Reshat Ametov, a Crimean Tatar, disappeared. He was last seen at a pro-Ukrainian rally in the centre of Simferopol, in front of the Council of Ministers of Crimea. His body was found ten days later in the village of Zemlyanichnoye in Belogorsk. The body bore marks of torture, the head was bound with duct tape and the legs were shackled (see paragraph 29 (ix) above). There are indications that he was killed by the CSDF in the Republican Military Commissariat of the BSF in Simferopol (see paragraphs 26 (vii) and 26 (viii) above and paragraph 227 below).

b. On 18 March 2014 Sergii Kokurin (see paragraph 28 (i) above), warrant officer of 13th Photogrammetric Centre of the Main Directorate of Operational Support of the Armed Forces of Ukraine, was shot by a Russian sniper during the storming of his unit by Russian troops and the CSDF (see paragraphs 26 (iv) and 26 (ix) above). Also, Captain Valentyn Fedun was wounded in the neck and arm during this onslaught.

c. On 15 March 2014 Mr Vasyl Chernysh, a Sevastopol resident and Automaidan activist, disappeared. Several days before his disappearance, he had assisted in the release of Ms O. Ryazantseva and Ms K. Butko, other Automaidan activists kidnapped by the CSDF. Neither he nor his body had been recovered.

109. None of these cases were properly investigated. Examples of such failure provided by the applicant Government are outlined below.

110. During the active phase of "occupation" of Crimea, Russian military and security personnel, the CSDF and local collaborators committed numerous instances of "kidnapping", torture, unlawful detention and subjection to inhuman or degrading conditions of detention in respect of Ukrainian military personnel, pro-Ukrainian and Tatar activists and journalists, as outlined below.

a. Ukrainian military personnel were systematically detained and held in the Military Prison of the military base of the BSF in Sevastopol and the Republican Military Commissariat (Conscription Centre) in Simferopol.

b. On March 2014 Colonel General M. Koval of the State Border Service of Ukraine was abducted by Russian soldiers dressed as "Night Wolves" biker club members. They beat him up and held him in unlawful captivity for several hours (see paragraph 26 (x) above).

c. Admiral I. Voronchenko (then colonel; see paragraph 26 (i) above) and Colonel Yu. Mamchur (see paragraph 26 (xi) above) were kidnapped on 22 March 2014, while Colonel D. Delyatytskyy (see paragraph 26 (xiii) above) was captured on 24 March 2014. They were transported to the BSF Military Prison in Sevastopol and unlawfully held there for several days before being released.

d. Captain O. Kalachov (see paragraph 26 (iii) above) was detained in Kerch by former Ukrainian Security Service officers who had defected, was held for some time in the building of the Security Service in Simferopol, and was subsequently also taken to the Military Prison, where he spent fifteen days. On 9 April 2014 he was subjected to a mock execution.

e. On 1 March 2014, three unknown persons in uniform refused to allow Mr Viktor Get (see paragraph 26 (ix) above) to leave the building of the Security Service in Simferopol.

f. During their detention in the Military Prison, the Ukrainian officers were held in conditions contrary to Article 3 (solitary confinement, torture by noise).

g. Also on 9 March 2014, in the town of Bakhchisaray the commander of the car battalion of military unit A2904, Mr V. Sadovnyk, was kidnapped.

h. Others unlawfully detained included three servicemen of military unit F0515, M. Zentsev, S. Lyuzak and M. Vovk, (all three were held in the Military Prison from 2 to 10 March 2014), Senior Lieutenant O. Filipov (from 12 to 27 March 2014 he was held in an unknown place), Lieutenant Colonel of the Medical Service E. Pivovar (from 14 to 16 March 2014 he was held in an unknown place), Commander Lieutenant Colonel A. Kalyan (from 17 to 21 March 2014 he was held in an unknown place), Lieutenant Colonel V. Necheporenko (from 18 to 19 March 2014 he was held in an unknown place), Rear Admiral Mr S.A. Gayduk (from 19 to 20 March 2014 he was held in an unknown place), Colonel O. Saphronov (on 20 March 2014 he was held in an unknown place) and Major S. Dashko (on 20 March 2014 he was held in an unknown place).

i. Pro-Ukrainian activists and journalists were also held in the Military Prison. In particular, Ms Olena Maksymenko (a journalist; see paragraph 26 (xii) above) stated that she and Mr Oles Kromplyas (a photographer) had been detained together with Mr Yevgen Rahkno, Ms Oleksandra Ryazantseva and Ms Yekateryna Butko. They were interrogated and tortured by the CSDF on 9 March 2014 at Chongar checkpoint, and then taken by Russian soldiers to the BSF military base. She was held in the Military Prison from 9 March 2014 to 11 March 2014. Mr Polishchuk was also detained in the Military Prison at the same time by members of the CSDF in Sevastopol. He was

subsequently handed over to Russian military personnel (see paragraph 26 (xiv) above), and was detained for sixteen days.

j. Mr Yaroslav Pilunskii and Mr Yurii Gruzinov were also held in the Military Prison. They were detained by the CSDF on 16 March 2014 in Sevastopol. Both were journalists and were detained when they tried to film the voting process during the "referendum". They were then handed over to Russian military personnel, who took them to the Military Prison, where they were subjected to torture (see paragraph 26 (vi) above). They were released on 20 March 2014.

k. There were also numerous short-term detentions of journalists and activists, without lawful reason or due process. For example, Mr I. Kiriuschenko was apprehended at his home on 10 March 2014 by representatives of the "Russian block" group. He was forced to leave his home in Crimea, together with his family. On 11 March 2014, a film crew from the Norwegian public broadcaster NRK was detained by unknown persons in uniform without insignia at the checkpoint on the way from Crimea (see paragraph 29 (x) above).

l. The rector of the parish of the Assumption of the Blessed Virgin Mary (Ukrainian Greek Catholic Church), Father M. Kvych, was detained in his church on 15 March 2014, by representatives of the "special services".

111. The Commissariat was the place of detention and torture of pro-Ukrainian activists and some military personnel by the CSDF. The leader of the Crimean Euromaidan, Mr Andrii Shchekun, and a public activist, Mr Anatolii Kovalskii, were held there for eleven days. Their accounts were documented in their witness statements (see paragraphs 26 (vii) and 26 (viii) above).

a. Mr Andrii Shchekun was kidnapped on 9 March 2014 by the CSDF and held for a short period in the Simferopol Railway Station Police Station. He was then handed over to people in civilian clothes and balaclavas, who took him to a van, blindfolded him with duct tape and took him to an unknown building, which in all probability was the Commissariat. There he was held for eleven days. He was blindfolded throughout this period. He was beaten, cut with a knife, electrocuted several times, fired at from a pneumatic gun (about twenty shots), forced to sit naked on a chair in a cold room with hands and feet tied to the chair by tape, and deprived of food and sleep. The interrogators demanded information about his alleged grant financing from the United States and Canada. Following his release, Mr Shchekun was treated by Ukrainian doctors, who confirmed that he had been subjected to torture.

b. Mr Kovalskii was similarly blindfolded, beaten, threatened and subjected to psychological pressure.

c. Mr Shchekun and Mr Kovalskii stated that there were approximately fifteen other inmates, who were held with them in the same inhuman conditions. Some of them were civilian activists. Others were Ukrainian military and security personnel. A number of the prisoners were also

subjected to torture. After several failed attempts at negotiation, they were eventually released on 20 September 2014.

112. The perimeter of the Commissariat was guarded by Russian military officials (see paragraph 28 (iv) above), who were stationed nearby (see paragraph 26 (xv) above). The unit itself was controlled by the CSDF, who were armed by the Russian forces. Russian State agents were thus closely involved with the activities of those subordinate forces committing Convention violations at this facility, and they either knowingly facilitated or tolerated their actions. Furthermore, the eventual release of the hostages on various dates was negotiated between Mr Andrii Vilenovych Senchenko, Deputy Head of the Administration of the President of Ukraine, and the leadership of the Ministry of Defence of the Russian Federation. It followed that the Russian authorities had control not only over the hostages held in the Military Prison, but also over those held in the Commissariat prior to 21 March 2014.

113. Priests of Christian confessions other than the Russian Orthodox Church were forced by the CSDF to leave Crimea. Two of those expelled were Rev. Mykola Kvych (priest-chaplain of the Ukrainian Greek Catholic Church) and Rev. Bogdan Kostetskyy (priest of the Ukrainian Greek Catholic Church) (see paragraph 29 (xi) above). Parishioners of Christian confessions other than the Russian Orthodox Church were similarly targeted and precluded from entering their churches (ibid.).

114. Suppression of the independent media was an important tool of the Russian "occupation". News agencies were raided and a television broadcaster shut down. On 1 March 2014, all Ukrainian television channels except ATR were banned from Crimea (and have remained so; see paragraph 26 (iv) above). On the same day, Ukrainian channels were jammed by the Russian army, in order to prevent them from broadcasting into Crimea. Hromadske recorded Russian troops using KAMAZ trucks blocking the tower of TRC-Crimea (the principal broadcasting station of Crimea). On 1 March 2014 the building of the Centre for Investigative Journalism, an agency based in Simferopol that runs investigative projects and journalist training, was stormed and briefly occupied by CSDF (see paragraph 29 (xii) above).

115. In place of the Crimean Tatar and Ukrainian television channels, Russian television channels, such as NTV, Rossiya and Rossiya 24, were launched. On 29 June 2014, the local providers of cable television in Simferopol stopped broadcasting such Ukrainian television channels as Inter, 1+1, 2+2, 5 channel, ICTV, Novyy kanal, News 24, HTH and Rada, and switched to broadcasting Russian television channels (see paragraph 29 (xiii) above).

116. Attacks on foreign journalists also took place. On 11 March 2014, armed men detained three identified journalists of the Norwegian public broadcaster NRK and confiscated their reporting equipment. According to NRK, a group of about twenty armed men wearing black ski masks stopped

the journalists on their way out of Crimea, and held them for about thirty minutes before releasing them. The armed men accused them of being spies and confiscated their computers, all the footage they had recorded in Crimea, USB drives, a camera and protective gear including bulletproof vests and helmets, according to NRK. The equipment was not returned.

117. On the same day a crew with Italy's Sky TG24 television channel, consisting of two identified journalists, was stopped and threatened by armed men on the checkpoint in Perekop. The gunmen let them go, but confiscated their laptops, memory cards, camera batteries and the device that allowed them to stream videos online (see paragraph 29 (xiv) above).

118. Reuters reported that on 13 March 2014, armed men had detained an identified journalist with the French television channel Canal+. According to the local Centre for Investigative Journalism, he was seized by armed men who identified themselves as "Aksenov's self-defence unit". He was released in exchange for providing all the video-footage he had recorded in the city (see paragraph 29 (xv) above).

119. Since 1 March 2014 Ukrainian movements and public organisations, together with Crimean Tatar organisations, started peaceful protest actions, aimed at supporting the territorial integrity of Ukraine (see paragraphs 26 (iv), 26 (vii) and 26 (viii) above). Protesters were frequently harassed, intimidated and assaulted by members of the CSDF. This led some of the activists to transfer their families to mainland Ukraine.

120. On or around 10 March 2014 the CSDF, local collaborators and the Russian security services launched a campaign of kidnappings of Ukrainian and Tatar activists. Amongst numerous examples, on 15 March 2014, Mr Vasyl Chernysh (an Automaidan activist) disappeared. Several days before his disappearance, he had assisted in the release of two other Automaidan activists, Ms O. Ryazantseva and Ms K. Butko, who had been kidnapped by members of the CSDF.

(b) The second phase (after 21 March 2014)

121. After 21 March 2014, as the Russian Federation further tightened its grip on Crimea, the campaign of human rights violations intensified. During this period, Russian forces and their proxies carried out illegal detentions, fabricated administrative and criminal charges, denied re-registration to legitimate NGOs, discriminated on the grounds of political opinion or other illegal grounds, illegally appropriated private property, and carried out beatings, forced disappearances, torture and murder.

122. The disappearances and murders continued. In her annual report for 2014, the Russian Ombudsperson, Ella Pamfilova, recorded that following the Russian "occupation" she had received reports of thirteen cases in which Crimean Tatars had disappeared and twenty-four instances in which Ukrainians had disappeared. The applicant Government, however, considered that the real number was likely to be much higher. However, the

true figures could not be established since the Russian and subordinate authorities routinely failed to investigate cases of alleged disappearance, and would not permit international human rights monitors access to the territory. In support of these arguments the applicant Government relied on the following alleged incidents.

a. Major Stanislav Karachevskyi was murdered on 6 April 2014 in the village Novofedorovka in Crimea, in a hostel of the Ukrainian military personnel at the Saki base.

b. On 20 April 2014, in Chornomorskyy district, Crimean militants beat to death Mr M. Ivanyuk, a 16-year-old student. According to witnesses, he was beaten because he was speaking Ukrainian. When the Council of Europe's Commissioner for Human Rights raised the incident with the local authorities, they reported that he had been killed in a car accident (see paragraph 228 below).

c. On 13 April 2015, the body of a 57-year-old Crimean Tatar woman was found on the banks of the River Kacha in the Bakhchysaraiskyi district of the occupied ARC. The following day, the dead body of her 2-year-old grandchild was also found.

123. Unlawful detentions by the CSDF also continued, including the following examples.

a. On 18 May 2014, in the city of Simferopol, the CSDF kidnapped the journalist and founder of the Crimean internet channel CrimeanOpenCh, Mr Osman Pashayev, together with a Turkish cameraman, Mr Cengiz Kizgin. The journalists were released after ten hours of detention.

b. On 2 June 2014, at 8 p.m. in Simferopol, the CSDF apprehended two members of the online media outlet Centre of Journalist Investigations (editor Mr Sergiy Mokrushin and director Mr Vladlen Melnikov). The CSDF took the men to their headquarters. Subsequently, the arrested journalists were put into a car and transported to the Tsentralny district police station of Simferopol, where they were beaten and ill-treated. Mr S. Mokrushin was taken to the Simferopol municipal hospital with suspected fractured ribs and contusion of his internal organs. According to the journalist, he was hit in the kidney area and in the liver area. Mr V. Melnikov's head was struck against glass.

c. On 23 August 2014, during the Ukrainian State Flag Day, members of the CSDF illegally detained Mr Sergiy Dub near the monument of the Ukrainian writer Taras Shevchenko in Simferopol.

d. Mr Nadir Bekirov, the head of the Fund for Research and Support of the Indigenous Peoples of Crimea, was attacked in Crimea on 19 September 2014. He was travelling to New York to take part in the UN General Assembly World Conference on Indigenous Peoples. On his way to catch a train to Kyiv, a minivan blocked the road and four masked men pulled him out of the car. He was beaten up and his passport and mobile phone were stolen (see paragraph 29 (xvi) above).

e. On 6 March 2015, Mr Asan Charuhov was unlawfully arrested in the city of Kerch for his participation in a mass meeting of opponents of the separation of Crimea from Ukraine on 26 February 2014 (see paragraph 29 (xvii) above). After interrogation he was released.

f. On 9 March 2015 Mr L. Kuzmin, Mr O. Kravchenko and Mr V.Shukurdzhyev were arrested in the city of Simferopol for having used Ukrainian symbols during a public meeting dedicated to the day of birth of Taras Shevchenko (see paragraphs 29 (xviii) and 29 (xix) above). They were taken to the police department, where they spent several hours.

g. On 13 August 2015 the editor of the Centre of Journalistic Investigations, Ms Nataliya Kokorina, was arrested in the Kyivskyi district of the occupied city of Simferopol by representatives of the "Department of the FSB for the Republic of Crimea and Sevastopol City" (see paragraph 29 (xx) above).

h. On 11 August 2015 two Ukrainian activists, Mr Veldar Shukurjev and Ms Iryna Kopylova, were detained by police in Simferopol when they attempted to take photos of themselves with Ukrainian flags. They were taken to the police department (see paragraph 29 (xix) above).

i. On 24 August 2015 police officers detained three pro-Ukrainian activists, Mr Leonid Terletskiy, Mr Maksym Kuzmin and Mr Leinid Kurmin, as they were laying flowers at the monument of Taras Shevchenko.

j. On the same day in Kerch, police officers detained three persons for taking pictures with a Ukrainian flag on the Mitridat Mountain (see paragraph 29 (xix) above).

k. The OHCHR estimated that up to 150 police and FSB raids of private houses, businesses, cafés, bars, restaurants, markets, schools, libraries, mosques and madrassas (Islamic religious schools) had taken place since the beginning of Crimea's "occupation" (see paragraph 105 of the OHCHR 2017 Report in paragraph 227 below).

124. Since the "occupation" of Crimea, the Russian Federation has unlawfully used its criminal-law machinery against Ukrainian prisoners in Crimea. Starting from March 2014 local courts discontinued all pending appeal proceedings under Ukrainian law. Ukrainian criminal legislation was repealed and prison sentences were reclassified in accordance with Russian Federation law, sometimes to the detriment of detainees (see paragraphs 111-12 of the OHCHR 2017 Report in paragraph 227 below).

125. Moreover, after reclassification of Ukrainian sentences under Russian legislation, a sizeable number of "convicts" have been transferred to the Russian Federation. Transfers of pre-trial detainees have also taken place (see paragraphs 116-17 of the OHCHR 2017 Report in paragraph 227 below). According to the Ukrainian Helsinki Human Rights Union and the Regional Centre for Human Rights, as of December 2017, more than 4,700 Ukrainian prisoners have been transferred from occupied Crimea to the territory of the Russian Federation in sixty-nine correctional institutions, located in thirty-two constituent entities of the Russian Federation. Ukrainian prisoners, as

well as their family members and relatives, have continued to experience negative consequences as a result of such transfers.

126. In March 2014 the Russian Federation also imposed "automatic citizenship" on residents of Crimea.

127. The "automatic citizenship" was provided for by the Federal Constitutional Law of the Russian Federation No. 6-FKZ on the Accession of the Republic of Crimea to the Russian Federation and the Formation of New Constituent Entities of the Russian Federation – the Republic of Crimea and the Federal City of Sevastopol, dated 21 March 2014. According to the applicant Government, under that law all Ukrainians and persons without citizenship were given the citizenship of the Russian Federation and had a period of one month to reject it. In fact, the recognition of the Crimean population as Russian citizens was automatic, without consideration of each case separately.

128. As a consequence, a person intending to retain Ukrainian citizenship was required to submit a personal application. At the same time, the Russian authorities in Crimea created practical obstacles for Ukrainians who did not want to receive Russian citizenship. For example, the Federal Migration Service of the Russian Federation formally received applications on refusals to acquire Russian citizenship and issued a document of doubtful validity indicating that such applications had been taken into consideration. At the same time the Federal Migration Service did not usually inform applicants of the results of its consideration (see paragraph 26 (v) above). It should be noted that in order to submit such an application, the applicants had to provide a broad range of unnecessary personal data about themselves. The conditions in which they had to choose (instantaneous loss of familiar reference points in everyday life, lack of adequate information about the consequences, extremely short time frame, infrastructure constraints, and so on) did not enable them to make an informed choice.

129. This mechanism was singularly ineffective for "family-less" children living in orphanages. Having limited civil capacity, they could not apply for the retention of their Ukrainian citizenship and thus were forced to accept Russian citizenship.

130. The applicant Government had also received information about the automatic compulsory grant of Russian citizenship to newborn children in Crimea. As a result of the above, Ukrainians residing in the occupied peninsula had to turn to the Ukrainian courts in order to establish the fact of the birth of their children. Even if the parents indicated that they and their children had Ukrainian nationality, the birth certificate, issued in Crimea, stated that they were Russian citizens (see paragraph 28 (xii) above).

131. On the other hand, refusal to acquire Russian citizenship deprived Ukrainians residing in Crimea of social benefits, access to medical services and certain payments, among other things. (see paragraph 28 (xii) above).

132. After 21 March 2014 the Russian authorities and their proxies in the local subordinate administration adopted a systematic practice of conducting illegal searches of private premises, as in the following examples.

a. On 3 September 2014, in Simferopol district, a large group of militants forced their way into the family home of Mr Isaev, the head of a village Mejlis (village council), after which a search was conducted.

b. On 4 September 2014 a series of searches were conducted in the homes of Crimean Tatars, starting early in the morning. The house of Mustafa Salman was one of those targeted. He was the chairman of the Nizhnegorsky regional Mejlis in the village of Razlivy in the Nizhnegorsky district.

c. On 13 March 2015 the house of Ms Anna Andriivska, a journalist living in Simferopol, was searched by officers of the Crimean FSB (see paragraph 29 (xix) above) and her computer was confiscated.

d. On 2 April 2015, in the village of Zhuravky (where nearly 500 Crimean Tatars live), an "operational and strategic exercise" took place at around 9 a.m. Checkpoints were set up on all of the three roads leading to the settlement. Government agencies stopped all passing cars and checked documents. On the basis of racial profiling, searches were conducted at more than ten houses belonging to Tatars (see paragraph 29 (xxi) above).

133. The unlawful expropriation of churches and other religious property has been enshrined in State practice. On 11 November 2014 the "Council of Ministers of the Republic of Crimea" adopted "resolution" no. 437, requiring the "handover to religious organisations of property for religious use which is in the public ownership of the Republic of Crimea". That "resolution" created preconditions for the seizure of property of those religious organisations which were not loyal to the current "occupation" authority of Crimea.

134. The United Nations Human Rights Monitoring Mission in Ukraine and the OHCHR have reported numerous cases in which the representatives of various religious communities have been harassed or forced to leave Crimea. Greek Catholic priests on many occasions faced threats and persecution, resulting in four out of six of them leaving Crimea. Most of the twenty-three Turkish imams and teachers on the peninsula have left Ukraine for the same reason (see paragraph 103 of the report in paragraph 29 (xxii) above).

135. In March 2015 the then OSCE Representative on Freedom of the Media, Ms Dunja Mijatović, recorded that in the twelve months since the Russian "occupation", broadcasting by all Ukrainian television channels had been "switched off" and replaced with channels originating from the Russian Federation; independent journalists had been threatened and physically attacked and detained; the premises of independent media outlets had been raided; and the Crimean Tatar media had been subjected to extensive censorship and harassment by the authorities.

136. Enterprises which belonged to Ukrainian citizens have been expropriated without any reimbursement. This practice was recently

condemned in the award of the Permanent Court of Arbitration of 2 May 2018 in the case of *Everest Estate LLC et al v. the Russian Federation* (PCA Case No. 2015-36; see paragraph 29 (xxiii) above).

137. On 2 April 2014 the Russian Federation adopted the Federal Law on the Specifics of the Functioning of the Financial System of the Republic of Crimea and the City of Sevastopol during the Transitional Period. This Law empowered the Russian Central Bank to terminate the banking licences of the Ukrainian banks operating in Crimea. When such an order is made (and many have been), the bank's operations are immediately stopped without the payment of compensation and all of its property is expropriated without compensation, including cash in ATMs and local offices in Crimea, valuables held in safety deposit boxes in local offices in Crimea, real property in Crimea, including foreclosed mortgaged property and loans (reference was made to the award of the Permanent Court of Arbitration of 26 November 2018 in the case of *Oschadbank v. the Russian Federation* (PCA Case No. 2016-14; see paragraph 29 (xxiii) above).

138. The widespread nature of nationalisation of private property, as well as instances of unlawful seizure of property, are also confirmed in a number of reports by international governmental organisations monitoring the human rights situation in Ukraine, such as the OHCHR (see paragraphs 235-36 of the Report mentioned in paragraph 29 (xvi) above; paragraph 85 of the Report mentioned in paragraph 29 (xxv) above; and paragraphs 133 and 157-58 of the Report mentioned in paragraph 29 (xxvi) above); the Council of Europe (see paragraph 35 of the Report in paragraph 228 below); and the OSCE (see paragraphs 67-68 and 70 of the Report in paragraph 230 below).

139. Russia's policy of consolidating its border control to incorporate Crimea has resulted in unjustified restrictions on freedom of movement into and out of Crimea, particularly for its Tatar population (see paragraph 29 (xxvii) above), as in the examples below.

a. Mr Mustafa Dzhemilev (Chairman of the Mejlis of the Crimean Tatar People and a member of the Ukrainian Parliament) was banned from entering Crimea and subsequently from entering the territory of the Russian Federation for five years (see paragraph 29 (xxviii) above).

b. Following the session of the Mejlis of the Crimean Tatar People in the town of Henichesk, the Mejlis leader, Mr R. Chubarov, was excluded from Crimea for five years (ibid.).

c. As the then Ukrainian ombudsman Ms Valeria Lutkovska noted, such actions crudely violate not only provisions of Russian legislation but also the fundamental rights and freedoms of indigenous peoples as set out in the UN Declaration on the Rights of Indigenous Peoples.

d. On 9 August 2014, at the checkpoint on the administrative boundary line, FSB officials excluded Ismet Yüksel (described as the adviser to the Head of the Mejlis), when he and his family were on their way home after a trip. He was told that he was excluded for five years (see paragraph 29 (xxix) above).

140. The suppression of education in the Ukrainian and Tatar languages has been a key objective of the Russian "occupation".

a. There were previously seven Ukrainian-language schools in Crimea, and 500 schools in which at least some classes were available in the Ukrainian language. There were also numerous public schools in which it was possible for Tatar students to study in their own language. During 2014, however, this educational plurality was heavily suppressed (though no details as to those specifically responsible were provided), depriving ethnic Ukrainians and Tatars of the possibility of receiving education in their native tongue. As stated in paragraph 238 of the Report on the Human Rights Situation in Ukraine of the United Nations High Commissioner for Human Rights of 15 November 2014, by the end of the year there were only twenty secondary schools in which it was possible to receive any form of education in Ukrainian (see paragraph 238 of the Report mentioned in paragraph 29 (xvi) above).

b. Children and their parents have been persecuted for speaking Ukrainian or demonstrating an apparently "pro-Ukrainian" position. Witnesses report FSB officers visiting schools and requesting the teachers to provide the names of children who speak Ukrainian in public. Parents have then been warned by the authorities of the risk of prosecution "for separatism".

c. On 30 December 2014 the Crimean authorities issued "Decree No. 651" to approve a "State Programme for Development of Education and Science in the Republic of Crimea for 2015-2017". The programme does not envisage access to education in a native language.

d. In 2015 the "Ministry of Education, Science and Youth of Crimea" ordered the administrations of educational establishments to conduct an audit of literature available in libraries and educational premises to determine whether collections included banned items on the Russian Federal List of Extremist Literature (see paragraph 29 (xix) above). Literature with Islamic or Tatar content has been seized and destroyed.

141. Russia has introduced a range of measures aimed at harassing Crimean Tatars, including summonses by the Prosecutor's Office of the Republic of Crimea; the initiation of criminal proceedings (see paragraph 29 (xxx) above); summonses by the police for questioning (see paragraph 29 (xxxi) above); prohibition of broadcasting on Crimean Tatar television channels; prohibition of programmes featuring the leaders of the Crimean Tatar people (see paragraph 29 (xxxii) above); prohibition of mass gatherings on days of cultural significance for the Tatar population; and interference with the right of Tatar citizens to freedom of movement (see paragraph 29 (xxxi) above). Such discriminatory legal and administrative measures targeting the Tatar population led the Parliamentary Assembly of the Council of Europe (PACE) to conclude in its Resolution 2133 (2016): "The cumulative effect of these repressive measures is a threat to the Tatar community's very existence as a distinct ethnic, cultural and religious group" (see paragraph 215 below).

II. THE RESPONDENT GOVERNMENT

A. Evidentiary material submitted by the respondent Government

142. In support of their submissions the respondent Government relied on various documents and other evidence. Official documents emanating from the Russian national authorities are listed in paragraph 143; official documents emanating from the Ukrainian national authorities are listed in paragraph 144; international materials in paragraph 145; documents emanating from various authorities in Crimea in paragraph 146; and various media articles and videos in paragraph 147. It is to be noted that, as is the case in relation to the applicant Government (see paragraph 25 above), unless otherwise specified, unnamed or unidentifiable material (such as articles, internet links, etc.) are not listed below.

1. Official documents emanating from the Russian national authorities

143. The official documents emanating from various Russian national authorities and referred to by the respondent Government in their submissions include the following:

i. a "mutual legal assistance request", of 15 December 2017 (no. 201-04.2017/23765), sent from the Senior Investigative Department of the Directorate for the Investigation of High-Profile Cases of the Main Investigative Directorate of the Investigative Committee of the Russian Federation to "the Ukrainian competent authorities", in the investigation into the death of "Reshat Midatovich Ametov";

ii. judgment of the Crimean Garrison Military Court of 13 March 2015 and the appellate decision of the North Caucasus Circuit Military Court of 14 May 2015;

iii. a decision on the "refusal to initiate a criminal case" of 25 May 2014, taken by the Acting Senior Investigator of the Razdolninsky Inter-district Investigative Department of the Main Investigative Directorate of the Investigative Committee of Russia for the Republic of Crimea, which contains a statement by Mrs T.Y. Ivanyuk to the effect that her son's death had been caused by a road traffic accident;

iv. a decision on the "refusal to initiate a criminal case", taken on 4 June 2014 by the senior investigator from the Investigative Unit for the Bakhchisaray District of the Main Directorate of the Investigative Committee of the Russian Federation for the Republic of Crimea, in the investigation into "reports of abduction and unlawful deprivation of liberty of V.V. Sadovnyk";

v. a decision on the "refusal to initiate a criminal case", taken on 31 December 2014 by the senior investigator from the Investigative Unit for the Zheleznodorozhniy District of Simferopol of the Main Investigative Department of the Investigative Committee of the Russian Federation for the

Republic of Crimea, on the basis of the "inquiry materials into the abduction of Ye.A. Pivovarov by unknown persons"; and

vi. a decision on the "refusal to initiate a criminal case", taken on 28 March 2015 by a local district police officer of Central Police Station No. 3 of the Ministry of Internal Affairs of the Russian Federation for Simferopol, into allegations that Mr Mokrushin had been beaten and unlawfully imprisoned by "Crimean self-defence officers".

2. Official documents emanating from the Ukrainian national authorities

144. The official documents emanating from various Ukrainian national authorities and referred to by the respondent Government in their submissions include the following:

i. the Decree of the President of Ukraine on the Chairman of the Council of Ministers of the ARC (no. 187/2014) of 1 March 2014;

ii. a witness statement, taken by the Office of the Agent of the Ukrainian Government before the Council of Europe on 22 March 2017, of Alona Kushnova, judge at the District Administrative Court of ARC in Simferopol at the time of the events; and

iii. a letter from the General Prosecutor's Office of Ukraine of 23 April 2018 (no. 14/1/1-24474-18) addressed to the General Prosecutor's Office of the Russian Federation, informing the latter that "the requested legal assistance cannot be provided".

3. International materials

145. The most relevant international materials referred to by the respondent Government in their submissions are the following:

i. the judgment of the International Court of Justice (ICJ) in the case *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States)*, *Merits*, *ICJ Reports* 1986, p. 14, § 118;

ii. the report of the International Advisory Panel established by the Secretary General of the Council of Europe in April 2014 on its review of the Maidan Investigation, 31 March 2015;

iii. the report of the International Law Commission, Fifty-third Session (23 April-1 June and 2 June-10 August 2001, General Assembly Official Records, Fifty-sixth Session, Supplement No. 10 (A/56/10));

iv. the International Law Commission (ILC) Articles on Responsibility of States for Internationally Wrongful Acts (UN GA A/RES/56/83); and

v. the judgment of the ICJ in the case *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, *ICJ Reports* 2007, p. 43.

4. Crimean documents

146. The documents emanating from various authorities in Crimea and referred to by the respondent Government in their submissions include the following:

i. Declaration of the *Verkhovna Rada* of the ARC and the City of Sevastopol (no. 1727-6/14) of 11 March 2014 on the independence of the Autonomous Republic of Crimea and the City of Sevastopol;

ii. Resolution of the *Verkhovna Rada* of the ARC (no. 1630-6/14) of 27 February 2014 on the organisation and holding of the republican (local) referendum in relation to the enhancement of the status and powers of the Autonomous Republic of Crimea;

iii. Resolution of the State Council of the Republic of Crimea (no. 1745/6/14) of 17 March 2014 on the Independence of Crimea; and

iv. Resolution of the Supreme Council of the ARC (no. 1702-6/14) of 6 March 2014 on the holding of the All-Crimean Referendum.

5. Various media articles and videos

147. In their submissions the respondent Government relied on the following press articles and video-footage:

i. footage of a press conference by the former United States Assistant Secretary of State for European and Eurasian Affairs on 13 December 2013: https://www.youtube.com/watch?v=U2fYcHLouXY;

ii. an interview with President Vladimir Putin, entitled "Kiev agitators 'trained in Poland' claims Putin", published in an online news outlet: http://archiwum.thenews.pl/1/10/Artykul/164084,Kiev-agitators-trained-in-Poland-claims-Putin;

iii. a newspaper article published in the *Daily Telegraph* (United Kingdom) on 28 February 2014, entitled: "Ukraine crisis: Kiev's revolutionaries laugh at deposed Viktor Yanukovych's televised press conference";

iv. a newspaper article published in the *Guardian* (United Kingdom) on 22 February 2014, entitled: "Ukraine: Tymoshenko freed as president denounces 'coup' – 22 February as it happened";

v. a newspaper article published in an online newspaper (https://vm.ru/news/238931.html) on 10 March 2014, entitled "Crimea's Prime Minister Aksyonov [Aksenov] Became Commander-in-Chief of the Republic Armed Forces";

vi. an interview with President Vladimir Putin held on 4 March 2014: "Vladimir Putin answered journalists' questions on the situation in Ukraine": http://en.kremlin.ru/events/president/news/20366; and a newspaper article published on 5 June 2018, entitled "Putin says Russia will not cede Crimea under any circumstances. Putin reiterated, 'Crimea gained independence not as a result of the invasion of Russian troops, but through the will of the people

of Crimea expressed in an open referendum'": https://tass.com/politics/1007961;

vii. a newspaper article published on 1 March 2014 (https://tass.ru/mezhdunarodnaya-panorama/1014091), entitled "Members of Sevastopol City Council Voted in favour of Non-submission to Kiev Authorities";

viii. an article published on 4 March 2014 on the BBC website, entitled "Ukraine crisis: What we know about the Kiev snipers";

ix. an article published on 4 March 2014 on the BBC News Ukraine website, entitled "Court suspended resolutions of the Council of Crimea on Appointment of Aksyonov [Aksenov] and Holding of a Referendum";

x. a documentary, entitled *Crimea: The way home*, aired by the Rossiya television channel, containing an interview with, among others, President Vladimir Putin of the Russian Federation; and

xi. a newspaper article published in the *Independent* (United Kingdom) on 18 March 2014, entitled: "Crimea crisis: Fears of war grow as Ukrainian officer is killed at military base in Simferopol: Ukraine warns of military action as Russia's annexation of Crimea leads to firefight".

B. The facts of the case as submitted by the respondent Government

148. A significant part of the respondent Government's version of the facts, which are mostly drawn from their memorial and partly from their earlier observations on admissibility submitted to the Chamber on 31 December 2015, focuses on legal arguments which are summarised under the relevant headings below. In so far as the respondent Government's submissions relate to factual issues, they will be structured in line with the structure of the applicant Government's submission of the facts and set out below under the headings of "Background"; "Developments leading up to the 'referendum', the 'referendum' and its aftermath"; and "Incidents alleged by the Ukrainian Government".

1. Background

149. Foreign efforts aimed at "regime change" in Ukraine date back to 1991. They have included the channelling of vast amounts of money into Ukraine to support the opposition groups, including support for President Yanukovych's opponents in the "Orange Revolution" and afterwards (see paragraph 147 (i) above). Such "support" has included engaging with and promoting extreme right-wing political parties and training right-wing thugs in tactics for confronting the police (see paragraph 147 (ii) above). These extremist groups included Svoboda (formerly the "fascist" Social National Party of Ukraine) and its "neo-Nazi" ally, the Right Sector, newly set up in November 2013 in preparation for the violence which occurred in and around Maidan Square.

150. As that violence intensified, in February 2014, the European Union (EU) and Germany took the lead in trying to resolve the crisis by negotiation. However, their efforts were not universally popular: the Right Sector refused to negotiate, and the United States of America was also intent on the immediate replacement of the Yanukovych Government. As the EU tried to mediate, unidentified snipers fired on both demonstrators and police in and around the Maidan Square. At the height of the EU's efforts, on 20 February 2014, more than fifty people died (see paragraph 147 (viii) above).

151. On 21 February 2014 the EU succeeded in achieving a compromise between the opposition groups and President Yanukovych, whereby the latter agreed to the following:

> "(1) A law to be adopted within 48 hours restoring the Constitution of 2004 as subsequently amended, and the formation of a national unity coalition within 10 days thereafter;
>
> (2) Constitutional reform, balancing the powers of the President, government and parliament, to be completed in September 2014;
>
> (3) Presidential elections to be held as soon as the new Constitution was adopted but not later than December 2014;
>
> (4) Investigation into recent acts of violence under joint monitoring by the authorities, the opposition and the Council of Europe."

152. However, also on 21 February 2014, the coffins of those shot by the snipers the previous day were paraded and laid out in Maidan Square and the protesters were inflamed. Government buildings were attacked and occupied. President Yanukovych was forced to flee the capital. Unknown would-be assassins fired at his car, but he was not injured (see paragraph 147 (iii) above).

153. These events followed a typical *modus operandi* for "regime change" (see paragraph 145 (i) above), which probably explains why the subsequent Ukrainian government has failed to investigate the shootings in and around Maidan Square in any genuine or effective way – a failure that has been noted and condemned repeatedly by international observers. For example, in its report of 31 March 2015 the Council of Europe's International Advisory Panel concluded as follows: "The Panel considers that substantial progress has not been made in the investigations into the violent incidents during the Maidan demonstrations. While this outcome can be explained to some extent by the contextual challenges to those investigations, the Panel considers that the serious investigative deficiencies identified in this Report have undermined the authorities' ability to establish the circumstances of the Maidan-related crimes and to identify those responsible" (see paragraph 145 (ii) above).

154. On 22 February 2014 Mr Oleksandr Turchynov was elected as speaker of the Ukrainian Parliament, the *Verkhovna Rada*. On 23 February 2014 he was purportedly designated as the acting President of Ukraine. On 25 February 2014 he assumed command of the Ukrainian Armed Forces.

Mr Yatsenyuk was appointed the first prime minister of a new interim or provisional Ukrainian government sworn in on 27 February 2014.

155. The new Government was unconstitutional and widely regarded as such in the East of Ukraine and in Crimea. It was also totally unrepresentative. The key appointees all came from the West of Ukraine. Most major posts were taken by Svoboda, despite the fact that Svoboda had no broad national support.

156. Immediately after the displacement of the constitutional government in Ukraine, attacks began against everyone who opposed the new order. As set out in the Russian Government's observations of 31 December 2015, a string of attacks were carried out on the opponents of the new government both in Kyiv and in the East, *inter alia* by far-right extremists such as Svoboda and the Right Sector.

157. Violence by right-wing assassins erupted. For example, on 20 February 2014, near the village of Korsyn (Cherkassy region in mainland Ukraine), dozens of activists from Crimea were attacked on their way home by nationalists. Activists were beaten and humiliated, and four buses were set on fire.

158. Some of the worst violence was inflicted by Euromaidan protesters and nationalists upon their political opponents. On 18 February 2014, radicals stormed an office of the Party of Regions in Kyiv. Two employees of the Party of Regions were reported to have been killed. On 19 February 2014 Mr Bashkalenko, governor of the Volyn Region and a member of the Party of Regions, was handcuffed to the Euromaidan stage for several hours, during which he was beaten and humiliated. On 22 February 2014 a communist, Rostislav Vasilko, was beaten and tortured near Maidan Square and forced to kiss the Cross. On 22 February 2014 two people's deputies from the All-Ukrainian Union Svoboda party beat a people's deputy, Mr Oles Doniy, in the building of the *Verkhovna Rada* (the Ukrainian Parliament). On 27 February 2014 a member of the Right Sector, Aleksandr Muzychko, armed with knives and an assault rifle, demanded that the Right Sector flag be flown at the City Hall in the city of Rivne. He proceeded to humiliate the public prosecutor. On 28 February 2014, the body of Maria Blomerius, a 65-year-old member of the Party of Regions, was found with multiple stab and slash wounds in her apartment in Kharkiv. In February and March 2014, Berkut officers were publicly humiliated in the cities of Lviv and Lutsk. They were forced to get to their knees and beg for forgiveness. Violent clashes occurred between Euromaidan activists and pro-Russian protesters in the cities of Kharkiv, Mykolaev, Odessa, Zaporizhia and Dnipropetrovsk.

159. Against this background the people in Crimea sought to protect themselves and agitated for independence from Kyiv and/or for union with Russia.

160. The displacement of the constitutional government in Kyiv and the installation of an unconstitutional and unrepresentative government had consequences in that it prompted immediate demonstrations by the people in

Sevastopol and Crimea seeking "reunification" with Russia (see paragraph 147 (iv) above).

161. The threat of violent intervention by the unconstitutional government in Kyiv and its paramilitary proxies also led to the formation of self-defence groups (see paragraph 147 (v) above) and a political response in the form of a declaration of independence on 11 March 2014 (see paragraph 146 (i) above) by the authorities in Sevastopol and Crimea, and the holding of the "referendum" on 16 March 2014 on whether Crimea should join Russia or remain with Ukraine (join the Russian Federation: 96.77%; remain with Ukraine and restore the 1992 Constitution: 2.51%; invalid votes: 0.72% on a voter turnout of 83.1%).

162. The "referendum" and the "reunification" cannot be seen in isolation. They were the direct result of the violent displacement of the constitutional government of Ukraine (see paragraph 147 (vi) above).

163. Russia was not responsible for these events or for any resultant disorder stemming from the inflamed tensions at this time. Responsibility lay with the new and, in their view, unconstitutional government of Ukraine and its sponsors.

2. *Developments leading up to the "referendum", the "referendum" and its aftermath*

164. The history of the "referendum" leading to "reunification" shows the evolution of the position taken by the authorities in Crimea, beginning with efforts to restrain the popular mood apparent on 22 February 2014.

165. The people's representatives initially adopted a more cautious approach aimed at self-determination without full separation from Ukraine. On 27 February 2014 the Crimean legislature issued a statement, reacting to the unconstitutional seizure of power in Kyiv. The Supreme Council recognised that the political extremism of the new unconstitutional government was a threat to the security of the Crimean people. The Council decided that in the circumstances it was compelled to hold a "referendum" in order to define Crimea's constitutional status in a democratic way (see paragraph 146 (ii) above).

166. As can be seen from the question suggested on 27 February 2014 (see paragraph 146 (ii) above), the Supreme Council then contemplated returning to a more independent status of the Republic within Ukraine. The poll was intended to answer the question whether or not the "Autonomous Republic of Crimea has sovereign autonomy and forms a part of Ukraine pursuant to treaties and agreements". At that stage no question was suggested about Crimea's accession to Russia. On 1 March 2014 the legislature of Sevastopol supported this "referendum" and refused to accept the new government of Ukraine (see paragraph 147 (vii) above).

167. Unfortunately, the new government of Ukraine was not prepared to recognise any prospect of constitutional settlement. A district administrative

court in Kyiv purported to annul the Crimean Supreme Council's rulings of 27 February 2014 regarding the "referendum" and the appointment of Mr Aksenov "to the senior executive office in the Republic" (see paragraph 147 (ix) above). On 5 March Ukraine's Prosecutor's Office reported that the Shevchenkivsky District Court in Kyiv had issued arrest warrants in respect of Mr Konstantinov (the Chairman of the Crimean Supreme Council) and Mr Aksenov. The criminal case was instituted on the basis of alleged anti-constitutional activities and usurpation of power. On 1 March 2014 Mr Turchynov, purportedly as the acting President of Ukraine, refused to recognise Mr Aksenov's appointment (see paragraph 144 (i) above). It became clear that the new authorities were determined to suppress any attempts at self-determination.

168. On 6 March 2014 the Supreme Council of the ARC adopted a Resolution on holding the all-Crimean referendum, which put the following choices to the vote: "(1) Do you support the reunification of Crimea with Russia with all the rights of a constituent entity of the Russian Federation?" or "(2) Do you support the restoration of the 1992 Constitution of the Republic of Crimea and the status of Crimea as part of Ukraine?" (seeparagraph 146 (iv) above). The "referendum" then led to a Resolution of the Supreme Council of the ARC declaring its independence on 17 March 2014 (see paragraph 146 (iii) above). "Reunification" with Russia followed on 18 March 2014 under an international treaty.

169. Ukraine was responsible for the events in Crimea and Sevastopol until the authorities there asserted local autonomy on 17 March 2014 as throughout all those events, up until 17 March 2014, Crimea remained under the jurisdiction of Ukraine.

170. This was so because, firstly, the legislative branch (Supreme Council of the ARC) during the whole period under consideration operated as elected in conformity with Ukrainian laws in 2010. Secondly, the appointment of Sergey Aksenov as Chair of the Ministerial Council of the Republic of Crimea was made under Ukrainian law and agreed by Viktor Yanukovych, who was the official President of Ukraine at the time. Sergey Aksenov explicitly acknowledged that the Russian authorities had not participated in his appointment and that it had been a lawful decision of the President of Ukraine and the Crimean Parliament elected in 2010 in accordance with the Ukrainian Constitution. Thirdly, no changes were made in the judicial system of Crimea. All judges appointed to their positions under Ukrainian laws continued to exercise their powers. For example, Ukraine's own witness, Judge Alena [Alona] Kushnova, has confirmed that the courts in Crimea and Sevastopol were unaffected (see paragraph 144 (ii) above).

171. Fourthly, according to Article 3 of the Interim Provisions on the republican "referendum" in the ARC (adopted on 6 March 2014 by the Supreme Council of the Republic of Crimea), only Ukrainian citizens had the right to vote in the "referendum". Finally, Ukraine had a very substantial military presence. Indeed, it appears that, during the material period of time,

Ukraine had some 20,315 servicemen in the relevant territory. According to Ukraine's Chief Military Prosecutor, Mr Matios, that number was made up as follows: (a) Army: 13,468 servicemen; (b) National Guard: 2,560 persons; (c) Customs officers: 1,870; (d) SBU officers: 1,614; (e) State security personnel: 527; and (f) State space agency personnel: 274 servicemen.

172. Furthermore, the appointment of Mr Aksyonov [Aksenov] – a Crimean and therefore a Ukrainian national at the time – does not amount to evidence of "effective control" by the Russian Federation over Crimea. The fact that the Republic of Crimea, with a significant Russian-speaking majority, should choose a Russian-speaking Crimean who wished to preserve the republic's ties with Russia in the face of a "coup in [Kyiv]", does not amount to evidence that the Russian Federation controlled the territory.

173. Ukraine presented no probative evidence and no extensive evidentiary material to prove that Russia took control on 26 or 27 February 2014. Concerning this issue, Ukraine makes unsupported statements that on 27 February 2014 "some sixty pro-Russian heavily armed gunmen" or "Russian soldiers" stormed the Supreme Council of the ARC. Nothing in the CCTV footage provided by Ukraine suggests that the persons who stormed the Parliament were Russian soldiers.

174. Russia did not take control either at this time or later. The true position is as follows: (1) On 22 February 2014, there was a "violent overthrow of the constitutional government in [Kyiv]" followed by its substitution by an unconstitutional, ultra-right-wing and unrepresentative government; (2) this caused immediate dissent in, *inter alia*, Crimea and Sevastopol; (3) the physical threat posed by the new unconstitutional government and its paramilitary proxies led to the formation of civil defence units; (4) the overall situation also led to local political moves by the authorities in Crimea and Sevastopol to assert their autonomy and organise the "referendum"; and (5) Russia had no control over these events, no control over the authorities in Crimea and Sevastopol and no control over the civil defence units.

175. In this connection, in a number of important respects the material cited by Ukraine actually contradicts its argument. For example, Ukraine cites an interview with Igor Strelkov, presumably to support its case that he exercised authority on behalf of the Russian Federation. But the interview says the opposite. Mr Strelkov makes clear that throughout the alleged events in Crimea he acted as a private individual and that he equipped himself. When asked "Did Moscow send you here?" he replied "Of course not". Indeed, he has complained repeatedly about the lack of Russian government support for rebels in the East.

176. The Russian armed forces have always been present in Crimea and Sevastopol. The fact that, in the period between 1 March 2014 and 17 March 2014, those armed forces stood ready to assist the Crimean people in resisting attacks by the Ukrainian armed forces does not mean that the Russian Federation had effective control over Crimea in that period

177. It is important to recognise the limited role of Russia's armed forces, which has been described as follows by the President of the Russian Federation, Mr Putin (in the interview of 17 April 2014 – see paragraph 147 (x) above): "In order to ensure the normal expression of the will of the individuals living in Crimea, to be honest, we had to prevent the bloodshed and not to allow the armed forces, armed units of the Ukrainian Army deployed in Crimea, or the law enforcement agencies, to prevent the people from expressing their will. We had to disarm the military units of the Ukrainian army and law enforcement agencies or to convince them not to interfere with people expressing their opinion and, actually, to collaborate with us in that".

178. The President of the Russian Federation further clarified that the overall number of Russian troops deployed in Crimea in March 2014 had not exceeded the established limits of 20,000 personnel, provided by the Russian-Ukrainian Agreement on the Status and Conditions of the Presence of the BSF of the Russian Federation in the Territory of Ukraine.

179. There was no interference with the ordinary operation of the civil authorities of Crimea during this process.

180. It follows that Russia did not exercise its jurisdiction in Crimea prior to Crimea's integration into the Russian Federation on 18 March 2014. Until then, the Crimean authorities functioned as part of the Ukrainian State, or alternatively, in their own right on their own path to statehood. Russia was not responsible for and did not control their actions.

181. Russia only acquired jurisdiction over Crimea and Sevastopol when, pursuant to the "referendum" and the "reunification", these territories rejoined Russia. Sevastopol and Crimea became part of Russia on 18 March 2014. From that date, Russia came under an obligation to secure that the civil authorities in Sevastopol and Crimea complied with the Convention standards.

182. Since that date, there has been a functioning legal system, including courts and a criminal prosecution service, in its original format or in transition or as harmonised with Russian institutions. Furthermore, after Crimea became part of Russia, transitional arrangements were made to ensure continuity in relation to criminal proceedings and civil proceedings and continuity in the availability of an appropriate criminal response and civil redress.

183. Pursuant to Article 9 §§ 2 and 3 of the Treaty on Accession of the Republic of Crimea to the Russian Federation and the Formation of New Constituent Entities of the Federation (see paragraph 209 below), the existing regional laws of the ARC and Sevastopol continued to apply during the "transitional period" which ended on 1 January 2015, unless they were repealed or held to be contrary to the Constitution of the Russian Federation.

184. On 21 March 2014 the Russian Federation enacted the Federal Constitutional Law on the Accession to the Russian Federation of the Republic of Crimea and the Formation of New Constituent Entities of the

Federation – Republic of Crimea and Federal City of Sevastopol. Under that law: a. the existing courts of Crimea and Sevastopol retained jurisdiction, to be exercised in the name of the Russian Federation during the transitional period; b. litigants were given the right to lodge appeals from the decisions of the Crimean and Sevastopol courts to the Russian Supreme Court (or Supreme Commercial Court) in accordance with Russian procedural law; c. the Crimean and Sevastopol courts applied Russian procedural laws to the conduct of proceedings pending as of the date of accession (and by implication any proceedings commenced after that date); and d. judges of the Crimean and Sevastopol courts continued in their offices for the transitional period provided they had acquired Russian nationality. The transitional arrangements ceased on 26 December 2014. From that date on, the Crimean courts transferred cases pending before them to the newly established federal courts. Following Crimea and Sevastopol's admission to the Russian Federation, new courts and departments of various law enforcement agencies (including the Ministry of Internal Affairs, prosecutor's office and investigative committee) had to be created. Russian laws guarantee preferential access to positions in the newly created bodies to judges and law-enforcement officers from Crimean courts and law-enforcement agencies; however, they have to go through the regular recruitment procedures of the respective bodies. By May 2014, of the seven courts of general jurisdiction in Crimea, five had full contingents of judges sitting.

3. Incidents alleged by the Ukrainian Government

185. Effective measures were taken by the Russian authorities to comply with their Convention obligations.

186. For example, concerning the disappearance of Mr Ametov (see paragraph 108 (a) above), the perpetrators are unknown, and there is no basis whatsoever for attributing crimes against him to the Russian Federation. Nor is there scope for criticism of the Russian authorities for any deficiency in the investigation. On the contrary, the competent Russian authorities have conducted a thorough inquiry into the disappearance and death of Mr Ametov. There have been extensive efforts to find those responsible: around five hundred witnesses have been questioned, fifty forensic examinations have been undertaken, along with sixty inspections and four searches. There has been no domestic application filed with the competent court by Mr Ametov's relatives under Article 125 of the Russian Code of Criminal Procedure to challenge the investigation as inadequate. It was manifestly thorough and detailed. But the investigation has been artificially obstructed in one important respect: Russian investigators have sought assistance from their counterparts in Ukraine in relation to this investigation. Because Ukrainian networks supported telephones in Crimea, assistance was sought to track telephones present in the area where Mr Ametov's body was found

(see paragraph 143 (i) above). Unfortunately, as in other cases, the Ukrainian authorities have flatly refused any assistance (see paragraph 144 (iii) above).

187. Similarly, investigations were conducted into Mr Karachevskyi's death (see paragraph 122 (a) above), criminal proceedings followed and on 13 March 2015 a Russian serviceman, Mr Zaytsev, was convicted of murder under Article 108 of the Criminal Code. The judgment was upheld on appeal (see paragraph 143 (ii) above) and therefore domestic remedies operated and were effective.

188. Ukraine's reliance on the killing of Mr Ivanyuk (see paragraph 122 (b) above) illustrates its manufacturing of allegations of racial hatred and violence where in reality only a road accident had taken place. Moreover, the mother of Mr Ivanyuk has not suggested that Russian State agents were involved in the incident (see paragraph 143 (iii) above).

189. Concerning the killing on 18 March 2014 of the Ukrainian serviceman Mr Kokurin (see paragraph 108 (b) above), allegedly by a Russian sniper, Ukraine relies on a statement from a Mr Get, who simply asserts that the Ukrainian serviceman was shot by a Russian sniper. He claims (with no foundation or basis in direct evidence) that this was a Russian tactic to provoke confrontation so that Russian forces would have an excuse to attack a Ukrainian position. The idea of Russian provocation is patently absurd. On the contrary, the circumstances show that if there was provocation, it is obvious that the new and unconstitutional Ukrainian government was responsible. Only its members had a motive. It makes no sense for Russian forces to have provoked violence. On that very day, 18 March 2014, President Putin stated: "Russia has not inducted its troops into Ukraine and in Crimea in particular. First, the army had already been deployed there and it was merely reinforced. Second, no intervention is casualty-free". The same day he also made the following speech, noting how Crimea had rejoined Russia *without* violence:

> "We are being told about some Russian intervention in Crimea, about aggression. It is strange to hear that. I cannot recall a single case from history of an intervention occurring without a single shot or human casualties.
>
> ...
>
> ... in no way do we want to harm you or offend your national sentiments. We have always respected the territorial integrity of the Ukrainian State, incidentally, unlike those who sacrificed Ukraine's unity in order to satisfy their political ambitions. They flaunt slogans about Ukraine's greatness but they are the ones who did everything to divide the nation.
>
> ...
>
> Do not believe those who scare you with Russia, who scream that other regions will follow Crimea. We do not seek division of Ukraine, we do not need that. As for Crimea, it has been and will remain Russian, Ukrainian, and Crimean Tatar."

190. Contemporary reporting suggests the involvement of an agent provocateur who fired both at Ukrainian soldiers and at an approaching

Crimean self-defence unit, presumably in an effort to provoke a firefight (see paragraph 147 (xi) above).

191. There is generally no basis whatsoever for attributing such events to Russia, and Ukraine has failed to advance any. Very often, the alleged perpetrators of breaches of the Convention have not been identified. Where they are identified, often generically, they are said to be members of self-defence units who were not answerable to Russia and whose conduct cannot be attributed to Russia. Such people were not State agents of Russia and were not directed by Russia. Secondly, and more importantly, many of the alleged incidents relied on by Ukraine are not real incidents at all. Some allegations are so vague that even the identities of the alleged victims are unclear. Furthermore, some of the alleged victims, when questioned, disproved Ukraine's allegations.

192. For example, Mr Sadovnyk was questioned by investigators and stated that he had never been abducted and that he had not been forced to stay on the territory of the Commissariat (see paragraph 143 (iv) above).

193. Mr Pivovar stated that he had not been forced to go anywhere; he had taken his own decisions on his own initiative. Mr Pivovar testified that he himself had decided to go with the persons who took him from the hospital, drove him around the city for some time and then took him back to hospital. Mr Pivovar also did not allege that those persons were Russian servicemen (see paragraph 143 (v) above).

194. In some cases, allegedly abducted victims were found alive and well and no evidence of any criminal conduct was established. For example, investigation revealed that Mr Filipov had voluntarily left for Kyiv. Similarly, the whereabouts of Mr Kalyan were established and no evidence of criminality was found.

195. Moreover, most of the alleged victims, including Mr Chernysh, Ms Ryazantseva, Mr Kirjyshenko (also referred to as "Kiriuschenko" in some documents), Mr Koval, Mr Necheporenko, Mr Delyatytskyy (also referred to as "Deliatytskiy" in some documents), Mr Voronchenko, Mr Mamchur, Mr Demyanenko and Mr Kostetskyy, have never made any allegations to domestic authorities alleging violations of their rights.

196. Others, including a foreign identified journalist who unlawfully entered the territory of a military base; Mr Kvych, who was suspected of storage of special ammunition; Mr Dub, who was convicted of petty hooliganism; Mr Mokrushin, who had been drunk in public and used obscene language (see paragraph 143 (vi) above); and Mr Pashayev and Mr Kizgin, who were suspected of unlawful journalistic activity, were either apprehended or taken in for questioning because of their involvement or suspected involvement in criminal activity. Nothing in the materials submitted by Ukraine supports the allegation of a violation of Article 5 of the Convention and the mere fact of the apprehension of the individuals concerned does not mean that their deprivation of liberty was carried out in breach of that Convention provision.

197. Ukraine also makes unfounded allegations that education in the Tatar and Ukrainian languages has been suppressed. The fact is that education in both Tatar and Ukrainian languages is offered alongside education in Russian. The small changes that have occurred in the proportions of the school population studying in different languages reflect changes in demand against the background of recent tensions.

RELEVANT LEGAL FRAMEWORK

I. DOMESTIC LAW

A. Constitution of Ukraine

198. At the time of the events the relevant provisions of the Constitution of Ukraine provided as follows:

Article 1

"Ukraine is a sovereign and independent, democratic, social, law-based state."

Article 2

"The sovereignty of Ukraine extends throughout its entire territory.

Ukraine is a unitary state.

The territory of Ukraine within its present border is indivisible and inviolable."

Article 73

"Issues of altering the territory of Ukraine are resolved exclusively by an all-Ukrainian referendum."

Article 132

"The territorial structure of Ukraine is based on the principles of unity and indivisibility of the State territory, the combination of centralisation and decentralisation in the exercise of State power, and the balanced socio-economic development of regions that takes into account their historical, economic, ecological, geographical and demographic characteristics, and ethnic and cultural traditions."

Article 134

"The Autonomous Republic of Crimea is an inseparable constituent part of Ukraine and decides on the issues ascribed to its competence within the limits of authority determined by the Constitution of Ukraine."

Article 135

"The Autonomous Republic of Crimea has the Constitution of the Autonomous Republic of Crimea that is adopted by the *Verkhovna Rada* of the Autonomous Republic of Crimea and approved by the *Verkhovna Rada* of Ukraine by no less than one-half of the constitutional composition of the *Verkhovna Rada* of Ukraine.

Normative legal acts of the *Verkhovna Rada* of the Autonomous Republic of Crimea and decisions of the Council of Ministers of the Autonomous Republic of Crimea shall not contradict the Constitution and the laws of Ukraine and shall be adopted in accordance with the Constitution of Ukraine, the laws of Ukraine, acts of the President of Ukraine and the Cabinet of Ministers of Ukraine, and for their execution."

Article 136

"The *Verkhovna Rada* of the Autonomous Republic of Crimea, within the limits of its authority, is the representative body of the Autonomous Republic of Crimea, whose deputies are elected on the basis of universal, equal and direct suffrage, by secret ballot. The term of office of the *Verkhovna Rada* of the Autonomous Republic of Crimea, where the deputies have been elected in regular elections, shall be five years. Termination of the authority of the *Verkhovna Rada* of the Autonomous Republic of Crimea shall lead to the termination of the authority of its deputies.

Regular elections to the *Verkhovna Rada* of the Autonomous Republic of Crimea shall take place on the last Sunday of October of the fifth year of the term of authority of the *Verkhovna Rada* of the Autonomous Republic of Crimea elected in regular elections.

The *Verkhovna Rada* of the Autonomous Republic of Crimea shall adopt decisions and resolutions that are mandatory for execution in the Autonomous Republic of Crimea.

The Council of Ministers of the Autonomous Republic of Crimea is the government of the Autonomous Republic of Crimea. The Head of the Council of Ministers of the Autonomous Republic of Crimea is appointed to office and dismissed from office by the *Verkhovna Rada* of the Autonomous Republic of Crimea with the consent of the President of Ukraine.

The authority and the procedure for the formation and operation of the V*erkhovna Rada* of the Autonomous Republic of Crimea and of the Council of Ministers of the Autonomous Republic of Crimea shall be determined by the Constitution of Ukraine and the laws of Ukraine, and by normative legal acts of the *Verkhovna Rada* of the Autonomous Republic of Crimea on issues ascribed to its competence.

In the Autonomous Republic of Crimea, justice is administered by courts that belong to the unified system of courts of Ukraine."

Article 137

"The Autonomous Republic of Crimea shall perform normative regulation on the following issues:

1. agriculture and forestry;

2. land reclamation and mining;

3. public works, crafts and trades; charity;

4. city construction and housing management;

5. tourism, hotel business, fairs;

6. museums, libraries, theatres, other cultural establishments, historical and cultural conservation areas;

7. public transport, roadways, water supply;

8. hunting and fishing;

9. sanitary and hospital services.

For reasons of non-conformity of normative legal acts of the *Verkhovna Rada* of the Autonomous Republic of Crimea with the Constitution of Ukraine and the laws of Ukraine, the President of Ukraine may suspend these normative legal acts of the *Verkhovna Rada* of the Autonomous Republic of Crimea with a simultaneous appeal to the Constitutional Court of Ukraine in respect of their constitutionality."

Article 138

"The sphere of competence of the Autonomous Republic of Crimea shall comprise the following:

1. calling elections of deputies to the *Verkhovna Rada* of the Autonomous Republic of Crimea, and approving the composition of the electoral commission of the Autonomous Republic of Crimea;

2. organising and conducting local referendums;

3. managing property that belongs to the Autonomous Republic of Crimea;

4. drawing up, approving and implementing the budget of the Autonomous Republic of Crimea on the basis of the uniform tax and budget policy of Ukraine;

5. drawing up, approving and realising programmes of the Autonomous Republic of Crimea for socio-economic and cultural development, the rational utilisation of nature, and environmental protection in accordance with national programmes;

6. recognising the status of localities as resorts; establishing zones for the sanitary protection of resorts;

7. participating in ensuring the rights and freedoms of citizens, national harmony, the promotion of the protection of legal order and public security;

8. ensuring the operation and development of the State language and national languages and cultures in the Autonomous Republic of Crimea, and the protection and use of historical monuments;

9. participating in the development and realisation of State programmes for the return of deported peoples;

10. initiating the introduction of a state of emergency and the establishment of zones of ecological emergency in the Autonomous Republic of Crimea or in its particular areas.

Other powers may also be delegated to the Autonomous Republic of Crimea by the laws of Ukraine."

Article 139

"The Representative Office of the President of Ukraine, whose status is determined by the law of Ukraine, shall operate in the Autonomous Republic of Crimea."

Article 157

"The Constitution of Ukraine shall not be amended if the amendments envisage the abolition or restriction of human and citizens' rights and freedoms, or if they are aimed at the abolition of the independence or the violation of the territorial indivisibility of Ukraine.

The Constitution of Ukraine shall not be amended in conditions of martial law or a state of emergency."

B. Resolution on the use of the Armed Forces of the Russian Federation on the territory of Ukraine, adopted on 1 March 2014 by the Federation Council of the Federal Assembly of the Russian Federation, No. 48-SF

199. As stated in the Resolution, on a request by the President of the Russian Federation and in the interests of the safety of "citizens of the Russian Federation, our compatriots and the personnel of the military contingent of the Armed Forces of the Russian Federation deployed in accordance with an international treaty in Ukraine (Autonomous Republic of Crimea) ...", the Federation Council of the Federal Assembly of the Russian Federation "[gave] permission (*дать согласие*) to the President of the Russian Federation to use the Armed Forces of the Russian Federation on the territory of Ukraine until the social and political situation in the country [became] normal". The Resolution entered into force on the day of its adoption.

C. Federal Law of the Russian Federation terminating the Agreements on the presence of the Black Sea Fleet of the Russian Federation on the territory of Ukraine (No. 38-FZ)

200. Under this Federal Law passed by the State Duma on 31 March 2014 and approved on 1 April 2014 by the Federation Council of the Russian Federation, the Agreements concerning the presence of the BSF of the Russian Federation on the territory of Ukraine (see paragraphs 202-08 below) were terminated. It entered into force on the day of its official publication (2 April 2014).

II. RELEVANT BILATERAL AGREEMENTS BETWEEN UKRAINE AND THE RUSSIAN FEDERATION

A. Treaty on friendship, cooperation and partnership between Ukraine and the Russian Federation of 31 May 1997

201. The relevant provisions of this Agreement read as follows:

Article 1

"As friendly, equal and sovereign States, the High Contracting Parties shall base their relations on mutual respect and trust, strategic partnership and cooperation."

Article 2

"In accordance with the provisions of the United Nations Charter and the obligations of the Final Act of the Conference on Security and Cooperation in Europe, the High

Contracting Parties shall honour each other's territorial integrity and shall acknowledge the inviolability of the borders existing between them."

Article 3

"The High Contracting Parties shall structure their relations with each other on the principles of mutual respect; sovereign equality; territorial integrity; inviolability of borders; peaceful settlement of disputes; non-use of force or the threat of force, including economic or other means of pressure; the right of peoples to freely choose their own destiny; non-intervention in internal affairs; observance of human rights and fundamental freedoms; cooperation between states; and good-faith performance of international obligations undertaken, as well as other universally recognized norms of international law."

Article 6

"Each of the High Contracting Parties shall refrain from participating in or supporting any actions whatsoever that are directed against the other High Contracting Party and shall obligate itself not to enter into any agreement with third countries that is directed against the other Party.

Nor shall either of the Parties allow its territory to be used to the detriment of the security of the other Party."

Article 7

"In the event that a situation arises that, in the opinion of one of the High Contracting Parties, creates a threat to peace, violates the peace, or affects the interests of its national security, sovereignty, or territorial integrity, it may propose to the other High Contracting Party the immediate conduct of relevant consultations. The Parties shall exchange information and, if necessary, take agreed-upon or joint measures to resolve the situation."

Article 8

"The High Contracting Parties shall develop their relations in the sphere of military and military-technical cooperation and the provision of State security, as well as in cooperation on border issues, customs, and export and immigration control, on the basis of separate agreements."

Article 38

"The High Contracting Parties shall enter into other agreements with each other that are necessary for the implementation of the provisions of this Treaty, as well as agreements in fields that are of mutual interest."

Article 40

"This Treaty shall be concluded for a period of 10 years. It shall then be automatically renewed for successive 10-year periods if neither of the High Contracting Parties declares its wish to terminate it to the other High Contracting Parties by way of written notification at least six months before the expiry of the current 10-year period."

B. Bilateral agreements concluded between Ukraine and the Russian Federation in 1997 and 2010 regarding the presence of the Black Sea Fleet of the Russian Federation on the territory of Ukraine

1. Agreement between the Russian Federation and Ukraine on the Status and Conditions of the Presence of the Black Sea Fleet of the Russian Federation on the territory of Ukraine

202. The purpose of this Agreement, which was signed in Kyiv on 28 May 1997, entered into force on 12 July 1999 and was concluded for a period of twenty years starting from the date of the beginning of its provisional application, was to determine the status of the BSF of the Russian Federation on the territory of Ukraine.

203. The relevant provisions of this Agreement provided as follows:

Article 4

"1. The total personnel strength, the number of ships, vessels, armament and military equipment of the Black Sea Fleet of the Russian Federation located on the territory of Ukraine shall not exceed the limits established in the Agreement between the Russian Federation and Ukraine on the Parameters of the Division of the Black Sea Fleet of 28 May 1997.

2. The Russian side shall inform the Ukrainian side of the total personnel strength and the main armament of the Black Sea Fleet of the Russian Federation located on the territory of Ukraine in accordance with the list agreed by the Parties before 1 January on an annual basis."

Article 6 § 1

"Military formations shall operate at their deployment sites in accordance with the laws of the Russian Federation, respect the sovereignty of Ukraine, observe its laws, and avoid interfering with Ukraine's domestic affairs."

Article 8 § 4

"Military units may take protective measures at their deployment sites and while in movement in accordance with a procedure specified by the Armed Forces of the Russian Federation and in cooperation with the competent authorities of Ukraine."

Article 12 § 1

"Service vehicles of the Black Sea Fleet of the Russian Federation shall bear a registration number and a clear identification mark. Any use of Ukrainian licence plates for service vehicles shall be prohibited."

Article 15 §§ 1and 5

"The transportation of troops and personnel of military formations travelling separately or as part of military formations, armament, military equipment and other material and technical means, guards and accompanying specialists by any means of transport in the interests of the Black Sea Fleet of the Russian Federation, shall be carried out on a priority basis subject to border, customs and other types of State control

during the crossing of the Russian-Ukrainian border in accordance with the effective Ukrainian laws.

...

Movements related to the activity of military formations outside their deployment sites shall be carried out *upon coordination* [*после согласования* (translation provided by the Russian Government)]*/after agreement* [*після узгодження* (translation provided by Ukrainian Government)] with the competent authorities of Ukraine." (emphasis added)

Article 18 § 1

"The Russian side shall pay for damage that may be inflicted by actions or omissions of military formations or personnel thereof during their performance of service duties, upon Ukrainian nationals or legal entities, nationals or legal entities of third States on the territory of Ukraine, in the amount determined on the basis of claims filed in accordance with the Ukrainian laws."

Article 19

"Any issues of jurisdiction related to the presence of military formations on the territory of Ukraine shall be regulated as follows:

1. Cases over crimes committed by the personnel of military formations or their family members on the territory of Ukraine shall be regulated by the laws of Ukraine and handled by courts, the prosecutor's office, and other competent Ukrainian authorities.

2. Paragraph 1 of this Article shall not apply:

(a) if the personnel of military formations or their family members (who are Russian nationals) commit crimes against the Russian Federation or against the personnel of military formations or their family members (who are Russian nationals);

(b) if the personnel of military formations commit crimes during the performance of service duties at the location sites of military formations.

As provided for by this paragraph, such cases shall be regulated by the laws of the Russian Federation and handled by courts, the prosecutor's office, and other competent Russian authorities.

3. The Parties' competent authorities may address each other with requests for the referral or assumption of jurisdiction in relation to specific cases envisaged by this Article. Such requests shall be considered in a prompt and well-disposed manner."

Article 24

"The Joint Commission shall be formed to resolve any disputes over the interpretation and application of this Agreement.

The Joint Commission shall act in accordance with the rules adopted by it.

Should the Joint Commission be unable to resolve any dispute referred to it, the dispute shall be resolved by diplomatic means within the shortest possible time."

2. Agreement between the Russian Federation and Ukraine on the Parameters of the Division of the Black Sea Fleet

204. The purpose of this Agreement, which was also concluded in Kyiv on 28 May 1997 with a view to remaining in force for the duration of the Agreement on the Presence of the BSF of the Russian Federation on the territory of Ukraine (see above), was to specify the limits to the total personnel strength and the quantity of ships, vessels, armament, and military equipment of the BSF of the Russian Federation on the territory of Ukraine.

205. According to this Agreement, "[t]he total military personnel strength of the BSF of the Russian Federation on the territory of Ukraine is 25,000 people, including 1,987 people in the marine infantry and the land-based naval air force" (subject to the Russian Federation's undertaking to inform Ukraine in accordance with Article 4 § 2 of the above-mentioned Agreement cited in paragraph 203 above).

206. Annex 2 to this Agreement provides a list of the "Parameters of Facilities of the BSF of the Russian Federation in the City of Sevastopol". Annex 3 lists the "Parameters of Facilities of the BSF of the Russian Federation outside of the City of Sevastopol". Annex 4 provides a list of the "Warships and Vessels of the BSF Owned by the Russian Federation in Ukraine". Finally, Annex 5 sets out the "Division of Armaments, Military Equipment, and Support Facilities of the Coastal Defence Force and Marine Infantry of the BSF between the Russian Federation and Ukraine" and Annex 6 sets out the "Division of Armaments, Military Equipment, and Support Facilities of the Land-Based Naval Air Force of the BSF between the Russian Federation and Ukraine".

3. Agreement between the Russian Federation and Ukraine on the Presence of the Black Sea Fleet of the Russian Federation on the Territory of Ukraine

207. This Agreement, signed in Kharkiv on 21 April 2010, was concluded with a view to strengthening the two countries' relationship based on the principle of strategic partnership enshrined in the Treaty on Friendship, Cooperation and Partnership between the two States signed on 31 May 1997 by the Presidents of Ukraine and the Russian Federation. In this Agreement, Ukraine and the Russian Federation agreed to extend the validity of the two agreements mentioned above for a period of twenty-five years from 28 May 2017, with an automatic extension for subsequent five-year periods if neither Party notified the other Party in writing of the termination of the agreements at least one year prior to the expiry of their validity.

208. On 28 May 1997 Ukraine and the Russian Federation also signed the Agreement on Payments Associated with the Division of the BSF and its Presence on the Territory of Ukraine.

III. "TREATY BETWEEN THE RUSSIAN FEDERATION AND THE REPUBLIC OF CRIMEA ON THE ACCESSION OF THE REPUBLIC OF CRIMEA TO THE RUSSIAN FEDERATION AND THE FORMATION OF NEW CONSTITUENT ENTITIES OF THE FEDERATION, SIGNED ON 18 MARCH 2014 AND RATIFIED BY THE RUSSIAN STATE DUMA ON 21 MARCH 2014" ("THE ACCESSION TREATY")

209. The Treaty, which as a matter of Russian law is an "international treaty" (see paragraph 168 above), was signed by President Putin for the Russian Federation; Mr Konstantinov, Chairman of the State Council, and Mr Aksenov, the Prime Minister, for the "Republic of Crimea", and Mr A. Chaly, for the City of Sevastopol. Under the Treaty, which refers, *inter alia*, to the results of the "referendum" held in Crimea on 16 March 2014, Crimea was considered to have acceded to the Russian Federation on the date of the Treaty's signature (Article 1). On the date of Crimea's admission to the Russian Federation, two new constituent entities were said to have been formed within the Russian Federation: the Republic of Crimea and the Federal City of Sevastopol (Article 2). Under Article 4 § 2 of the Treaty, the land border of Crimea adjacent to the territory of Ukraine was to be regarded as the border of the Russian Federation. As of the date of Crimea's admission into the Russian Federation, Ukrainian citizens and stateless persons permanently residing in Crimea and in the city of Sevastopol, were to be recognised as Russian citizens, unless within one month from that day they declared their wish to retain their existing citizenship or to remain stateless persons (Article 5). As of the date of Crimea's admission into the Russian Federation, and until 1 January 2015, the Treaty provided for a transitional period during which the new constituent entities were to be integrated into the economic, financial, credit and legal system of the Russian Federation (Article 6). The Treaty further provided that legislative and other regulatory legal acts of the Russian Federation would be in effect on the territories of Crimea and the city of Sevastopol from the date of Crimea's accession to the Russian Federation, unless otherwise specified by the Russian legislation (Article 9 § 1). The Accession Treaty entered into force on 1 April 2014.

IV. MULTILATERAL TEXTS AND RELEVANT INTERNATIONAL CASE-LAW AND PRACTICE

A. Memorandum on Security Assurances in connection with Ukraine's accession to the Treaty on the Non-Proliferation of Nuclear Weapons, Budapest, 5 December 1994

210. The relevant parts of this Memorandum read as follows:

"Ukraine, the Russian Federation, the United Kingdom of Great Britain and Northern Ireland, and the United States of America,

...

Confirm the following:

1. The Russian Federation, the United Kingdom of Great Britain and Northern Ireland, and the United States of America reaffirm their commitment to Ukraine, in accordance with the principles of the CSCE Final Act, to respect the independence and sovereignty and the existing borders of Ukraine.

2. The Russian Federation, the United Kingdom of Great Britain and Northern Ireland, and the United States of America reaffirm their obligation to refrain from the threat or use of force against the territorial integrity or political independence of Ukraine, and that none of their weapons will ever be used against Ukraine except in self-defense or otherwise in accordance with the Charter of the United Nations.

...

6. Ukraine, the Russian Federation, the United Kingdom of Great Britain and Northern Ireland, and the United States of America will consult in the event a situation arises which raises a question concerning these commitments."

B. UN General Assembly Resolutions

1. Resolution no. 68/262 of 27 March 2014 on the territorial integrity of Ukraine (A/RES/68/262)

211. The relevant parts of this Resolution read as follows:

"1. Affirms its commitment to the sovereignty, political independence, unity and territorial integrity of Ukraine within its internationally recognized borders;

2. Calls upon all States to desist and refrain from actions aimed at the partial or total disruption of the national unity and territorial integrity of Ukraine, including any attempts to modify Ukraine's borders through the threat or use of force or other unlawful means;

...

5. Underscores that the referendum held in the Autonomous Republic of Crimea and the city of Sevastopol on 16 March 2014, having no validity, cannot form the basis for any alteration of the status of the Autonomous Republic of Crimea or of the city of Sevastopol;

6. Calls upon all States, international organizations and specialized agencies not to recognize any alteration of the status of the Autonomous Republic of Crimea and the city of Sevastopol on the basis of the above-mentioned referendum and to refrain from any action or dealing that might be interpreted as recognizing any such altered status."

2. Resolution no. 71/205 on the situation of human rights in the Autonomous Republic of Crimea and the city of Sevastopol (Ukraine), adopted on 19 December 2016 (A/RES/71/205)

212. The relevant parts of this Resolution read as follows:

"*The General Assembly*

...

2. Urges the Russian Federation:

(a) To uphold all of its obligations under applicable international law as an occupying Power;

(b) To take all measures necessary to bring an immediate end to all abuses against residents of Crimea, in particular reported discriminatory measures and practices, arbitrary detentions, torture and other cruel, inhuman or degrading treatment, and to revoke all discriminatory legislation;

(c) To immediately release Ukrainian citizens who were unlawfully detained and judged without regard for elementary standards of justice, as well as those transferred across internationally recognized borders from Crimea to the Russian Federation;

(d) To address the issue of impunity and ensure that those found to be responsible for abuses are held accountable before an independent judiciary;

...

4. Urges the Russian Federation to ensure the proper and unimpeded access of international human rights monitoring missions and human rights non-governmental organizations to Crimea, recognizing that the international presence in Crimea is of paramount importance in preventing further deterioration of the situation ..."

213. The above has been restated in the subsequent resolutions of the UN General Assembly regarding the situation of human rights in Crimea (A/RES/72/190 of 19 December 2017, A/RES/73/263 of 22 December 2018 and A/RES/74/168 of 18 December 2019).

C. Instruments of the Council of Europe

1. Resolutions of the Parliamentary Assembly of the Council of Europe

(a) Resolution 1988(2014) on recent developments in Ukraine: threats to the functioning of democratic institutions, adopted on 9 April 2014

214. The relevant parts of Resolution 1988(2014) read as follows:

"15. ... Given that neither secessionism, nor integration with the Russian Federation, was prevalent on the political agenda of the Crimean population, or widely supported, prior to Russian military intervention, the Assembly considers that the drive for secession and integration into the Russian Federation was instigated and incited by the Russian authorities, under the cover of a military intervention.

16. The so-called referendum that was organised in Crimea on 16 March 2014 was unconstitutional under both the Crimean and Ukrainian Constitutions. In addition, its reported turnout and results are implausible. The outcome of this referendum and the illegal annexation of Crimea by the Russian Federation therefore have no legal effect and are not recognised by the Council of Europe. The Assembly reaffirms its strong support for the independence, sovereignty and territorial integrity of Ukraine ...

17. The Assembly expresses its great concern about the build-up of large numbers of Russian military troops along the border with Ukraine, which could be an indication that the Russian Federation is considering further unprovoked military aggression against Ukraine, which is unacceptable."

(b) Resolution 2133 (2016) on legal remedies for human rights violations on the Ukrainian territories outside the control of the Ukrainian authorities, adopted on 12 October 2016

215. The relevant parts of Resolution 2133 (2016) read as follows:

"7. Victims of human rights violations have no effective internal legal remedies at their disposal:

...

7.2. As far as the residents of Crimea are concerned, fear of retribution affects the independence of the courts and, in particular, the willingness of the police and the prosecution service to hold to account perpetrators of crimes against perceived or actual Ukrainian loyalists.

...

8. In Crimea, Ukrainians in general, and Crimean Tatars in particular, live in a climate of severe intimidation created by the above-mentioned human rights violations and the fact that they remain largely unpunished. Many were forced to leave Crimea ... As a result of the recent decision of the Supreme Court of the Russian Federation on banning the Mejlis and its local branches, the Crimean Tatars have lost their traditional democratic representation. Tatar media and the Tatar's Muslim religious practices were also targeted. The cumulative effect of these repressive measures is a threat to the Tatar community's very existence as a distinct ethnic, cultural and religious group."

2. Committee of Ministers of the Council of Europe

Decision regarding the situation in Ukraine (CM/Del/Dec(2014)1196/1.8) of 2 April 2014

216. The relevant parts of this Decision read as follows:

"The Deputies,

...

1. stressed that the illegal referendum held in the Autonomous Republic of Crimea and the city of Sevastopol on 16 March 2014 and the subsequent illegal annexation by the Russian Federation cannot form the basis for any alteration of the status of the Autonomous Republic of Crimea and the city of Sevastopol;

...

5. recalled the obligation for all States Parties to the European Convention on Human Rights to abide by this instrument ...;"

D. Council of the European Union

Decision concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine, 17 March 2014 (2014/145/CFSP)

217. The relevant parts of this Decision read as follows:

"On 6 March 2014, the Heads of State or Government of the Union's Member States strongly condemned the unprovoked violation of Ukrainian sovereignty and territorial

integrity by the Russian Federation and called on the Russian Federation to immediately withdraw its armed forces to the areas of their permanent stationing, in accordance with the relevant agreements. They called on the Russian Federation to enable immediate access for international monitors. The Heads of State or Government considered that the decision by the Supreme Council of the Autonomous Republic of Crimea to hold a referendum on the future status of the territory is contrary to the Ukrainian Constitution and therefore illegal."

E. Case-law of the International Court of Justice

1. Political implications/motivation

218. As regards the impact of the alleged existence of political implications of a case on the jurisdiction of the ICJ to decide, the relevant case-law of that court is as follows.

(a) *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, *Jurisdiction and Admissibility* (Judgment, *ICJ Reports* 1984, p. 392)

219. The relevant parts of this judgment read as follows:

"93. ... It is for the Court ... to resolve any legal questions that may be in issue between parties to the dispute ...

...

96. It must also be remembered that, as the *Corfu Channel case* (I.C.J. Reports 1949, p. 4) shows, the Court has never shied away from a case brought before it merely because it had political implications or because it involved serious elements of the use of force ...

98. ... The Court is asked to pass judgment on certain legal aspects of a situation ..., a procedure which is entirely consonant with its position ...

...

105. ... the Court would recall that in the *United States Diplomatic and Consular Staff in Tehran* case it stated:

'The Court, at the same time, pointed out that no provision of the Statute or Rules contemplates that the Court should decline to take cognizance of one aspect of a dispute merely because that dispute has other aspects, however important." (*I.C.J. Reports 1980, p. 19, para. 36.*)'

And, a little later, added:

'Yet never has the view been put forward before that, because a legal dispute submitted to the Court is only one aspect of a political dispute, the Court should decline to resolve for the parties the legal questions at issue between them. Nor can any basis for such a view of the Court's functions or jurisdiction be found in the Charter or the Statute of the Court; if the Court were, contrary to its settled jurisprudence, to adopt such a view, it would impose a far-reaching and unwarranted restriction upon the role of the Court in the peaceful solution of international disputes.' (*I.C.J. Reports 1980, p. 50, para. 37.*)"

(b) *Advisory Opinion in Legality of the Threat or Use of Nuclear Weapons*, *ICJ Reports* 1996, p. 234

220. The relevant parts of this Opinion read as follows:

> "13. ... The fact that this question also has political aspects, as, in the nature of things, is the case with so many questions which arise in international life, does not suffice to deprive it of its character as a 'legal question' and to 'deprive the Court of a competence expressly conferred on it by its Statute' ... Whatever its political aspects, the Court cannot refuse to admit the legal character of a question which invites it to discharge an essentially judicial task, namely, an assessment of the legality of the possible conduct of States with regard to the obligations imposed upon them by international law ...
>
> ... The Court moreover considers that the political nature of the motives which may be said to have inspired the request and the political implications that the opinion given might have are of no relevance in the establishment of its jurisdiction to give such an opinion."

221. The latter passages were restated in *Legal Consequences of the Construction of a Wall in the occupied Palestinian Territory*, Advisory Opinion of 9 July 2004, ICJ Reports 2004, p. 155, § 41.

2. Probative value of certain types of evidence

222. In its judgment in *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, *Merits* (*ICJ Reports* 1986, p. 14 at pp. 40-41) the ICJ described its approach to the question of the probative value of media information and statements of State officials as follows:

> "62. At all events, in the present case the Court has before it documentary material of various kinds from various sources. A large number of documents has been supplied in the form of reports in press articles, and some also in the form of extracts from books. Whether these were produced by the applicant state, or by the absent Party before it ceased to appear in the proceedings, the Court has been careful to treat them with great caution; even if they seem to meet high standards of objectivity, the Court regards them not as evidence capable of proving facts, but as material which can nevertheless contribute, in some circumstances, to corroborating the existence of a fact, i.e., as illustrative material additional to other sources of evidence.
>
> 63. However, although it is perfectly proper that press information should not be treated in itself as evidence for judicial purposes, public knowledge of a fact may nevertheless be established by means of these sources of information, and the Court can attach a certain amount of weight to such public knowledge. In the case of *United States Diplomatic and Consular Staff* in Tehran, the Court referred to facts which 'are, for the most part, matters of public knowledge which have received extensive coverage in the world press and in radio and television broadcasts from Iran and other countries' (*I.C.J.* Reports 1980, p. 9, para. 12). On the basis of information, including press and broadcast material, which was 'wholly consistent and concordant as to the main facts and circumstances of the case', the Court was able to declare that it was satisfied that the allegations of fact were well-founded (*ibid*., p. 10, para. 13). The Court has however to show particular caution in this area. Widespread reports of a fact may prove on closer examination to derive from a single source, and such reports, however numerous, will in such case have no greater value as evidence than the original source. It is with this

important reservation that the newspaper reports supplied to the Court should be examined in order to assess the facts of the case, and in particular to ascertain whether such facts were matters of public knowledge.

64. The material before the Court also includes statements by representatives of States, sometimes at the highest political level. Some of these statements were made before officia1 organs of the State or of an international or regional organization, and appear in the official records of those bodies. Others, made during press conferences or interviews, were reported by the local or international press. The Court takes the view that statements of this kind, emanating from high-ranking official political figures, sometimes indeed of the highest rank, are of particular probative value when they acknowledge facts or conduct unfavourable to the State represented by the person who made them. They may then be construed as a form of admission."

3. 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. the Russian Federation), Preliminary Objections*, Judgment, ICJ, 8 November 2019, at pp. 21 and 46*

223. In this judgment the ICJ, declaring admissible Ukraine's allegations against the Russian Federation of a pattern of discrimination against Crimean Tatars and ethnic Ukrainians in Crimea, noted the following:

"29. In the present case, the Court notes that Ukraine is not requesting that it rule on issues concerning the Russian Federation's purported 'aggression' or its alleged 'unlawful occupation' of Ukrainian territory. Nor is the Applicant seeking a pronouncement from the Court on the status of Crimea or on any violations of rules of international law other than those contained in the ICSFT and CERD. These matters therefore do not constitute the subject-matter of the dispute before the Court.

...

130. The Court notes that, according to Ukraine, the Russian Federation has engaged in a sustained campaign of racial discrimination, carried out through acts repeated over an appreciable period of time starting in 2014, against the Crimean Tatar and Ukrainian communities in Crimea. The Court also notes that the individual instances to which Ukraine refers in its submissions emerge as illustrations of the acts by which the Russian Federation has allegedly engaged in a campaign of racial discrimination. It follows, in the view of the Court, that, in filing its Application under Article 22 of CERD, Ukraine does not adopt the cause of one or more of its nationals, but challenges, on the basis of CERD, the alleged pattern of conduct of the Russian Federation with regard to the treatment of the Crimean Tatar and Ukrainian communities in Crimea. In view of the above, the Court concludes that the rule of exhaustion of local remedies does not apply in the circumstances of the present case."

F. Office of the Prosecutor, International Criminal Court, Report on Preliminary Examination Activities 2019, 5 December 2019

224. The relevant parts of this Report read as follows:

"*Crimea*

262. From the last days of February 2014, protests against the new Ukrainian Government began to grow, notably in the eastern regions of the country and in Simferopol, the capital of the Autonomous Republic of Crimea. From the night of 26-27 February 2014, armed and mostly uniformed individuals, whom the Russian Federation later acknowledged to be its military personnel together with locally-resident militia members, progressively took control of the Crimean peninsula. On 18 March the Russian Federation announced the formal incorporation of Crimea into Russian territory. Russia has continued to exercise effective control over the territory since that time.

...

Crimea

270. In 2016, the Office made public its assessment that the situation within the territory of Crimea and Sevastopol would amount to an international armed conflict between Ukraine and the Russian Federation which began at the latest on 26 February 2014, and that the law of international armed conflict would continue to apply after 18 March 2014, the date on which Russia announced the incorporation of Crimea into the Russian Federation, to the extent that the situation within the territory of Crimea and Sevastopol factually amounts to an ongoing state of occupation. This assessment, while preliminary in nature, provided the legal framework for the Office's analysis of information concerning crimes alleged to have occurred in the context of the situation in Crimea since 20 February 2014.

271. For purposes of the subject-matter assessment, the Office examined a large volume of information regarding a number of allegations of crimes that occurred in the context of the situation that led up to the occupation, and during the occupation of the territory of Crimea.

272. The information available provides a reasonable basis to believe that, from 26 February 2014 onwards, in the period leading up to, and/or in the context of the occupation of the territory of Crimea, the following crimes were committed: wilful killing, pursuant to article 8(2)(a)(i); torture, pursuant to article 8(2)(a)(ii); outrages upon personal dignity, pursuant to article 8(2)(b)(xxi); unlawful confinement, pursuant to article 8(2)(a)(vii); compelling protected persons to serve in the forces of a hostile Power, pursuant to article 8(2)(a)(v); wilfully depriving protected persons of the rights of fair and regular trial, pursuant to article 8(2)(a)(vi); the transfer of parts of the population of the occupied territory outside this territory (with regard to the transfer of detainees in criminal proceedings and prisoners), pursuant to article 8(2)(b)(viii); seizing the enemy's property that is not imperatively demanded by the necessities of war, with regard to private and cultural property, pursuant to article 8(2)(b)(xiii) of the Statute.

273. In addition, the Office considered the information available with regard to alleged offences under article 7 of the Statute, and found a reasonable basis to believe that acts amounting to crimes had occurred in the context of the period leading up to and during the (ongoing) occupation of Crimea: murder, pursuant to article 7(1)(a); deportation or forcible transfer of population (with regard to the transfer of detainees in criminal proceedings and prisoners), pursuant to article 7(1)(d); imprisonment or other severe deprivation of physical liberty, pursuant to article 7(1)(e); torture, pursuant to article 7(1)(f); persecution against any identifiable group or collectivity on political grounds, pursuant to article 7(1)(h); and enforced disappearance of persons, pursuant to article 7(1)(j) of the Statute."

V. OTHER MATERIALS

A. Relevant reports of intergovernmental organisations

1. Reports of UN (treaty) bodies

(a) UN Human Rights Committee (HRC)

UN HRC, Concluding Observations on the seventh periodic report of the Russian Federation, CCPR/C/RUS/CO/07, 28 April 2015

225. The Concluding Observations under this head stated, *inter alia*:

"**Violations of Covenant rights of residents of the Autonomous Republic of Crimea and the city of Sevastopol**

The Committee, having due regard for General Assembly resolution 68/262 on the territorial integrity of Ukraine, is concerned about reported violations of the Covenant in the Autonomous Republic of Crimea and the city of Sevastopol, which are under the effective control of the State party, including:

(a) Allegations of serious human rights violations, many of which involve the 'Crimean self-defence' forces, including enforced disappearances, abductions, arbitrary detention, ill-treatment and attacks against journalists;

(b) Alleged violations of freedom of expression and information, including harassment of media, blockage of Ukrainian Internet sites and forced relocation of local Internet sites, and threats and intimidation against journalists;

(c) Limitation of the possibility for Crimean residents to make an informed decision on the free choice of their citizenship owing to the very short period granted to them to refuse Russian citizenship. This disproportionately affected those individuals who could not apply in person at the designated locations to refuse citizenship, in particular persons in places of detention and other closed institutions, such as hospitals and orphanages. It also resulted in serious implications on the ability of Crimean residents who retained Ukrainian nationality to enjoy their rights under the Covenant;

(d) Allegations that Oleg Sentsov has been deprived against his will of his Ukrainian nationality, tried in Moscow as a citizen of the Russian Federation and subject to legal proceedings that fail to meet the requirements of articles 9 and 14 of the Covenant;

(e) Allegations of discrimination and harassment of members of minorities and indigenous peoples, in particular Crimean Tatars, including a ban on entry into the territory of Crimea for five years of some of their leaders: Mustafa Dzhemilev, Ismet Yuksel and Reshat Chubarov;

(f) Reports of violations of freedom of religion and belief on the territory of Crimea, such as intimidation and harassment of religious communities, including attacks on the Ukrainian Orthodox Church, the Greek Catholic Church and the Muslim community (arts. 1, 2, 6, 7, 9, 10, 12–14, 16–19, 21, 22 and 25–27).

The State party should:

(a) Take effective measures to investigate all allegations of serious human rights violations, in particular abductions, enforced disappearances, arbitrary detention and ill-treatment, including those committed by 'Crimean self-defence' forces, and bring perpetrators to justice and provide victims or their families with effective remedies, including appropriate compensation;

(b) Ensure the exercise in practice of freedom of expression and information for all residents of Crimea, including freedom to use the Internet, in accordance with the State party's obligations under the Covenant;

(c) Ensure that appropriate and transparent procedures are in place for Crimean residents to revisit their decision concerning their nationality; consider the possibility of allowing residents to retain their Ukrainian citizenship even if they are interested in a Russian citizenship;

(d) Ensure that Crimean residents who retained their Ukrainian nationality are not discriminated against in any sphere of public life and are granted full access to public services on equal terms;

(e) Respect and ensure the rights of minorities and indigenous peoples, in particular, that Crimean Tatars are not subject to discrimination and harassment, and revisit the legal justification for criminal cases brought against some Crimean Tatar leaders and activists;

(f) Respect and ensure freedom of religion and belief in the territory of Crimea and refrain from any actions that may compromise it, in accordance with the State party's obligations under the Covenant."

(b) UN Committee against Torture

Committee against Torture, Concluding Observations on the sixth periodic report of the Russian Federation, CAT/C/RUS/CO/6, 28 August 2018

226. The Concluding Observations under this head stated, *inter alia*:

"**Crimea and the City of Sevastopol**

48. Without prejudice to the legal status of Crimea under international law, and emphasizing the fundamental importance of the principle of territorial integrity of all States Members of the United Nations, the Committee notes that Crimea is under the effective control of the Russian Federation and that the Russian Federation has the obligation to implement the Convention in Crimea. The Committee expresses its concern about:

(a) Persistent reports of serious human rights violations, including abductions, arbitrary detentions, enforced disappearances, torture, ill-treatment and extrajudicial killings, particularly of Crimean Tatars, pro-Ukraine activists and affiliates of the Mejlis, by members of the Federal Security Service and the 'Crimean self-defence' forces;

(b) Information that since 2014, torture has been routinely used by the authorities to obtain false confession for politically motivated prosecutions, including in the case of Oleg Sentsov, a Ukrainian filmmaker, who was allegedly tortured in Crimea;

(c) Reports that of 106 allegations of torture by public officials from February 2014 to June 2018, not a single case was effectively investigated;

(d) Deplorable conditions of detention, in particular inadequate access to medical care which resulted in numerous deaths in custody;

(e) Limited access to detention facilities by an independent monitoring mechanism, civil society and lawyers of detainees;

(f) Denial of access to Crimea by the international human rights monitoring mechanisms, particularly the human rights monitoring mission in Ukraine (arts. 2, 4, 11, 12 and 16).

49. The State party should take immediate measures to put an end to the practice of torture in Crimea, including for the purpose of pressuring, punishing and/or extracting confessions from political opponents and activists such as Oleg Sentsov. The State party should promptly, impartially and effectively investigate all complaints of torture and other acts prohibited by the Convention, in particular such acts committed by members of the Federal Security Service and the 'Crimean self-defence' forces. It should ensure the prosecution and punishment of the perpetrators and provide victims with redress. The Committee also invites the State party to ensure unimpeded access to Crimea by the international human rights monitoring mechanisms, in particular the human rights monitoring mission in Ukraine."

2. Office of the United Nations High Commissioner for Human Rights

Report on the situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol (Ukraine), dated 25 September 2017, covering the period from 22 February 2014 to 12 September 2017 ("the OHCHR 2017 Report")

227. Referring, *inter alia*, to the work done by the United Nations Human Rights Monitoring Mission in Ukraine (HRMMU), the relevant parts of the OHCHR 2017 Report read as follows:

"**I. Executive Summary**

2. ... The report covers the period from 22 February 2014 to 12 September 2017. HRMMU has not been provided access to Crimea by Russian Federation authorities since its former Head of Mission accompanied the former Assistant Secretary-General for Human Rights, Ivan Šimonović, on 21-22 March 2014. As a result, it has been monitoring human rights developments in Crimea from mainland Ukraine.

3. Pro-Russian groups in Crimea rejected the ousting by Parliament of former President of Ukraine Viktor Yanukovych on 22 February 2014, criticizing it as an unconstitutional change of power. One of these groups was the 'people's militia', a local paramilitary formation created on 23 February 2014, and commonly referred to as the 'Crimean self-defence'. With the support of Russian Federation troops (footnote 5: Speaking to journalists, the President of the Russian Federation, Vladimir Putin, stated: *'Behind the backs of the Crimean self-defense units, there were our soldiers. They acted in a very polite, but decisive and professional manner. There was no other way to help the people of Crimea to express their free will*'. Video conference, Ria Novosti, 17 April 2014), the Crimean self-defence blocked key infrastructure, airports and military installations and took control of strategic facilities. It has been accused of committing numerous human rights abuses with impunity since the end of February 2014.

4. The President of the Russian Federation Vladimir Putin stated that in a meeting with heads of security agencies during the night of 22 and 23 February 2014 he took the decision to 'start working on the return of Crimea to the Russian Federation' (reference was made to an interview given to the TV channel 'Rossiya' as part of a documentary 'Crimea. The way home').

...

7. Since the beginning of occupation, Ukrainian laws were substituted by Russian Federation laws, in violation of the obligation under international humanitarian law to respect the existing law of the occupied territory ...

8. Laws and judicial decisions deriving from the implementation of the legal framework of the Russian Federation in Crimea have further undermined the exercise of fundamental freedoms. Mandatory re-registration requirements were imposed on NGOs, media outlets and religious communities in Crimea. Russian Federation authorities have denied a number of them the right to re-register, generally on procedural grounds, raising concerns about the use of legal norms and procedures to silence dissent or criticism.

9. Most affected by these restrictions were individuals opposed to the March 2014 referendum or criticizing Russian Federation control of Crimea, such as journalists, bloggers, supporters of the Mejlis, pro-Ukrainian and Maidan activists, as well as persons with no declared political affiliation but advocating strict compliance with the tenets of Islam, who are often accused of belonging to extremist groups banned in the Russian Federation, such as Hizb ut-Tahrir. The rights of these people to freedom of opinion and expression, association, peaceful assembly, movement, thought, conscience and religion, were obstructed through acts of intimidation, pressure, physical attacks, warnings as well as harassment through judicial measures, including prohibitions, house searches, detentions and sanctions.

10. Russian Federation justice system applied in Crimea often failed to uphold fair trial rights and due process guarantees. Court decisions have confirmed actions, decisions and requests of investigating or prosecuting bodies, seemingly without proper judicial oversight. Courts frequently ignored credible claims of human rights violations occurring in detention. Judges have applied Russian Federation criminal law provisions to a wide variety of peaceful assemblies, speech and activities, and in some cases retroactively to events that preceded the temporary occupation of Crimea or occurred outside of the peninsula in mainland Ukraine.

11. Grave human rights violations, such as arbitrary arrests and detentions, enforced disappearances, ill-treatment and torture, and at least one extra-judicial execution were documented. For a three-week period following the overthrow of Ukrainian authorities in Crimea, human rights abuses occurring on the peninsula were attributed to members of the Crimean self-defence and various Cossack groups. Following Crimea's temporary occupation, on 18 March 2014, representatives of the Crimean Federal Security Service of the Russian Federation (FSB) and police were more frequently mentioned as perpetrators.

12. While those human rights violations and abuses have affected Crimean residents of diverse ethnic backgrounds, Crimean Tatars were particularly targeted especially those with links to the Mejlis, which boycotted the March 2014 referendum and initiated public protests in favour of Crimea remaining a part of Ukraine. Intrusive law enforcement raids of private properties have also disproportionately affected the Crimean Tatars and interfered with their right to privacy under the justification of fighting extremism. Furthermore, the ban of the Mejlis, imposed in April 2016 by the Supreme Court of Crimea, has infringed on the civil, political and cultural rights of Crimean Tatars.

13. The Russian Federation authorities in Crimea have failed to effectively investigate most allegations of human rights violations committed by the security forces or armed groups acting under the direction or control of the State. Failure to prosecute these acts and ensure accountability has denied victims proper remedy and strengthened

impunity, potentially encouraging the continued perpetration of human rights violations.

...

16. Large scale expropriation of public and private property has been conducted without compensation or regard for international humanitarian law provisions protecting property from seizures or destruction. Crimean Tatars who returned from deportation in the 1990s and built their houses on land plots without obtaining construction permits remain at risk of seeing their security of tenure contested and being forcibly evicted.

17. The space for public manifestation of Ukrainian culture and identity has shrunk significantly. Groups manifesting their attachment to national symbols, dates or historic figures have been issued warnings or sanctioned by courts for violating public order or conducting unauthorized rallies. Education in the Ukrainian language has almost disappeared from Crimea, jeopardizing one of the pillars of an individual's identity and cultural affiliation.

...

II. Introduction

23. In Simferopol, the capital of the Autonomous Republic of Crimea, supporters of Ukrainian unity, mainly Crimean Tatars, clashed on 26 February with pro-Russian residents in front of the parliament. A stampede left two people dead and some 70 injured. On the following night, armed groups without insignia took over the buildings of the local government and parliament. On 27 February, members of the Parliament of Crimea, in the presence of gunmen, dismissed the local Government and elected Sergey Aksenov as the Head of Crimea

III. Methodology

30. HRMMU has a mandate *inter alia* to monitor and publicly report on the human rights situation in Ukraine through teams based in various locations, including through a presence in Crimea's capital, Simferopol.

31. Former Assistant Secretary-General for Human Rights Ivan Šimonović was the last United Nations official to visit the Crimean peninsula, on 21 and 22 March 2014.

32. On 18 September 2014, a letter addressed by HRMMU to the Head of Crimea requested the opportunity to establish a sub-office in Simferopol, in line with its mandate and General Assembly resolution 68/262. The response, received on 8 October 2014, stated that HRMMU had been deployed on the territory of Ukraine upon the invitation of the Government of Ukraine; that Crimea was part of the Russian Federation; and that questions of international relations were not within the competence of Crimean institutions.

33. On 20 April 2017, following consultations with the Government of Ukraine, OHCHR informed the Government of the Russian Federation of its intention to send a mission of HRMMU to Crimea in order to prepare the report on the human rights situation in Crimea requested by General Assembly resolution 71/205. While no formal response was received, OHCHR was notified informally that it would not be granted access to Crimea due to its mandate covering Ukraine and that any OHCHR mission would need to be agreed upon directly with the Russian Federation authorities. A second notification mentioning an OHCHR mission to Crimea, addressed to the Russian Federation on 13 June 2017, remained unanswered at the closing date of the present report.

...

35. Given the lack of access to Crimea, HRMMU has monitored the human rights situation in the peninsula from its presence in mainland Ukraine. HRMMU systematically collects and analyzes information gathered through direct interviews and fact-finding missions, including at the Administrative Boundary Line (ABL) between mainland Ukraine and Crimea. This report only describes allegations of human rights violations and abuses and violations of international humanitarian law that OHCHR could verify and corroborate in accordance with its methodology. OHCHR is committed to the protection of its sources and systematically assesses the potential risks of harm and retaliation against them.

V. Population data and movements

46. According to the last census conducted in Ukraine, in 2001, 125 nationalities lived on the Crimean peninsula, which had a population of 2,401,209 (2,024,056 in Crimea and 377,153 in Sevastopol). The census enumerated the population by ethnicity, finding the largest national groups in Crimea and Sevastopol to be Russians, numbering 1,450,394 (60.40 per cent); Ukrainians 576,647 (24.12 per cent); and Crimean Tatars 245,291 (12.26 per cent).

...

49. According to that same census (September 2014), in the entire peninsula, the number of persons of Russian nationality increased to 1,492,078 (65.31 per cent), the Ukrainians dropped to 344,515 (15.08 per cent) and the Crimean Tatars decreased to 232,340 (10.17 per cent). The other communities diminished, except for the Tatars - a group culturally affiliated with the Volga Tatars and the Crimean Tatars - whose numbers rose from 13,602 to 44,996.

...

VI. Civil and Political Rights

A. Right to nationality

55. The adoption of the Treaty on Accession on 18 March 2014 had an immediate consequence for the status of residents of Crimea and rights attached to it: all Ukrainian citizens and stateless persons who were permanently residing on the peninsula, as evidenced by a residency registration stamp in the passport, were automatically recognized as citizens of the Russian Federation. An exception was made for persons who, within one month of the entry into force of the treaty (i.e. by 18 April 2014), rejected Russian Federation citizenship in writing.

56. The automatic citizenship rule led to the emergence of three vulnerable groups: those who rejected in writing Russian Federation citizenship; those who, for lack of a residency registration in Crimea, did not meet the legal criteria to become Russian Federation citizens; and those who had to renounce their Ukrainian citizenship to keep their employment. As of May 2015, the High Commissioner for Human Rights of the Russian Federation (Ombudsperson) estimated that around 100,000 persons living in Crimea (about 4 per cent of the population) did not have Russian Federation citizenship.

57. Imposing citizenship on the inhabitants of an occupied territory can be equated to compelling them to swear allegiance to a power they may consider as hostile, which is forbidden under the Fourth Geneva Convention. In addition to being in violation of international humanitarian law, the automatic citizenship rule raises a number of important concerns under international human rights law.

1. Ukrainian citizens having Crimean residency registration who rejected Russian Federation citizenship

58. The procedure for rejecting Russian Federation citizenship, which had to be completed by 18 April 2014, was marked by certain constraints: instructions from the Russian Federal Migration Service (FMS) on the refusal procedure were only made available on 1 April; information about FMS centres was not available until 4 April; only two FMS centres were functioning on 9 April 2014; and some requirements in the procedure evolved over time, such as the demand that both parents make the application on behalf of their child.

59. After 18 April 2014, FMS reported that 3,427 permanent residents of Crimea had applied to opt out of automatically obtaining Russian Federation citizenship.

60. Renouncing Russian Federation citizenship remains legally possible on the basis of the 2002 law On Citizenship, except for people who were indicted, sentenced, have outstanding obligations towards the Russian Federation, or have no other citizenship or guarantee for the acquisition thereof.

61. Residents of Crimea who opted out of Russian Federation citizenship became foreigners. They could obtain residency permits through a simplified procedure, giving them certain rights enjoyed by Russian Federation citizens, such as the right to pension, free health insurance, social allowances, and the right to exercise professions for which Russian Federation citizenship is not a mandatory requirement.

62. However, overall, persons holding a residency permit and no Russian Federation citizenship do not enjoy equality before the law and are deprived of important rights. They cannot own agricultural land, vote and be elected, register a religious community, apply to hold a public meeting, hold positions in the public administration and re-register their private vehicle on the peninsula.

63. OHCHR documented some cases of Crimean residents who had rejected Russian Federation citizenship and faced discrimination. For instance, a man from Simferopol was subjected to regular psychological harassment by his employer for having renounced Russian Federation citizenship. In 2016, after two years of being pushed by his employer to take back his formal rejection of Russian Federation citizenship, he was dismissed after being told that his anti-Russian position disqualified him from continued employment. Two of his colleagues were also dismissed, including one who rejected Russian Federation citizenship, and another who took up Russian Federation citizenship but publicly expressed pro-Ukrainian views.

2. Ukrainian citizens without Crimean residency registration who are excluded from Russian Federation citizenship

64. Ukrainian citizens living in Crimea whose passport stamps indicated they were registered in mainland Ukraine could not become citizens of the Russian Federation. They assumed the status of a foreigner. As such, they could no longer legally remain in Crimea for more than 90 days within a period of 180 days from the moment they entered the peninsula, according to Russian Federation legislation applicable to foreigners.

65. Non-compliance with immigration regulations imposed by the Russian Federation can lead to court-ordered deportations. For instance, in 2016, a court in Sevastopol ordered a Ukrainian citizen who had overstayed to be deported to mainland Ukraine although he owned property in this city; another court deported a Ukrainian citizen who had a wife and children in Crimea.

66. Under international humanitarian law, deportation or transfer of protected persons from occupied territory to the territory of the occupying power or to that of any other country, occupied or not, is prohibited regardless of the motive.

67. Rules regulating stay were not consistently applied, sometimes favoring individuals who supported Crimea's accession to the Russian Federation. For example, the Supreme Court of Crimea ruled not to deport a Ukrainian citizen who described himself as 'an active participant of the Russian Spring in Sevastopol' and claimed his deportation to Ukraine would threaten his life and well-being. The Court accepted the argument that he had a family in Crimea and that his deportation would interfere with his private and family life.

68. Employment of Ukrainian citizens lacking Crimean residency registration is prohibited. A quota system under Russian Federation law allows up to 5,000 foreigners to reside and work in Crimea but this only applies to foreigners with non-Ukrainian passports who were living in Crimea before March 2014 and held Ukrainian residence permits.

69. In 2016, police raids against private businesses were conducted, resulting in the opening of administrative proceedings against owners of catering institutions and private entrepreneurs who were illegally employing Ukrainian citizens. People illegally employed risk deportation and their employers face administrative sanctions of up to 800,000 RUB (nearly USD 13,200) or closure of their business for up to 90 days.

70. Ukrainian citizens without residency registration in Crimea are excluded from free health insurance and access to public hospitals. In one case documented by OHCHR, a Ukrainian woman who had lived in Crimea for 10 years, but was registered in Kharkiv, died in 2015 after a public hospital in Crimea refused to treat her due to the fact that she did not have health insurance. According to Russian Federation legislation, she was a foreigner and, as such, she did not have a Russian Federation passport affording the right to free health insurance and access to public hospitals. The refusal to provide life-saving medical treatment - including due to origin or status, such as citizenship - constitutes a grave violation of the right to the highest attainable level of physical and mental health, and a violation of the obligation, under international humanitarian law, to ensure that the health system in place in an occupied territory continues to function adequately.

...

C. Right to life

80. In February, March and April 2014, four persons were killed and two others died, as described in this chapter, during incidents related to Crimea's unrecognized accession to the Russian Federation. While other deaths, including murders, have occurred in Crimea in the three and a half years since the occupation began, OHCHR does not have credible circumstantial evidence that they could be attributed to State agents of the Russian Federation in Crimea.

81. In March 2014, a pro-Ukrainian Crimean Tatar activist, Mr. Reshat Ametov, was abducted, tortured and summarily executed by people believed to be members of the Crimean self-defence. He disappeared on 3 March after staging a one-man picket in front of Crimea's government building in Simferopol. Video footage shows him being led away by three men in military-style jackets. On 15 March, his body was found in a village of the Bilohirsk district, bearing signs of torture. The Crimean police opened a criminal investigation. As of December 2014, more than 270 witnesses had been interrogated and over 50 forensic analyses and 50 examinations had been carried out. OHCHR has serious doubts about the effectiveness of these investigations. The

suspects, members of the Crimean self-defence, who were filmed abducting the victim, were only interrogated as witnesses and later released. In 2015, the investigation was suspended due to the fact that the individual suspected by the police to be the perpetrator was allegedly no longer in Crimea. It resumed in 2016 but has since been conducted intermittently.

82. Three killings occurred during armed incidents. On 18 March 2014, one Ukrainian serviceman and one Crimean self-defence volunteer were killed during a shooting incident in Simferopol. OHCHR does not have information about the investigation conducted in relation to this case. On 6 April 2014, a Ukrainian Army naval officer was killed by a Russian Federation serviceman in a dormitory in Novofedorivka. A Russian Federation military tribunal in Crimea sentenced the perpetrator to two years of imprisonment on 13 March 2015. The accused was convicted of homicide committed in excess of the requirements of justifiable defence. In addition, the victim's widow sued and obtained from the Ministry of Defence of the Russian Federation 500,000 RUB (about USD 8,000) in compensation for the harm incurred.

...

D. Right to physical and mental integrity

...

85. Multiple and grave violations of the right to physical and mental integrity have been committed by state agents of the Russian Federation in Crimea since 2014. The absence of investigations suggests that their perpetrators have benefited from and continue to enjoy impunity.

...

89. In view of the multiplicity of testimonies mentioning illicit acts committed by members of the self-defence with apparent impunity, OHCHR has serious doubts that the Russian Federation authorities have complied with their obligations to ensure accountability through effective and impartial investigations. The duty to investigate and prosecute is made more compelling by the fact that the existence of the self-defence group has been legalized, and its members have been recognized as agents of the State.

...

91. In two cases documented by OHCHR in 2016, pro-Ukrainian supporters were compelled by FSB officers to confess to terrorism-related crimes through torture with elements of sexual violence. The victims were kept incommunicado, tied, blindfolded, beaten up, subjected to forced nudity, electrocuted through electric wires placed on their genitals, and threatened with rape with a soldering iron and wooden stick.

...

95. OHCHR documented multiple allegations of violations of the right to liberty as a result of acts attributed to agents of the Russian Federation authorities in Crimea. While most of them occurred in 2014, fresh claims of unlawful deprivation of liberty are regularly recorded. Arbitrary arrests and detentions take different forms and appear to serve various purposes, from instilling fear, to stifling opposition, and inflicting punishment.

96. ... Detention under such circumstances would usually last from several hours to several days, exceeding the legal limits for temporary detention and ignoring procedural requirements, such as the establishment of a protocol of arrest. Many of the victims were journalists ... OHCHR noted a prevalence of members of the Crimean Tatar community among people apprehended during police raids ...

...

101. The highest number of enforced disappearances in a single month occurred in March 2014, when at least 21 persons were abducted in Crimea. The victims included pro-Ukrainian and Maidan activists, journalists, Crimean Tatars and former and active Ukrainian servicemen. They were held incommunicado and often subjected to physical and psychological abuse by armed individuals allegedly belonging to the Crimean self-defence and one Cossack group. Most victims were released after being illegally held from a few hours to several days, with no contact with their relatives or lawyers.

102. OHCHR documented 10 cases of persons who disappeared and are still missing: six Crimean Tatars, three ethnic Ukrainians and one Russian-Tatar - all men. Seven went missing in 2014, two in 2015 and one in 2016.

103. ... Of the 10 disappearances mentioned, criminal investigations were still ongoing in only one case as at 12 September 2017. They were suspended in six cases due to the inability to identify suspects, and in three cases no investigative actions have been taken as the disappearances were allegedly not reported.

F. Right to private and family life

105. OHCHR estimates that up to 150 police and FSB raids of private houses, businesses, cafés, bars, restaurants, markets, schools, libraries, mosques and madrassas (Islamic religious schools) have taken place since the beginning of Crimea's occupation. These actions have usually been carried out with the justification to search for weapons, drugs or literature with extremist content forbidden under Russian Federation law. Several interlocutors shared their conviction that the objective pursued by such operations was to instil fear, particularly in the Crimean Tatar community, in order to pre-empt or discourage actions or statements questioning the established order since March 2014.

106. The searches were conducted on the basis of the Russian Federation's antiextremism law, which is very broad and has been used extensively in Crimea. The law gives wide discretion to law enforcement agencies to interpret and apply its provisions, which can be viewed as an infringement of the principles of legality, necessity and proportionality. In her annual report for 2014, the Ombudsperson of the Russian Federation stated in relation to Crimea that law enforcement officers should adopt 'a well-balanced approach that rules out any arbitrary, excessively broad interpretation of the notion of 'extremism'.

107. OHCHR documented raids, which at times took place without search warrants being presented, involved excessive use of force, and amounted to an arbitrary or unlawful interference with an individual's privacy, family and home, in violation of international human rights law. According to victims, materials considered illegal were planted in homes and false written testimonies declaring the presence of illegal substances were signed under duress. On 4 and 5 September 2014, at least 10 houses belonging to Crimean Tatars were searched by police officers and FSB officials in Simferopol, Nizhnegorsk, Krasnoperekopsk and Bakhchisaray. The police found no weapons or drugs but confiscated religious literature.

...

G. Rights of detainees

111. According to the Ministry of Justice of Ukraine, on 20 March 2014, 1,086 individuals were detained at Crimea's only pre-trial detention facility in Simferopol, 1353 convicts were serving their sentences in a strict regime colony in

Simferopol, 789 convicts 16 were held in a general regime colony in Kerch and 67 in a correction centre in Kerch. All four institutions have been integrated into the penitentiary system of the Russian Federation, which led to the transfer of hundreds of detainees held in Crimea to penitentiary institutions in the Russian Federation.

1. Violations of the rights of prisoners in Crimea

112. After the Russian Federation took control of Crimea, local courts discontinued all pending appeal proceedings under Ukrainian law, in violation of fair trial guarantees. Ukrainian penal legislation was repealed and prison sentences were requalified in accordance with Russian Federation law, sometimes to the detriment of detainees.

...

2. Transfer of prisoners to the Russian Federation

116. A sizeable number of Crimea's prison population was transferred to the Russian Federation. A key factor explaining this situation is the lack of specialized penitentiary facilities in Crimea, which has led to the transfer of juveniles in conflict with the law, people sentenced to life imprisonment, and prisoners suffering from serious physical and mental illnesses. In addition, Crimea having no prisons for women, 240 female detainees convicted by Crimean courts were sent to the Russian Federation between 18 March 2014 and 15 June 2016 to serve their sentences.

117. Transfers of pre-trial detainees have also taken place. This is the case of Ukrainian filmmaker Mr. Oleg Sentsov, who was arrested in Simferopol on 11 May 2014 on suspicion of 'plotting terrorist acts'. On 23 May 2014, he was transferred to Moscow's Lefortovo prison and later to Rostov-on-Don (Russian Federation) where he was placed in remand detention. Following his trial and conviction on 25 August 2015, he was incarcerated in a high security penal colony in the Siberian region of Yakutia.

118. OHCHR notes that international humanitarian law strictly prohibits forcible transfers of protected persons, including detainees, from occupied territory to the territory of the occupying power, regardless of the motives of such transfers ...

119. On 17 March 2017, negotiations between the Ombudspersons of Ukraine and the Russian Federation enabled the return to mainland Ukraine of 12 detainees (11 men and a woman) sentenced by Ukrainian courts before March 2014, and transferred from Crimea to various penitentiary institutions in the Russian Federation after that date ...

I. Freedom of movement

123. The introduction by the Russian Federation of a State border at the ABL between mainland Ukraine and Crimea, in violation of General Assembly resolution 68/262, has adversely affected freedom of movement between mainland Ukraine and the Crimean peninsula. Other legal restrictions, as per this section, have been imposed both by the Governments of the Russian Federation and Ukraine.

124. International human rights law guarantees freedom of movement to anyone lawfully within the borders of a State and the right to leave and enter their own country. It also recognizes that a sovereign Government has the right to restrict freedom of movement provided such a measure is necessary, reasonable and proportionate.

1. Restrictions imposed by the Russian Federation authorities

125. On 25 April 2014, the Russian Federation authorities established its 'border' at the northern entrance to Crimea. Ukrainian activists, supporters and members of the Mejlis, in particular, have frequently faced infringements on their movement, including intrusive and lengthy interrogations whenever entering or leaving Crimea through the ABL.

...

127. OHCHR has information that 20 to 25 other Ukrainian citizens were deported from Crimea to mainland Ukraine in 2016, and has reasons to believe that the total number since the beginning of the occupation of Crimea may be significantly higher.

...

J. Freedom of thought, conscience and religion

137. After the start of the occupation, freedom of religion or belief in Crimea has been jeopardized by a series of incidents targeting representatives of minority confessions and religious facilities belonging to them. Limitations on religious freedom have also resulted from the imposition of legal re-registration requirements, legislation increasing restrictions on the activities of religious groups in the name of fighting extremism, and judicial decisions.

...

140. The gravest and most frequent incidents involving representatives of minority confessions were reported in 2014. For instance, on 1 June, men in Russian Cossack uniforms broke into the local Ukrainian Orthodox Church of the Kyiv Patriarchate (UOCKP) in the village of Perevalne, shouting and terrorizing churchgoers. The car of the priest was damaged. The police were called but did not investigate the incident. On 21 July, a house in the village of Mramorne belonging to the UOC-KP was burnt to the ground. A pastor of the Protestant Church from Simferopol and his family left the peninsula after reportedly being told by FSB officers that he could 'disappear'. Greek-Catholic priests faced threats and persecution, resulting in four out of six of them leaving Crimea. A Polish citizen and the senior Roman Catholic priest in the Simferopol parish had to leave on 24 October, due to the non-renewal of Ukrainian residence permits. Most of the 23 Turkish Imams and teachers on the peninsula have left for the same reason. On 26 April, unknown persons threw Molotov cocktails at a mosque in the village of Skalyste, setting it 20 on fire. On 25 July, a Muslim cemetery in Otuz was damaged. Several mosques and madrassas (Islamic schools) belonging to the Spiritual Administration of the Muslims of Crimea (DUMK) were raided in 2014 by FSB officers searching for banned extremist materials and members of radical groups. The raids have continued in the following years but their frequency diminished after the DUMK leadership started cooperating with the Russian Federation authorities in Crimea in 2015.

...

145. The Ukrainian Orthodox Church of the Kyiv Patriarchate (UOC-KP) chose not to re-register under Russian Federation law and thus has no legal recognition. Since 2014, five UOC-KP churches have been either seized by paramilitary groups or closed due to nonrenewal of their property leases. The activities of another UOC-KP church, located in Simferopol, were disrupted on 31 August 2017, when court bailiffs stormed the building of the church. The action was undertaken pursuant to a judgment, upheld by the Supreme Court of the Russian Federation in February 2017, ordering to vacate premises in the building used by a daughter company of the UOC-KP as office space and a shop. As of 12 September 2017, worship services were still held but fewer parishioners attended them.

...

K. Freedom of peaceful assembly

147. The possibility to peacefully gather or hold a rally in Crimea has been significantly reduced since March 2014. Restrictive legal measures placed additional

obstacles to the exercise of the right to peaceful assembly. According to legislation adopted by the Parliament of Crimea in August 2014, the organizers of public assemblies must be Russian Federation citizens and must officially request permission to hold an assembly no more than 15 days and no fewer than 10 days prior to the planned event. In addition, a resolution of the Government of Crimea of 4 July 2016 reduced from 665 to 366 the number of locations throughout the 'Republic of Crimea' where public events could be organized, without explaining the motives of this decision.

148. Lengthy blanket prohibitions on holding public assemblies have been issued, including an indefinite one decided by the Simferopol city authorities. In March 2016, a ban on all public events on the territory of the city was decreed, with the exception of those organized by the republican and local authorities. This measure was not taken in response to a sudden deterioration of public order and clearly infringed on the freedom to hold peaceful public assemblies.

149. Public events initiated by groups or individuals not affiliated with the Russian Federation authorities in Crimea or which consider that Crimea remains a constituent part of Ukraine have systematically been prohibited and prevented. On 23 September 2014, the Prosecutor of Crimea issued a statement that '*all actions aimed at the non-recognition of Crimea as a part of the Russian Federation will be prosecuted'*. Consequently, any assembly demanding the return of Crimea to Ukraine or expressing loyalty to Ukraine has been effectively outlawed.

150. Requests to hold peaceful public assemblies have often been rejected on procedural technicalities, which appeared to be neither necessary to justify a ban nor proportionate and responding to a general public interest ...

151. In some cases, refusals to authorize public events were based on unsubstantiated allegations that 'extremist' or 'separatist' messages would purportedly be disseminated during their conduct.

152. Spontaneous gatherings have been met with sanctions. Crimean Tatars taking part in unauthorized motorcades to commemorate the Crimean Tatar deportation were regularly arrested, interrogated for hours, and fined. An elderly Crimean Tatar man holding a oneperson picket in support of prosecuted Crimean Tatars was arrested in front of the building of the Supreme Court of Crimea on 8 August 2017. He was charged with carrying out an unauthorized public gathering and resisting police orders and sentenced by court to an administrative fine of 10,000 RUB (USD 175) and 10 days of detention.

L. Freedom of opinion and expression and the media

...

155. The right to express one's view or opinion has been significantly curtailed in Crimea. In March 2014, analogue broadcasts of Ukrainian television channels were shut off and the vacated frequencies started broadcasting Russian TV channels. Journalists were attacked or ill-treated without any investigation being conducted into these incidents. In June 2014, the only Ukrainian language newspaper, *Krymska svitlytsia*, was banned from distribution and had to vacate its rented premises.

156. Official 'warnings' have often preceded the closing down of a media outlet. They applied to views, articles or programmes whose content were deemed 'extremist'. The editor of the weekly Mejlis newspaper *Avdet* received several written and oral warnings from FSB officers that the newspaper materials allegedly contained extremist content, such as use of the terms 'annexation', and 'temporary occupation' of Crimea. The Crimean Tatar *ATR* television channel was warned by *Roskomnadzor*, the Russian

Federation media regulatory body, against disseminating false rumours about repression on ethnic and religious grounds and promoting extremism.

157. *ATR* and *Avdet* were among the Crimean Tatar media outlets which were denied re-registration according to Russian Federation legislation and had to cease operations on the peninsula. When the deadline for re-registration expired on 1 April 2015, *Roskomnadzor* reported that 232 media were authorized to work, a small fraction of the approximately 3,000 media outlets previously registered under Ukrainian regulations. In addition, other popular Crimean Tatar media outlets, such as *Lale* television channel, *Meydan* and *Lider* radio stations, *QHA* news agency and *15minut* Internet site, were denied licenses to work. Procedural violations were cited as the main reasons for rejection.

...

VII. Economic, Social and Cultural Rights

A. Property rights

170. Following Crimea's occupation, the Russian Federation authorities proceeded with a large-scale nationalization of public and sometimes private property. Expropriation was done in disregard of ownership rights and without compensation. Proper regulation of housing, land and property issues are also central to the Crimean Tatars who, almost three decades after returning from deportation, have not obtained security of tenure guarantees.

1. Property nationalization

171. Since the March 2014 referendum, many of the most economically valuable assets in Crimea – from energy companies to mobile operators – have been expropriated, often by force.

...

173. Regulatory acts have been adopted to provide legitimacy to the nationalization process. However, frequent amendments, which increased the number and nature of property to be nationalized, undermined legal certainty and guarantees against arbitrariness. For example, Resolution No. 2085-6/14, which originally focused on nationalization of property without ownership or belonging to the State of Ukraine, was amended to include 111 individual property assets listed in a separate Annex called 'List of property considered as the property of the Republic of Crimea'. During 2014-2016, hotels, private apartments, non-residential premises, markets, gas stations, land plots and movable property, were added to the Annex by new resolutions, which contained no criteria for the nationalization and, in most cases, no information on the owners of nationalized property.

174. ... As of 12 September 2017, the Annex with the list of nationalized property had been amended 56 times and now contains 4,618 'nationalized' public and private real estate assets.

175. Similar processes have taken place in the city of Sevastopol. With the purpose of 'restoring social fairness and maintaining public order', the city authorities nationalized 13 companies and 30 real estate assets between February 2015 and July 2016.

...

C. Right to education in native language

194. International human rights instruments ratified by both Ukraine and the Russian Federation guarantee the right to education. States are obliged to prioritize the introduction of compulsory, free primary education and must 'take steps' towards the realization of secondary, higher and fundamental education for all those within its jurisdiction. Article 2 of the First Protocol to the European Convention on the Protection of Human Rights and Fundamental Freedoms provides that states should respect the right of parents to ensure education and teaching in conformity with their own religious and philosophical convictions ...

195. Shortly after the March 2014 referendum, schools and universities in Crimea started functioning in accordance with the curriculum and educational standards of the Russian Federation. The education and academic qualifications obtained in Ukrainian educational establishments were recognized while a large-scale in-training programme for over 20,000 Crimean teachers started in June 2014.

196. Overall, the introduction of Russian Federation education standards has limited the right of ethnic Ukrainians and Crimean Tatars to education in their native language ... Furthermore, there is no clear procedure regulating the education in a mother tongue and no legally defined numeric threshold for opening schools or classes.

197. The number of students undergoing instruction in Ukrainian language has dropped dramatically. In the 2013-2014 academic year, 12,694 students were educated in the Ukrainian language. Following the occupation of Crimea, this number fell to 2,154 in 2014-2015, 949 in 2015-2016, and 371 in 2016-2017. In April 2015, the long-time director of the only Ukrainian-language gymnasium in Simferopol left Crimea, allegedly due to threats and harassment. Between 2013 and 2017, the number of Ukrainian schools decreased from seven to one, and the number of classes from 875 to 28.

198. ... Pressure from some teaching staff and school administrations to discontinue teaching in Ukrainian language has also been reported.

199. At the university level, the Department of Ukrainian Philology in the Vernadskiy Taurida National University was closed down in September 2014 and the majority of its teaching staff laid off. The departments of Ukrainian philology, culture of the Ukrainian language and theory and history of the Ukrainian language have been merged into one department. By the end of 2014, Ukrainian as a language of instruction had been removed from university-level education in Crimea.

200. On 19 April 2017, the International Court of Justice delivered an Order on provisional measures in proceedings brought by Ukraine against the Russian Federation, concluding unanimously that the Russian Federation must '*Ensure the availability of education in the Ukrainian language*'.

201. The number of students receiving their instruction in Crimean Tatar language has remained stable, largely due to a high level of cultural awareness among the Crimean Tatars. In the 2013-2014 academic year, when Ukraine's curriculum was last applied in Crimea, 5,551 Crimean Tatars were educated in their native language. In 2014-2015, the figure was 5,146, in 2015-2016 it was 5,334, and in 2016-2017, 5,330 children were educated in Crimean Tatar. Fifteen Crimean Tatar national schools were functioning in 2017, as in 2013.

...

VIII. Conclusions and Recommendations

220. The human rights situation in Crimea has significantly deteriorated since the beginning of its occupation by the Russian Federation. The imposition of a new

citizenship and legal framework and the resulting administration of justice have significantly limited the enjoyment of human rights for the residents of Crimea. The Russian Federation has extended its laws to Crimea in violation of international humanitarian law. In many cases, they have been applied arbitrarily.

221. Russian Federation authorities in Crimea have supported groups and individuals loyal to the Russian Federation, including among national and religious minorities, while preventing any criticism or dissent and outlawing organized opposition, such as the Mejlis. The space for civil society to operate, criticize or advocate has considerably shrunk. Media outlets have been shut down, disproportionately affecting the Crimean Tatar and Ukrainian communities, their right to information and to maintain their culture and identity.

222. Grave human rights violations affecting the right to life, liberty and security have not been effectively investigated. The judiciary has failed to uphold the rule of law and exercise proper administration of justice. There is an urgent need for accountability for human rights violations and abuses and providing the victims with redress.

223. Moreover, the freedom of movement between mainland Ukraine and Crimea has been restricted and the ABL has acquired many attributes of a State border.

...

226. In order to improve the human rights situation in Crimea, OHCHR recommends:

To the Government of the Russian Federation to:

...

o) Put an end to police actions, including house searches, summons, detentions, taking of DNA samples, targeting disproportionately members of the Crimean Tatar community;

..."

3. Commissioner for Human Rights of the Council of Europe

Report following the Commissioner's Mission in Kyiv, Moscow and Crimea from 7 to 12 September 2014 ("the Commissioner's Report")

228. The relevant parts of the Commissioner's Report read as follows:

"13. ... The circumstances of Mr Ametov's disappearance and death have not been clarified to date. The local prosecutorial authorities informed the Commissioner that the investigation was still ongoing and that 300 expert examinations had been carried out. The Commissioner considers that all relevant video recordings purportedly showing Mr Ametov being taken from the site of the 3 March protest should be subject to an expert analysis. Further, steps should be taken to identify the three men shown in those videos, and to question them.

14. Another case concerned a 16-year old student, Mark Ivanyuk, who died under unclear circumstances on the highway Chernomorskoe-Olenevka on 21 April 2014. While the leadership in the region released information that the death was due to a hit-and-run car accident, certain media reported that the person's mother had alleged police involvement in his death. When the Commissioner raised the case, Ms Poklonskaya indicated that the local prosecutorial authorities were not aware of it.

15. The Commissioner also enquired about the cases of three local civil society activists, Leonid Korzh, Timur Shaimardanov, and Seiran Zinedinov, who went missing

at the end of May 2014 (respectively, since 22, 26, and 30 May). Mr Shaimardanov and Mr Zinedinov are included in the publicised list of missing persons ... After the mission, the Commissioner became aware of reports about the abduction by uniformed men of Islyam Dzhepparov and Dzhevdet Islyamov on 27 September 2014 near the Simferopol – Feodosia highway. The men were placed in a minibus and taken in an unknown direction ...

...

3.2 SITUATION OF MINORITIES

20. The situation of ethnic minorities was the main topic of the previous Commissioner's visit to the region which took place in November 2011, and a follow-up letter to the Prime Minister of the Autonomous Republic of Crimea, Mr Anatolii Mohyliov. Within the framework of the current mission the Commissioner paid particular attention to the situation of the Crimean Tatar community and ethnic Ukrainians residing on the peninsula.

21. The Commissioner received reports about a number of searches - carried out by armed and masked members of the security forces - in Muslim religious institutions, as well as businesses and private homes belonging to members of the Crimean Tatar community. The purpose of those actions was to search for prohibited items, including weapons and 'extremist literature'. By the time of the Commissioner's visit, such searches had been carried out in 8 out of 10 religious schools (madrasas) belonging to the Spiritual Directorate of the Muslims of Crimea (*Dukhovnoe Upravlenie Musulman Kryma*). There were also reports that 'informative talks' had been carried out with scores of persons in order to check whether they adhered to 'undesirable' or 'non-traditional' forms of Islam. The perception among various representatives of the Crimean Tatar community was that the above-mentioned actions were intrusive and performed with an intent to intimidate them. Moreover, Mr Mustafa Dzhemilev, one of the key leaders of the Crimean Tatar community and former Chairman of the Mejlis, and Refat Chubarov (on 20 August 2014, the President of Ukraine, Mr Petro Poroshenko, signed a decree whereby Mr Dzhemilev was appointed as Commissioner of the President on the Affairs of Crimean Tatars), the current Chairman of the Mejlis have respectively been barred since 22 April and 5 July 2014 from entering the territory of Crimea.

22. During his meeting with the regional leadership on 11 September 2014, the Commissioner expressed the opinion that the above-mentioned searches and checks were disproportionate and excessive, and that care should be taken to avoid any further actions which selectively target members of the Crimean Tatar community in the name of fighting extremism. In response, the authorities indicated that they would engage with representatives of the Crimean Tatar community with a view to resolving the problem. However, on 18 September 2014, after the Commissioner's return from the mission, he was informed that the building of the Crimean Tatar Mejlis in Simferopol - which he had visited - was seized by security forces and that the employees of the organisations located in the building were evicted, reportedly on the basis of a court order.

...

24. ... In the wake of the events of February-March this year, some of them decided to leave the region because they no longer felt secure, while others preferred to refrain from openly stating and/or manifesting their views.

25. The Commissioner took note of the allegations about attempts to gain control over churches owned by the Ukrainian Orthodox Church of the Kyiv Patriarchate and

apply pressure upon priests serving in the Crimean diocese. One such incident was reported on 1 June 2014 when uniformed men, said to be Cossacks and members of the 'self-defence' forces, entered a local church in the village of Perevalne proclaiming that they were seizing it with the intention of transferring it to the authority of the Moscow Patriarchate. According to the local head of the Ukrainian Orthodox Church of the Kyiv Patriarchate, archbishop Kliment, six out of fifteen churches belonging to that religious denomination were no longer under the control of the Kyiv Patriarchate. The Commissioner raised the matter with the local leaders and urged them to enter into a dialogue with the representative of that church with a view to resolving the foregoing issues. The Commissioner's interlocutors promised to organise such a meeting.

26. The Commissioner is of the opinion that multiculturalism is a unique feature and asset of this territory and should be nurtured and preserved, including through the media, as well as in schools and public institutions. Despite the changing legal framework, the three languages - Russian, Crimean Tatar and Ukrainian – continue to be used as languages of communication. However, the Commissioner received reports that the use of Ukrainian language in the schools has been diminishing. Apparently, the only Ukrainian-language gymnasium in Simferopol has been transformed into a school where in some classes education will continue to be provided in Ukrainian, while in other classes Russian will become the language of instruction. Whether this was done on the basis of the requests received from the parents of the schoolchildren has been a matter of some dispute. Moreover, whether parents can make language choices free of pressure has also been questioned.

...

3.3 MEDIA SITUATION

...

30. The Commissioner received information about two main 'waves' of attacks against journalists: in March 2014, around the time of the 'referendum', and in 15-19 May 2014, around the commemoration day of the 1944 deportation of Crimean Tatars (18 May). One case involved a local journalist, Osman Pashaev, who was detained and physically assaulted by members of 'self-defence' forces on 18 May 2014 in Simferopol and subsequently left Crimea. The Commissioner had an opportunity to meet with some of the affected journalists who shared with him their accounts of being intimidated or assaulted by members of the 'self-defence' forces.

...

3.4 STATUS OF 'SELF-DEFENCE' FORCES (*SAMOOBORONA*)

34. The legal status and functions of the Crimean 'Self-Defence' (*Samooborona Kryma*) – auxiliary forces which have been playing a visible role in the events of February-March 2014 and thereafter - were also among the issues raised by the Commissioner with his interlocutors in the region. As was mentioned in previous sections, the Commissioner received numerous reports that ..., on a number of occasions, members of [the Crimean 'Self-Defence' (*Samooborona Kryma*)] have reportedly been implicated in cases of serious human rights violations, including abductions, arbitrary detention, ill-treatment and attacks against journalists. One of the many cases communicated to the Commissioner involved two activists, Andriy Schekun and Anatoly Kovalsky, who were detained and allegedly ill-treated by those forces on 9 March 2014. After spending eleven days detained in an unknown location, they were transferred to the territory under control of the Ukrainian government.

35. ... He was also informed about their (members of CSDF) alleged involvement in the seizure and 'nationalisation' of private enterprises. One such case occurred during

the Commissioner's mission and was effectively acknowledged by the local leadership, who indicated that the interference was made due to unlawful actions by the company in question.

36. In June this year the local legislative body, in an apparently retroactive manner, endorsed a proposal to 'legalise' those forces through an act which provided them with a rather wide range of functions, but included only a limited number of checks and appropriate safeguards. Furthermore, the Commissioner was informed that there were two legislative initiatives – one introduced locally and another one pending in the State Duma – which provides for immunity from prosecution for actions committed by members of those forces after February 2014.

...

3.6 CITIZENSHIP-RELATED ISSUES

44. During his mission, some of the Commissioner's interlocutors drew his attention to various aspects of the on-going process of issuance of Russian passports (commonly referred to as 'passportisation') and shared their concerns as to how the choices made by various individuals may eventually affect their access to and enjoyment of a number of human rights.

45. The Russian Federation stipulated in its legislation that all permanent residents on the territory of Crimea, unless they explicitly refuse Russian citizenship, will become citizens of the Russian Federation one month after the date on which, according to the Russian Federation, Crimea was incorporated into its territory ...

46. The Commissioner received several reports suggesting that the wish of the person concerned was not always taken into account throughout the above-mentioned process ... In at least some of these cases there are reasons to believe that the affected persons did not have an effective possibility to exercise their choices (see below). The Commissioner was also made aware of some cases of persons who reportedly wished to acquire Russian citizenship but were not in a position to do so due to certain 'eligibility' criteria (lack of proof of permanent residence has frequently been invoked in such cases).

47. In the Commissioner's view, people should have a choice in matters relating to their citizenship. The consent of the person concerned should be the paramount consideration in this regard, and this consent should be active and clearly stated ...

48. Another issue of concern raised by the Commissioner's interlocutors relates to the effective possibility to express one's wishes. The period granted for initiating a procedure to refuse Russian citizenship was very short (one month, expiring on 18 April 2014). Moreover, instructions from the relevant migration service as to the exact procedure to follow were only available as of 1 April 2014. Furthermore, information about the places where the relevant application should be submitted was only available after 4 April; from 4 to 9 April only two such places, in Sevastopol and in Simferopol, were functioning; as of 10 April, a total of nine localities had been made available. Finally, additional requirements were introduced during the process, such as the necessity to make an application in person, or that both parents were required for the application of a child.

49. Certain persons in closed institutions might have experienced difficulties with expressing their consent. This in particular applies to those imprisoned on remand or serving a sentence, as well as people in other closed institutions (geriatric institutions, hospitals and psychoneurological clinics, orphanages, etc.) ...

50. Persons who find themselves in the situation described above should also have all the necessary information enabling them to make an informed choice. In other words, they should be fully informed and have a clear understanding of all possible legal consequences attached to one option or the other. While individuals who initiated a procedure for refusing Russian citizenship were asked to sign a document stating they were fully aware of the legal consequences of their decision, it would appear that a whole range of important issues related to their future status has not been clarified to date. First and foremost, questions have been raised as to whether these individuals will 'automatically' acquire permanent resident status or not, and to what extent this will affect their social and economic rights, access to employment, and similar issues.

51. For certain groups of individuals – such as civil servants – the decision not to accept Russian citizenship meant the loss of their current employment. The Commissioner also received reports suggesting that public sector employees (e.g. teaching staff in universities and other educational institutions) were also 'advised' to renounce their Ukrainian citizenship.

...

3.8 ACCESS OF INTERNATIONAL HUMANITARIAN AND HUMAN RIGHTS ORGANISATIONS

53. There appears to be an issue with regard to free and unhindered access of international organisations and missions to the region, including those whose mandate is to provide independent and impartial monitoring of the human rights situation. Some of these obstacles stem from the relevant legislative framework, others from its practical implementation; still others arise from what appears to be an arbitrary or selective application of the rules by the relevant executing bodies. Except for the Council of Europe Commissioner for Human Rights, representatives of other international institutions, including UN OHCHR, have not been able to secure access of their monitors to the region after March 2014.

...

55. During his exchange of views in Moscow with the Deputy Minister of Foreign Affairs, the Commissioner formed the impression that the Russian authorities consider that the access route via Moscow represents the best option under the current circumstances. Apart from the requirement to obtain a Russian visa, the Commissioner does not have information suggesting that the legislation which is effectively (*de facto*) applied in the region imposes any additional or separate rules or procedures on foreign citizens and/or stateless persons wishing to enter the region by land from the north."

4. Reports of the OSCE Office for Democratic Institutions and Human Rights (ODIHR) and the OSCE High Commissioner on National Minorities (HCNM)

(a) Human Rights Assessment in Ukraine, The Hague/Warsaw, 12 May 2014

229. The relevant parts of the Report under this head read as follows:

"6. In the reporting period, the HRAM received credible allegations of enforced disappearances. In Crimea, the targeted individuals primarily included pro-Maidan activists, journalists and members of the Armed Forces of Ukraine. In a number of these cases, victims were reportedly subjected to torture and other ill-treatment while in custody. Any steps taken by law enforcement and prosecutorial bodies to investigate enforced disappearances and related acts appear to have been ineffective ...

10. ... Reports point to numerous checks by 'self-defence' groups on a daily basis ... Acting outside the law, these groups appear to have enjoyed the acquiescence and, in some cases, the active complicity of the authorities exercising *de facto* control, including their law-enforcement bodies.

11. The situation of legal uncertainty that arose from the change in the authorities exercising *de facto* control over Crimea carries with it a number of risks, including potential infringements of the rule of law and human rights ...

107. In the reporting period, the HRAM received credible allegations of enforced disappearances ...

120. The incidents described above reveal a disturbing pattern of violations entailing enforced disappearances and allegations of torture and other ill-treatment primarily targeting pro-Maidan activists and Ukrainian military officers. These violations appear to have been perpetrated by individuals reported as wearing a variety of uniforms and acting as members of 'self-defence' groups, Cossacks, 'Crimean Army', etc. Although acting outside the law, the groups responsible for such acts appear to have enjoyed the acquiescence and, in some cases, the active complicity of the authorities exercising *de facto* control, including their law-enforcement bodies ...

132. The incidents described above indicate a disturbing pattern of physical attacks, harassment, threats and intimidation of journalists and pro-Maidan activists taking place in the reporting period in Crimea. The alleged perpetrators were usually described as unidentified men who were, in some cases, wearing a uniform and are reportedly associated with 'self-defence' groups ..."

(b) Report of the Human Rights Assessment Mission on Crimea (6–18 July 2015), 17 September 2015

230. The relevant parts of the Report under this head read as follows:

"4. Despite their clear mandates to monitor the human rights situation in Crimea, the institutions and independent experts of the OSCE, the United Nations and the Council of Europe have all had their access to the Crimean peninsula either fully or partially restricted since the annexation. The *de facto* authorities in Crimea did not respond to requests to facilitate access to Crimea for the HRAM, for which reason the HRAM primarily conducted fact-finding and research in the territory of mainland Ukraine, as well as through remote interviews with relevant contacts in Crimea and elsewhere.

5. Through extensive meetings and interviews with over 100 civil society actors, Ukrainian authorities, internally displaced persons and cross-boundary travellers, the HRAM received numerous credible, consistent and compelling accounts of human rights violations and legal irregularities in Crimea – some of them of a serious nature. The allegations documented and trends established by the HRAM demand urgently to be addressed by Crimean *de facto* authorities, and underscore the need for systematic independent monitoring of the human rights situation in Crimea by impartial international bodies.

...

67. Since March 2014, the Crimean *de facto* authorities have undertaken to expropriate (or 'nationalize') Ukrainian public properties and enterprises, as well as many private properties and businesses of Crimean residents. The law on nationalization itself does not specify a procedure for property purchase, and provides neither a requirement of actual notification of the owner of the property being nationalized, nor an appeal procedure.

68. According to Crimean lawyers, NGOs, residents and IDPs who spoke with the HRAM, as well as NGO reports, the ensuing seizures of public and private properties and businesses have reportedly been without adequate notification, compensation, legal basis or opportunity for appeal. In some cases the seizures were reportedly enforced by 'self-defence' militia, or apparently targeting civil society, media organizations, ethnic minorities or religious communities.

...

70. Crimean *de facto* authorities in February 2015 reportedly identified 250 public enterprises that had been nationalized; while the Ministry of Justice of Ukraine estimated the actual number to include approximately 4,000 such enterprises, valued by Ukrainian authorities at over US$1 trillion. Additional to the list of 141 public properties Crimean *de facto* authorities designated in March 2014 for nationalization, countless other public and private properties have also reportedly been seized under recently enacted legislation – including a large portion of the tourism and industrial sectors. The Ukrainian Government claims that there have been thousands of cases of expropriations of private properties and enterprises from Crimean residents or IDPs who were the legal owners prior to annexation ..."

B. Relevant reports of non-governmental organisations

1. *Human Rights Watch, "Rights in Retreat: Abuses in Crimea" November 2014*

231. The relevant parts of the Report under this head read as follows:

"**Summary**

Human rights protections in Crimea have been severely curtailed since Russia began its occupation of the peninsula in February 2014. In the past eight months, the *de facto* authorities in Crimea have limited free expression, restricted peaceful assembly, and intimidated and harassed those who have opposed Russia's actions in Crimea. In particular the authorities have targeted the Crimean Tatar community, a Muslim ethnic minority that is native to the Crimean peninsula and that has openly opposed Russia's occupation. At the same time the authorities have failed to rein in or effectively investigate abuses by paramilitary groups implicated in enforced disappearances and unlawful detention and ill-treatment of Crimean Tatars, activists, journalists, and other individuals who are or perceived to be pro-Ukrainian. By bestowing Russian citizenship on Crimea residents through a coercive process, the authorities have also engaged in discrimination against Ukrainian citizens in Crimea, laid the groundwork for the potential expulsion of some Ukrainian citizens, and violated their obligations as an occupying power under international humanitarian law in relation to protecting civilians' rights.

Following the signing of the Treaty on the Adoption of the Republic of Crimea into Russia between local Crimea authorities and Russia and the Russian Duma passing the law On the Acceptance of the Republic of Crimea into the Russian Federation and the Creation of New Federal Subjects on March 20, 2014, Russian and Crimea's authorities started the process of extending Russian legislation and policy to Crimea. This includes Russian laws relating to citizenship, media registration, and laws on 'extremism', including prohibited literature.

In particular, authorities in Crimea have used Russia's vaguely worded laws on extremism to issue several 'anti-extremist warnings' to the Mejlis, the Crimean Tatar representative body, and have banned mass public gatherings by the Crimean Tatar

community. Between August and October, authorities conducted invasive and in some cases unwarranted searches at mosques and Islamic schools and searched dozens of private homes of Crimean Tatars, including members of the Mejlis. The searches, which the authorities say were conducted to look for 'drugs, weapons, and prohibited literature,' were carried out by both local police and Russia's Federal Security Service (FSB), but also involved dozens of unidentified armed, masked men.

The authorities have harassed pro-Ukraine and Crimean Tatar media outlets, searched their offices, shut down some, and threatened others with closure. The FSB and Crimea prosecutor's office issued formal and informal warnings to leading Crimean Tatar media outlets against publishing 'extremist materials' and invited editors to their offices for meetings during which they threatened that the outlets would not be allowed to re-register under Russian legislation unless they changed what they called their anti-Russian editorial policies.

The authorities continue to support so-called self-defense units, armed paramilitary groups which formed in Crimea toward the end of February and were implicated in enforced disappearances, beatings, and in at least one case, the torture of pro-Ukraine activists in March. These units continue to unlawfully detain and beat pro-Ukraine activists in Crimea. The authorities have neither restrained the units from committing abuses nor investigated the abuses themselves. Rather, in June they took steps to regularize the units under the law and give them wider powers. Additionally, in July the *de facto* prime minister of Crimea, Sergei Aksyonov [Aksenov], introduced a draft law to the Parliament of Crimea proposing to grant amnesty to all members of the self-defense units in Crimea for the period between February and April 2014. At this writing, a similar law is pending in Russia's State Duma, which proposes amnesty for members of the self-defense units for the period between February 2014 and January 2015 with the exception of those 'motivated by personal gain'.

This report documents the abuses outlined above. It is based on on-site research in Crimea in October 2014, during which a Human Rights Watch researcher met and spoke with journalists, activists, lawyers, civil society representatives, and members of the Crimean Tatar community, including the leadership of the Mejlis and the Spiritual Directorate of the Muslims of Crimea. Human Rights Watch researchers also conducted telephone interviews with people who have left Crimea for mainland Ukraine. The report also includes previously published material gathered during a research trip to Crimea in March 2014.

On November 6, Human Rights Watch sent a letter summarizing our research findings to the Crimean authorities. We have not yet received a response."

2. Amnesty International

"One Year On: Violations of the Rights to Freedom of Expression, Assembly and Association in Crimea", report published in 2015

232. The relevant parts of the report under this head read as follows:

"**INTRODUCTION**

The downfall of President Viktor Yanukovych on 22 February 2014 following the three month-long EuroMaydan protests in Kyiv set in motion a rapid chain of events in Ukraine's autonomous Republic of Crimea, culminating in its annexation by Russia.

Virtually overnight, Russian laws in their entirety were extended to Crimea, including those limiting the exercise of the right to freedom of expression, association and assembly, heralding a rapid deterioration in the respect for human rights in the peninsula

and a clampdown on dissent, targeting particularly those opposed to Russian annexation and suspected of harbouring pro-Ukrainian views.

The attitude of the *de facto* Crimean authorities, and their Russian masters, to their opponents is simple: leave or shut up. Many vocal critics have indeed left, spurred also by a spate of abductions in the first few months after the annexation. Several pro-Ukrainian associations and human rights groups have likewise relocated or ceased to operate altogether.

The 200,000 strong Crimean Tatar community has been particularly affected. Many of the rights violations documented in this briefing have been suffered by Tatars. This is not surprising, as prominent Tatar leaders remain the most visible and vocal opponents of Russian rule left in the region. Their distinct way of life, culture, religion, language, names and even appearance further set them apart from the majority of Crimea's residents. Unlike many ethnic Ukrainian activists who have since relocated to mainland Ukraine, Crimean Tatars for the most part regard Crimea as their only homeland and are unwilling to contemplate relocating.

However, the human rights violations over the past year are not limited to Crimean Tatars.

...

ABDUCTIONS AND IMPUNITY

In the first few months of the Russian occupation of Crimea, at least a dozen people were abducted and ill-treated by unidentified paramilitaries (generally referred to as 'Crimean self-defense forces'); the fate of seven of them has not been resolved and not a single perpetrator has been identified. Some pro-Ukrainian activists – most famously the film director Oleg Sentsov – were arrested by the Russian Federal Security Service and unlawfully transferred to Russia as criminal suspects on highly questionable charges of forming a terrorist group and planning acts of terrorism.

There have also been several cases of abduction of Crimean Tatars by paramilitaries over the past year. Typically, Crimean Tatar men were stopped in the street, pushed into a vehicle, and driven away by an organized group of armed men. The *de facto* authorities have created a special contact group to investigate these abductions and have promised repeatedly to do the utmost to find those responsible, but as of the time of writing not a single case has been solved.

...

FREEDOM OF EXPRESSION: MUZZLING THE MEDIA

Freedom of expression has been severely restricted in Crimea since the occupation and annexation of the peninsula by Russia in February and March 2014. This has followed, in part, from the application of generally restrictive Russian laws and practices, but has clearly been aggravated by the desire of the *de facto* authorities in Crimea to silence pro-Ukrainian and other dissenting voices.

Senior members of the *de facto* authorities have repeatedly made threatening statements warning about imminent sanctions against those who would seek to disseminate views and media coverage which they deem unwelcome. Law enforcement agencies have been deployed to harass people holding, or likely holding, such views, particularly from among members of the Crimean Tatar community. Means of harassment include issuing official 'warnings' and conducting home and office searches, and questioning people known for their pro-Ukrainian views.

...

ELIMINATION OF INDEPENDENT MEDIA OUTLETS THROUGH ADMINISTRATIVE PROCEDURES

Following Crimea's annexation by Russia, the *de facto* authorities ordered all legal entities in Crimea to re-register under relevant Russian legislation, by 1 January 2015, a deadline that was subsequently extended to 1 April 2015. On 11 March the *de facto* Minister of Internal Policy, Information and Communications in Crimea Dmitriy Polonskiy complained during a press conference in Simferopol that 'currently, a large number of media outlets have not registered for varying reasons.' He added that the media outlets that failed to register before 1 April 'will not be able to work on the territory of the Russian Federation.'

The registration procedures is confers a wide discretion on the registering authorities to delay or deny registration, including on minor technicalities – or sometimes purporting there are irregularities but without specifying what they are ...

At least five local radio stations, all of them general entertainment stations, were deprived of their broadcasting frequencies in Crimea's biggest towns through another administrative procedure initiated by the federal Russian authorities ...

FREEDOM OF ASSEMBLY

...

The right to freedom of peaceful assembly has been severely curtailed since the peninsula's annexation by the Russia. Public gatherings and street protests in Crimea have visibly decreased since March 2014, as the *de facto* authorities have employed restrictive Russian legislation and administrative technicalities to curb any public protest or other assemblies that could be seen as opposing the new regime. Under Russian law, organizers of public assemblies are obliged to obtain official authorization unless they plan to hold them in a specially designated, and typically remote, location. These provisions have been used to repeatedly ban unwelcome demonstrations and public gatherings. Other events have been disrupted by young men shouting insults at participants. Crimean Tatars have borne the brunt of these newly imposed restrictions. They have been forced to move their traditional commemorative events from central squares to remote neighbourhoods and in some cases have been denied the opportunity to assemble altogether. But they are not the only group to have endured violations of their right to peaceful assembly.

HARASSMENT AND DETENTION OF PRO-UKRAINIAN ACTIVISTS

Public gatherings opposing the annexation of Crimea virtually ceased after 18 March 2014, when the 'treaty' sealing Crimea's annexation by Russia was signed in Moscow. Since then, most openly pro-Ukrainian activists – among them all publicly known EuroMaydan activists – have left the peninsula, fearing for their personal safety and the risk of criminal prosecution. Such fears became particularly acute in May 2014, following the arrest, unlawful transfer to Moscow, and alleged torture of the film director Oleg Sentsov and several other individuals by Russian Federal Security Service officers, and their subsequent criminal prosecution under terrorism-related charges. Since then, pro-Ukrainian sentiments are hardly ever publicly expressed in Crimea, and even public assemblies intended to celebrate Ukrainian cultural events have been prevented by the *de facto* authorities and pro-Russian thugs ...

TRADITIONAL ASSEMBLIES BY CRIMEAN TATARS CURTAILED, PROTESTS DISALLOWED

The Crimean Tatar community has been particularly affected by the new restrictions on the right to freedom of peaceful assembly in Crimea, which the *de facto* authorities have used to curtail traditional public gatherings.

... In May of 2014, the year of the 70th anniversary of this event, the *de facto* authorities issued a temporary ban on all public events in Crimea. Though never articulated as such, the ban clearly targeted the Crimean Tatar community. On 16 May, the *de facto* Prime Minister of Crimea Sergei Aksionov [Aksenov] announced that all public assembles in Crimea were to be disallowed until 6 June, in order to 'eliminate possible provocations by extremists, who have managed to penetrate the territory of the Republic of Crimea' and to prevent 'disruption of the summer holiday season'.

...

PRESSURE ON THE UKRAINIAN ORTHODOX CHURCH OF THE KYIV PATRIARCHATE

Religious groups have also faced existential difficulties in the new Crimea. Of the more than 1,400 officially registered religious groups prior to the annexation, as of February 2015, only around a dozen had been re-registered under Russian law, according to a report produced the Crimean Field Mission (a human rights initiative involving Russian and Ukrainian NGOs).

The Ukrainian Orthodox Church of the Kyiv Patriarchate (UOCKP), which split from the Russian Orthodox Church in Ukraine in 1992, and is unrecognized by other Orthodox patriarchates, risks losing its parishes and church buildings in Crimea if they do not succeed in registering under Russian law.

Recently, the Russian Federal Security Service (FSB) has requested the UOCKP to voluntarily give up its rights to the plot of land in Simferopol where it was planning to build a temple, for the construction of apartment blocks for FSB personnel there. The FSB's plans for construction on this land have already been approved by Sergey Aksionov [Aksenov].

Further pressure has been applied against UOCKP by pro-Russian thugs. The church in the village of Perevalnoe was stormed on 1 June 2014 by men armed with knives, sabres and whips, and wearing Cossack outfits. They damaged the interior of the church, issued death threats against the priest Ivan Katkalo, and demanded that he leave. He has not returned since. In a similar manner, other UOCKP churches in Sevastopol, Krasnoperekopsk and Kerch' were ransacked and closed. The prayers in the main UOCKP temple in Simferopol are being routinely visited by security services monitoring the parishioners who attend the services ..."

COMPLAINTS

233. The applicant Government complained that the respondent State was responsible for an administrative practice amounting to violations of numerous rights and freedoms protected by the Convention and the Protocols thereto. As illustrations of the alleged practice (leaving aside the complaint about the "transfer of convicts to the territory of the Russian Federation" (see below)), in their memorial of 28 December 2018 the applicant Government essentially relied on alleged individual incidents that had occurred in Crimea, and on the effects produced by general measures adopted in respect of Crimea, during the period they had previously addressed in their initial

applications, namely from 27 February 2014 until 26 August 2015, the date of introduction of their second application (see paragraphs 1 and 105-41 above). According to them, since 27 February 2014 the respondent State had exercised extraterritorial jurisdiction over Crimea and accordingly, it was to be held responsible for the administrative practice complained of. In their memorial before the Grand Chamber, the applicant Government made the following complaints:

> "a. The death and disappearance of perceived opponents of the Russian occupation (in particular Ukrainian soldiers, ethnic Ukrainians and Tatars) without appropriate investigation in violation of the substantive and procedural components of Article 2 of the Convention ...;
>
> b. The unlawful detention, inhuman and degrading treatment and torture of perceived opponents of the Russian occupation (in particular Ukrainian soldiers, ethnic Ukrainians and Tatars as well as journalists) in violation of Articles 3 and 5 of the Convention. Detainees were blindfolded, beaten, subjected to mock executions and otherwise subjected to torture and inhuman or degrading treatment by paramilitary groups in Russian military facilities, guarded by Russian military and intelligence agents;
>
> c. Unlawful imposing of 'automatic Russian citizenship' on all residents of the Crimean Peninsula in violation of Article 8 of the Convention;
>
> d. Unlawful requalification of the Ukrainian judgments under Russian legislation in breach of Article 6 of the Convention and transfer of convicts to the territory of the Russian Federation contrary to Article 8 of the Convention;
>
> e. Arbitrary raids of private dwelling houses and places of worship associated with perceived opponents of the Russian occupation (in particular the homes of Ukrainian soldiers, ethnic Ukrainians and Tatars), as well as the confiscation of religious property in violation of Article 8 of the Convention ...;
>
> f. The harassment and intimidation of religious leaders not conforming to the Russian Orthodox faith (in particular Ukrainian Orthodox priests and imams) in violation of Article 9 of the Convention;
>
> g. The suppression of non-Russian media, including the closure of Ukrainian and Tatar television stations and the apprehension, intimidation and seizure of material from international journalists in violation of Article 10 of the Convention;
>
> h. Unlawful and discriminatory prohibition of public gatherings and manifestations of support for Ukraine or the Tatar community, including the intimidation and arbitrary detention of organisers of demonstrations in violation of Article 11 of the Convention;
>
> i. The expropriation without compensation of the property of Ukrainian soldiers, civilians and private enterprises under the premise of 'nationalisation' in violation of Article 1 of Protocol No. 1 and Article 8 of the Convention;
>
> j. The suppression of the Ukrainian language in schools and persecution of Ukrainian speaking children at school in violation of Article 2 Protocol No. 2 of the Conventions; and
>
> k. The construction and enforcement of an illegal 'border' at the administrative boundary line with mainland Ukraine resulting in violations of Article 2 Protocol No. 4 of the Convention."

234. They also reiterated the allegations made in their earlier submissions of discriminatory legal and administrative measures targeting the Tatar population. In this connection they referred to the alleged summonses of Tatars by police and the Public Prosecutor of Crimea; the initiation of criminal proceedings against Tatars; the prohibition of broadcasting of Tatar television channels; the ban on public meetings and interference with their freedom of movement. Being the master of the characterisation to be given in law to the facts of a case (see *Fernandes de Oliveira v. Portugal* [GC], no. 78103/14, § 81, 31 January 2019; *Molla Sali v. Greece* [GC], no. 20452/14, § 85, 19 December 2018; and *Scoppola v. Italy (no. 2)* [GC], no. 10249/03, § 54, 17 September 2009), the Court considers that these complaints are to be examined under Article 14, taken in conjunction with Articles 8, 9, 10, 11 of the Convention and with Article 2 of Protocol No. 4.

235. The applicant Government further stated that the purpose of their application was not to seek individual findings of violations and just satisfaction but rather to invoke the jurisdiction of the Court to establish the existence of the pattern of violations alleged, put an end to them and prevent their recurrence.

THE LAW

I. SCOPE OF THE CASE

236. The Court notes at the outset that the present decision concerns only the admissibility of the complaints that Ukraine brought against the Russian Federation. In this connection the Court finds it necessary to set out the context and identify the appropriate approach that it will apply to all the aspects relevant to the admissibility of these complaints, including, *inter alia*, the jurisdictional issues and the alleged existence of an "administrative practice" in violation of various provisions of the Convention relied upon by the applicant Government. The Court's findings in this decision are without prejudice to the issues which (as noted below) may fall to be examined at a later stage, namely the merits phase, of the Court's procedure.

A. Object of the case before the Court

237. The Court reiterates that under Article 33 of the Convention, any High Contracting Party may refer to the Court any alleged breach of the provisions of the Convention and the Protocols thereto by another High Contracting Party. As noted above (see paragraphs 7 and 231 above), the applicant Government complained that as from 27 February 2014 the respondent State had exercised extraterritorial jurisdiction over Crimea and that it "ha[d] adopted an administrative practice of human rights violations" there. They invited the Court to find that the respondent State, on that account,

had failed to observe the engagements undertaken under the Convention and its Protocols.

238. In such circumstances, and having regard to the applicant Government's submissions as formulated in their memorial of 28 December 2018 (see paragraph 233 above), the Court considers that the present case concerns the applicant Government's specific allegations of an administrative practice adopted by the respondent State in or in respect of Crimea in violation of the Convention between 27 February 2014 and 26 August 2015 ("the period under consideration", except for the complaint about the "transfer of convicts to the territory of the Russian Federation", as explained below), and at this stage, only the admissibility of those allegations. By asking the Court not to give a decision on any individual case in support of the alleged "pattern of violations", the applicant Government limited the scope of their complaint before the Court to the alleged administrative practice of human rights violations as such. In the Court's view, such allegations of an administrative practice are sufficiently clear and precise for a judicial examination. Having regard to the temporal scope of the applicant Government's complaints as defined above, the Court considers that it is no longer necessary to maintain the interim measure under Rule 39 of 13 March 2014 issued in respect of both parties to the proceedings (see paragraph 5 above).

239. At this juncture, the Court considers it important to address, firstly, the parties' positions as to the relevance of the background events relating to the Maidan protests in Kyiv and, secondly, the issue of the legality, as a matter of international law, of Crimea's purported integration into the Russian Federation following the "referendum" held in Crimea in March 2014.

240. As to the former, the Court does not consider that those events, to which the respondent Government referred extensively in their submissions, are an essential part of the factual and evidential basis relevant to the present case. Neither do they have a direct material bearing on the issues to be decided by the Court, which, as noted above, concern the admissibility of specific allegations of an administrative practice adopted by the respondent State in Crimea between 27 February 2014 and 26 August 2015. The Court notes furthermore that those events are the subject of a number of individual applications currently pending before the Court. Any argument by the respondent Government that the events unfolding in Crimea were related to the post-Maidan political developments and the alleged subsequent actions taken against the opponents of the post-Maidan Government (see paragraphs 149-63 above) will be taken into account, in so far as relevant and to the appropriate extent, under the relevant heading(s) below (see paragraphs 323-24 below).

241. As to the latter issue, in their memorial the applicant Government made the following statements:

> "14. ... The primary focus of the application is not to invite the Court to determine the legality of the Russian invasion and annexation of Crimea. It is to determine whether the violations alleged fall within Russia's jurisdiction for the purposes of Article 1 of the Convention. These may be related questions that overlap, in certain respects, but they are not the same.
>
> 15. Nor is Ukraine asking the Court to provide a remedy for Russia's unlawful occupation. Rather, the present Application invites the Court to make certain threshold findings of fact for the purpose of determining the juridical basis for Russian State responsibility under Article 1 of the Convention, and for the purpose of determining the date from which violations committed in Crimea are to be attributed to the Russian Federation.
>
> 16. These factual findings are essential to determine the question of jurisdiction and attribution for the human rights violations alleged. Moreover, they do not necessarily require a determination from the Court on the legality of the Russian occupation and annexation of Crimea. They may or may not require such a ruling, depending upon the Court's interpretation of its function (and its assessment of the evidence and arguments advanced) at the merits stage .... [T]he focus of the Court's inquiry will primarily be directed to the issue of Article 1 jurisdiction, and not to the legality of the Russian occupation.
>
> 17. ... The question for the Court will be whether Russia bears responsibility for the violations alleged. It may be possible for the Court to determine this question without directly addressing the legality, in public international law, of the Russian invasion, occupation and annexation ...
>
> 18. ... Ukraine's application cannot oblige the Court to rule on the legality of the Russian occupation and annexation of Crimea. It will be for the Court itself to determine, at the merits stage, whether such a ruling is necessary or appropriate, in order for it to reach a finding on the issue of Article 1 jurisdiction. The Court may or may not consider it necessary to determine this issue."

242. At the hearing, this position was reiterated by the applicant Government in response to a question put by the judges.

243. In their written reply to questions put by judges at the hearing of 11 September 2019, the respondent Government submitted that the Court should not make any findings on the current status of Crimea, arguing that "it is a political question between States, which turns on issues that go well beyond the interpretation and application of the Convention".

244. Having regard to the parties' written submissions, the Court considers that it is not called upon to decide in the abstract on the "legality" of the Russian Federation's purported "invasion" and "occupation" of Crimea other than by reference to the rules contained in the Convention. Nor are the applicant Government seeking a ruling from the Court on the legality *per se* under international law of the "annexation of Crimea" and, accordingly, of its consequent legal status thereafter. These matters were not referred to the Court and do not therefore constitute the subject matter of the dispute before it. Accordingly, they are outside the scope of the case and will not be directly considered by the Court. A similar approach was taken by the ICJ in the 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. the Russian Federation), *Preliminary Objections* (8 November 2019, at p. 21, § 29 – see paragraph 223 above), in which it declared admissible the complaint brought by the Government of Ukraine against the Russian Federation of a pattern of discrimination against Crimean Tatars and ethnic Ukrainians in Crimea contrary to the International Convention on the Elimination of All Forms of Racial Discrimination. In its 21 February 2020 Award (*concerning the Preliminary Objections of the Russian Federation in respect of the Dispute concerning Coastal State Rights in the Black Sea, Sea of Azov, and Kerch Strait between Ukraine and the Russian Federation*, PCA Case No. 2017-06, §§ 195 and 197) the Arbitral Tribunal constituted under Annex VII to the 1982 United Nations Convention on the Law of the Sea ("UNCLOS"), considering its jurisdiction under Article 288 § 1 of UNCLOS "over any dispute concerning the interpretation or application of this Convention", held that "the Parties' dispute regarding sovereignty over Crimea is not a minor issue ancillary to the dispute concerning the interpretation or application of the Convention. On the contrary, the question of sovereignty is a prerequisite to the Arbitral Tribunal's decision on a number of claims submitted by Ukraine under the Convention. Those claims simply cannot be addressed without deciding which State is sovereign over Crimea ..." As a consequence, the Tribunal concluded that "it lacks jurisdiction over the dispute as submitted by Ukraine to the extent that a ruling of the Arbitral Tribunal on the merits of Ukraine's claims necessarily requires it to decide, expressly or implicitly, on the sovereignty of either Party over Crimea. As a result, the Arbitral Tribunal cannot rule on any claims of Ukraine presented in its Notification and Statement of Claim and its Memorial which are dependent on the premise of Ukraine being sovereign over Crimea."

B. Scope of the complaints before the Court

245. The Court has set out (see paragraphs 233-35 above) the complaints as they have been formulated by the applicant Government in their memorial before the Grand Chamber.

246. The Court notes that in the proceedings before the Chamber, and specifically in their original applications, the applicant Government made a number of further complaints under various Articles of the Convention, including Article 1 (that the respondent State had prevented it from securing Convention rights and freedoms in Crimea), Article 2 (positive obligation to protect the right to life), Article 3 (procedural limb), Article 11 (regarding the non-(re)registration of religious and other associations), Article 13, Article 18 taken in conjunction with Article 6 (alleged political motivation behind the criminal prosecution of people opposing Crimea's "accession to the Russian Federation"), Article 3 of Protocol No. 1 (right to free elections), "Article 2 of Protocol No. 3" (regarding the alleged unlawfulness of the "referendum" held in Crimea on 16 March 2014), Article 1 of Protocol No. 12

and Article 14 (regarding "ethnic Ukrainian and pro-Ukrainian minded population (activists)", as well as "ethnic Ukrainians and of representatives of indigenous people – Crimean Tatar people, or other ethnic groups". They also raised further allegations and adduced documentary material under the Articles referred to in paragraphs 233 and 234 above, which were not necessarily identical to those finally put forward in the memorial before the Grand Chamber.

247. The Court observes that the applicant Government did not maintain, either explicitly or by way of reference, the allegations outlined in the preceding paragraph in their memorial before the Grand Chamber, notwithstanding the clear instruction that it "must constitute an exhaustive outline of their position on the complaints raised" (see paragraph 12 above).

248. In these circumstances, the Court considers that these allegations have not been pursued by the applicant Government. The Court will accordingly confine its examination to the complaints as formulated by the applicant Government in their memorial to the Grand Chamber (see paragraph 233-35 and 238 above).

II. APPROACH TO THE EVIDENCE

249. Before undertaking an examination of the admissibility of the complaints advanced in the applicant Government's memorial, the Court will briefly indicate the types of evidence to which it will have regard and set out the principles that it will apply in assessing the available evidence.

A. Types of evidence examined

250. In the context of examining, at this stage of the proceedings, the issues raised in the application before it, the Court has had regard to the parties' submissions and the evidentiary material that they submitted, as well as material in the public domain.

251. The Court has had regard, in particular, to the national legislation in both States Parties; the relevant bilateral agreements between Ukraine and the Russian Federation; instruments of the Council of Europe and other international bodies; reports by international governmental organisations and institutions, including United Nations (UN) committees, the UN High Commissioner for Human Rights (OHCHR) and the Council of Europe's Commissioner for Human Rights; reports of non-governmental organisations; documents issued by government bodies and statements made by relevant government officials, sometimes at the highest political level, before official organs of the State or during interviews; witness evidence; and media articles. Any objections by the parties as to the admissibility and probative value of any piece of evidence will be addressed under the appropriate headings below.

B. Principles of assessment of the evidence

1. The parties' submissions

252. In their written and oral submissions, the respondent Government argued that the principle *affirmanti incumbit probatio* should be applied to inter-State cases such as the present one. This was because in inter-State cases the parties were equal in terms of the instruments available to them to collect and present evidence. There was no good reason for "shifting or mitigating" the burden of proof, as that would put the applicant Government in a better position to argue the case. The applicant Government had the means and time to collect evidence. Accordingly, there was no basis for assuming that the applicant Government should be relieved of the burden of proving their case, let alone that the burden should be reversed. They submitted that each allegation had to be supported by sufficient prima facie evidence. According to them, "the evidence must be sufficient to prove the case ... where the applicant fails to make a prima facie case, the burden of proof cannot be reversed".

253. At the hearing, the applicant Government reiterated their argument that the respondent State had restricted the access of independent human rights monitoring bodies to Crimea at the time. Accordingly, the respondent Government could not contest the evidential value of the reports produced by the relevant organisations. Furthermore, the respondent State had enjoyed the "monopoly of first-hand evidence". The applicant Government asked the Court to take that into account when considering whether there was evidence of the alleged administrative practice of human rights violations.

2. The Court's assessment

254. In the light of the legal and evidential complexities of the present case, the Court considers it important at the outset to set out the approach it will take to the questions of proof (both the burden and the standard of proof) in relation to the issues to be decided at this stage of the proceedings. This is of particular importance in an inter-State case concerning, as the present case does, allegations of an "administrative practice", because the Court is almost inevitably confronted with the same difficulties in relation to the establishment and assessment of the evidence as are faced by any first-instance court.

(a) Burden of proof

255. The Court notes that as a general principle of law the initial burden of proof in relation to an allegation is borne by the party which makes the allegation in question (*affirmanti incumbit probatio*; see, for example, *Nolan and K. v. Russia*, no. 2512/04, § 69, 12 February 2009, and *Makhmudov v. Russia*, no. 35082/04, § 68, 26 July 2007).

256. That said, the Court has also recognised that a strict application of this principle is not always appropriate. This is particularly so where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities of the respondent State (see *Baka v. Hungary* [GC], no. 20261/12, § 143 *in fine*, 23 June 2016, and the examples cited therein, in relation to various substantive Articles of the Convention when only the respondent Government have access to information capable of corroborating or refuting the applicant's allegations). In such circumstances, the Court has held that the burden of proof may be regarded as falling on the respondent Government to provide a satisfactory and convincing explanation. In the absence of such explanation, the Court can draw inferences that may be unfavourable for the respondent Government. The burden of proof will only shift in this way where there are already concordant inferences supporting the applicant's allegations (see, *mutatis mutandis*, *El-Masri v. the former Yugoslav Republic of Macedonia* [GC], no. 39630/09, §§ 152-53, ECHR 2012; *Hassan v. the United Kingdom* [GC], no. 29750/09, § 49, ECHR 2014; and *Al Nashiri v. Romania*, no. 33234/12, § 493, 31 May 2018). In the context of, in particular, inter-State cases, the Court has long held that the conduct of the parties when evidence is being obtained may be taken into account (see *Ireland v. the United Kingdom*, 18 January 1978, § 161, Series A no. 25).

257. This approach relies on the premise that in the proceedings before the Court, there are no procedural barriers to the admissibility of evidence or predetermined formulae for its assessment. It adopts the conclusions that are, in its view, supported by the free evaluation of all evidence, including such inferences as may flow from the facts, the parties' submissions and, if necessary, material obtained *proprio motu*. According to its established case-law, proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. Moreover, the level of persuasion necessary for reaching a particular conclusion and, in this connection, the distribution of the burden of proof, are intrinsically linked to the specificity of the facts, the nature of the allegation made and the Convention right at stake. Reports or statements by international observers, non-governmental organisations or the media, or the decisions of other national or international courts, are often taken into account to, in particular, shed light on the facts, or to corroborate findings made by the Court. The Court is also attentive to the seriousness that attaches to a ruling that a Contracting State has violated fundamental rights (see *Merabishvili v. Georgia* [GC], no. 72508/13, § 317, 28 November 2017; *Georgia v. Russia (I)* [GC], no. 13255/07, § 94, ECHR 2014; *El-Masri*, cited above, §§ 151 and 213; and *Creangă v. Romania* [GC], no. 29226/03, § 88, 23 February 2012, and the cases cited therein).

258. Having regard to the specificity of the facts, the nature of the allegations made by the applicant Government and the Convention rights at stake, the Court finds it appropriate to adhere to the above approach to the burden of proof for the purposes of assessing the evidence in the present case

to the applicable standard of proof required at the admissibility stage of the proceedings for each issue alleged by the applicant Government (see *Georgia v. Russia (I)*, cited above, § 95).

(b) Standard of proof

259. In this latter connection, the Court considers it important to identify the relevant standard(s) of proof which, according to its case-law, are applicable to the respective issues before the Court. In considering this question, the Court is mindful that it is at this stage only concerned with the admissibility of the present application.

(i) As to the alleged existence of an "administrative practice"

260. As noted above, the present case is limited to specific allegations of an administrative practice amounting to violations of the Convention directed against the respondent State. The Court's examination of those allegations will be confined to the "administrative practice" as such and, as requested by the applicant Government, will not involve an individual examination of the alleged incidents in support of the alleged "pattern of violations" (see paragraphs 235 and 238 above). It is as a consequence of this limited scope of the application before the Court that the concept of "administrative practice" assumes a particular function in the present case, as will be explained in more detail below, given both its close interrelationship with the requirement of exhaustion of domestic remedies under Article 35 § 1 of the Convention (procedural admissibility), as applied to inter-State cases under Article 33 of the Convention, as well as its implications for the substantive admissibility of the "alleged breach of the provisions of the Convention" under the latter Article.

261. The meaning of the concept of "administrative practice" was established and explained by the former European Commission of Human Rights ("the Commission") in the early inter-State cases (see the second admissibility decision in "the *Greek* case" (*Denmark, Norway, Sweden and the Netherlands v. Greece*, nos. 3321/67, 3322/67, 3323/67 and 3344/67, Commission decision of 31 May 1968, unreported); *Ireland v. the United Kingdom*, no. 5310/71, Commission decision of 1 October 1972, unreported; and "the *Turkish* case" (*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 (DR) 35, p. 143)) and was reiterated most recently by the Court in *Georgia v. Russia (I)* (cited above) as follows:

> "122. ... an administrative practice comprises two elements: the 'repetition of acts' and 'official tolerance' (see *France, Norway, Denmark, Sweden and the Netherlands v. Turkey*, nos. 9940-9944/82, Commission decision of 6 December 1983, § 19, DR 35, and *Cyprus v. Turkey* [[GC], no. 25781/94], § 99[, ECHR 2001-IV]).

123. As to 'repetition of acts', the Court describes these as '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' (see *Ireland v. the United Kingdom*, [18 January 1978], § 159[, Series A no. 25], and *Cyprus v. Turkey*, cited above, § 115).

124. By 'official tolerance' is meant 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; or that a higher authority, in 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'. To this latter element the Commission added that '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' (see *France, Norway, Denmark, Sweden and the Netherlands v. Turkey*, cited above, ibid.). In that connection the Court has observed that '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. Furthermore, under the Convention those authorities are strictly liable for the conduct of their subordinates; they are under a duty to impose their will on subordinates and cannot shelter behind their inability to ensure that it is respected' (see *Ireland v. the United Kingdom*, cited above, § 159).

125. With regard to the rule on exhaustion of domestic remedies, the Court reiterates that, according to its case-law in inter-State cases, the rule does not in principle apply where the applicant Government 'complain of a practice as such, with the aim of preventing its continuation or recurrence, but does not ask ... the Court to give a decision on each of the cases put forward as proof or illustrations of that practice' (see *Ireland v. the United Kingdom*, cited above, § 159). In any event, it does not apply 'where an administrative practice, namely, a repetition of acts incompatible with the Convention, and official tolerance by the State, has been shown to exist and is of such a nature as to make proceedings futile or ineffective' (see *Ireland v. the United Kingdom*, cited above, ibid; *Akdivar and Others v. Turkey*, 16 September 1996, § 67, *Reports of Judgments and Decisions* 1996-IV; and *Cyprus v. Turkey*, cited above, § 99).

126. However, the question of effectiveness and accessibility of domestic remedies may be regarded as additional evidence of whether or not such a practice exists (see, in particular, *Cyprus v. Turkey*, cited above, § 87)."

262. In the context of the exhaustion rule, the evidentiary threshold to be satisfied at the admissibility stage in relation to the alleged existence of an administrative practice in inter-State cases was laid down by the Commission in the cases referred to in paragraph 260 above and was maintained by the Court in *Georgia v. Russia (I)* ((dec.), no. 13255/07, § 41, 30 June 2009) and *Georgia v. Russia (II)* ((dec.), no. 38263/08, § 86, 13 December 2011). It is as follows:

"... in accordance with the Commission's case-law on admissibility, it is not sufficient that the existence of an administrative practice is merely alleged. It is also necessary, in order to exclude the application of the rule requiring the exhaustion of domestic remedies, that the existence of the alleged practice is shown by means of substantial evidence ...

... It observes that the term 'substantial evidence', used in the *First Greek Case*, cannot be understood as meaning full proof. The question whether the existence of an administrative practice is established or not can only be determined after an

> examination of the merits. At the stage of admissibility prima facie evidence, while required, must also be considered as sufficient ... There is prima facie evidence of an alleged administrative practice where the allegations concerning individual cases are sufficiently substantiated, considered as a whole and in the light of the submissions of both the applicant and the respondent Party. It is in this sense that the term 'substantial evidence' is to be understood."

263. The Court finds no grounds to hold otherwise in the present case. Furthermore, it considers that the same standard of proof, notably whether there is sufficiently substantiated prima facie evidence, is to be satisfied at this admissibility stage of the proceedings in respect of the applicant Government's substantive allegations of an administrative practice of human rights violations. In the Court's view, the close interplay between the two admissibility issues, namely the exhaustion rule and the substantive admissibility of the complaint of an "administrative practice" said to amount to an "alleged breach" (in the French version "*manquement ... qu'elle croira pouvoir être imputé*") under Article 33 of the Convention, requires the application of a uniform standard in order for the complaint of an administrative practice to be admissible on both formal and substantive grounds. This standard is to apply to each of the two component elements of the alleged "administrative practice", namely the "repetition of acts" and the necessary "official tolerance". In the absence of such evidence, the complaint of an administrative practice cannot be viewed as admissible and warranting the Court's examination on the merits.

(ii) As to the jurisdictional issues

264. The present case also raises the preliminary question as to the respondent State's "jurisdiction" in Crimea as from 27 February 2014 as alleged by the applicant Government. This is because under Article 1 of the Convention the exercise of jurisdiction is a necessary condition for a Contracting State to be able to be held responsible for acts or omissions attributable to it which are in breach of the rights and freedoms set forth in the Convention (see *Al-Skeini and Others v. the United Kingdom* [GC], no. 55721/07, § 130, ECHR 2011, and *Ilaşcu and Others v. Moldova and Russia* [GC], no. 48787/99, § 311, ECHR 2004-VII). It is also a fundamental requirement for the Court's competence under Article 19 of the Convention to ensure the observance of the engagements undertaken by the High Contracting Parties in the Convention and the Protocols thereto. The Court accordingly has to determine whether its competence under this Article to examine the applicant Government's complaints is excluded on the grounds that they concern matters which cannot fall within the "jurisdiction" of the respondent Government (see *Loizidou v. Turkey* (preliminary objections), 23 March 1995, §§ 60-61, Series A no. 310; *Cyprus v. Turkey*, no. 25781/94, Commission decision of 28 June 1996, DR 86-A, pp. 130-31; and *Ilaşcu and Others v. Moldova and Russia* (dec.) [GC], no. 48787/99, 4 July 2001).

265. In the Court's view, there is nothing to prevent it from establishing already at this preliminary (admissibility) stage, under general principles governing the exercise of jurisdiction by international tribunals, whether the matters complained of by the applicant Government fall within the "jurisdiction" of the respondent Government (see, *mutatis mutandis*, *Georgia v. Russia (II)*, cited above, §§ 64-65, and *Ilaşcu and Others* (dec.), cited above). Furthermore, establishing the existence of "jurisdiction" within the meaning of Article 1 of the Convention is not necessarily determined by the merits of the case, and it is not therefore necessary to be left to be determined at the merits stage of the proceedings. The Court finds that the issue of the respondent State's "jurisdiction" under Article 1 of the Convention must be examined to the "beyond reasonable doubt" standard of proof, it being understood that such proof, as noted above, may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact.

266. The Court's decision on this preliminary issue at this stage of the proceedings is without prejudice to the issues of attribution and responsibility of the respondent State under the Convention for the acts complained of, which fall to be examined at the merits phase of the proceedings (see *Loizidou* (preliminary objections), cited above, § 61; *Cyprus v. Turkey*, Commission decision of 28 June 1996, cited above; *Al-Skeini and Others*, cited above, § 102; and *Georgia v. Russia (II)*, cited above, § 63).

III. ALLEGED LACK OF A GENUINE APPLICATION

A. The parties' submissions

1. The respondent Government

267. The respondent Government objected that the purpose of the applicant Government was not genuinely to raise issues related to the protection of human rights under the Convention. Rather, the application had been brought to seek a decision on political questions and issues of general international law, such as the lawfulness of the "referendum" held in Crimea on 16 March 2014 and the "reunification that flowed from it", which were outside the Court's competence. According to the respondent Government, Ukraine's "political diatribe against the referendum and reunification" was central to the application. They submitted that, putting such political questions before the Court demonstrated a lack of good faith on the part of the applicant Government and amounted to an abuse of process. That, in itself, constituted a ground for declaring the application inadmissible, a possibility which the Commission in "the *Greek* case" (cited above) and in *Cyprus v. Turkey* (Commission decision of 28 June 1996, cited above) had left open. In that connection they referred to the following passages of those decisions:

> "... the alleged political element of the new allegations, even if established, is not such as to render them 'abusive' in the general sense of the word." ("The *Greek* case", cited above, at p. 22)

> "Even if there should exist a general principle of law allowing the Commission to reject an inter-State application as inadmissible on the ground that it is manifestly abusive (cf. No. 8007/77, Dec. 3.10.78, D.R. 13 p. 78, para. 56 at p. 156), the Commission does not find this to be the case in the present application." (*Cyprus v. Turkey*, Commission decision of 28 June 1996, cited above)

2. The applicant Government

268. The applicant Government contested the objection under this head as unsubstantiated and argued that an examination of a State's purported motives for bringing an inter-State application would place an impossible burden on the Court. They further maintained that inter-State cases almost inevitably had a political dimension. In any event, they submitted that the political motivation of an applicant State was immaterial to the admissibility of an inter-State application. Good faith was not a criterion by which to judge the admissibility of an inter-State application.

B. The Court's assessment

269. The Court refers to the findings of the Commission in "the *Greek* case" (cited above) and "the *Turkish* case" (cited above), which the Court subsequently maintained in *Denmark v. Turkey* ((dec.), no. 34382/97, 8 June 1999), namely:

> "... the wording of Article 27 paras. 1 and 2 [now superseded by Article 35 §§ 2 and 3] only makes reference to Article 25 [now Article 34], but that on the other hand the Article does not exclude the application of a general rule providing for the possibility of declaring an application under Article 24 [now Article 33] inadmissible, if it is clear, from the outset, that it is ... otherwise lacking the requirements of a genuine allegation in the sense of Article 24 [now Article 33] of the Convention." ("The *Turkish* case", cited above, § 12.)

270. On the other hand, as stated in *Cyprus v. Turkey* (Commission decision of 28 June 1996, cited above):

> "The Commission also recalls that the Convention itself does not empower it to reject an application introduced under Article 24 [now Article 33] of the Convention as constituting an 'abuse of the right of petition', Article 27 para. 2 [now Article 35 § 3 (a)] of the Convention being applicable only to applications lodged under Article 25 [now Article 34]."

271. In considering whether the application in the present case is lacking the "requirements of a genuine application", the Court will take account of the nature of the issues raised before it by the applicant Government. Having regard to the scope of the case as defined above, the Court considers that those issues are indeed legal ones, since the Court is asked to rule on whether in Crimea the respondent State complied with any obligation it may have had

under Article 1 to secure the rights and freedoms defined in the Convention (and the Protocols thereto) to everyone within its jurisdiction, provided that such jurisdiction is established. That preliminary issue of whether, at any relevant time, the respondent State exercised jurisdiction over Crimea within the meaning of Article 1 is closely linked to the object of the case as defined above and is likewise of a legal nature.

272. The Court is mindful that these questions inevitably have political aspects. However, that fact alone does not suffice to deprive them of their character as legal questions. Indeed, the Court has never refused to decide a case brought before it merely because it had political implications. Any such implications in the present case cannot deprive the Court of the competence expressly conferred on it under Article 19 of the Convention. Judicial adjudication on those issues is entirely consonant with its competence under that Article to ensure the observance of the engagements undertaken by the respondent State in the Convention and the Protocols thereto.

273. Furthermore, the political nature of any motives which might have inspired the applicant Government to submit the application and the political implications that the Court's ruling might have are of no relevance in the establishment of its jurisdiction to adjudicate the legal issues submitted before it. In this context, the Court notes that this approach is also in line with that adopted by the ICJ (see paragraphs 219-21 above). In *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, *Jurisdiction and Admissibility* (Judgment, *ICJ Reports* 1984, p. 392), the ICJ confirmed the following:

> "105. ... the Court would recall that in the *United States Diplomatic and Consular Staff in Tehran* case it stated:
>
> > 'The Court, at the same time, pointed out that no provision of the Statute or Rules contemplates that the Court should decline to take cognizance of one aspect of a dispute merely because that dispute has other aspects, however important.' (*I.C.J. Reports 1980, p. 19, para. 36.*)
>
> And, a little later, added:
>
> > 'Yet never has the view been put forward before that, because a legal dispute submitted to the Court is only one aspect of a political dispute, the Court should decline to resolve for the parties the legal questions at issue between them. Nor can any basis for such a view of the Court's functions or jurisdiction be found in the Charter or the Statute of the Court; if the Court were, contrary to its settled jurisprudence, to adopt such a view, it would impose a far-reaching and unwarranted restriction upon the role of the Court in the peaceful solution of international disputes.' (*I.C.J. Reports 1980, p. 50, para. 37.*)"

274. It confirmed this position more recently in its *Advisory Opinion in Legality of the Threat or Use of Nuclear Weapons* (*ICJ Reports* 1996):

> "13. ...
>
> The fact that this question also has political aspects, as, in the nature of things, is the case with so many questions which arise in international life, does not suffice to deprive it of its character as a 'legal question' and to 'deprive the Court of a competence

> expressly conferred on it by its Statute' ... Whatever its political aspects, the Court cannot refuse to admit the legal character of a question which invites it to discharge an essentially judicial task, namely, an assessment of the legality of the possible conduct of States with regard to the obligations imposed upon them by international law ...
>
> ...
>
> The Court moreover considers that the political nature of the motives which may be said to have inspired the request and the political implications that the opinion given might have are of no relevance in the establishment of its jurisdiction to give such an opinion [ibid., p. 226]."

275. Accordingly, the Court considers that there is no basis on which the application can be rejected as lacking the requirements of a genuine application (and accordingly as an abuse of the right of application). It therefore dismisses the respondent Government's objection under this head.

IV. JURISDICTION OF THE RESPONDENT STATE REGARDING THE EVENTS COMPLAINED OF BY THE APPLICANT GOVERNMENT

276. 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 parties' submissions

1. The respondent Government

277. The respondent Government submitted that, as a matter of principle, the jurisdiction of a State within the meaning of Article 1 of the Convention was based on the principle of territoriality and did not extend beyond the national territory of a State Party unless it was voluntarily extended by that State Party under Article 56 of the Convention. In that respect, they disagreed with the *Al-Skeini* line of case-law adopted by the Court, which according to them disregarded the sovereign entitlement of Contracting States to decide whether and how to apply the Convention beyond their metropolitan jurisdiction.

278. In any event, they argued that the "effective control" principle, as it had been developed in the Court's case-law, could not be applied to the respondent State regarding the events prior to 18 March 2014, the day when, according to them, "Sevastopol and Crimea became part of Russia" under the "Treaty of (Re)Unification" (the Accession Treaty – see paragraph 209 above), unless the applicant Government established or made out a prima facie case for the attribution of the alleged violations of the Convention to the Russian Federation. The applicant Government had failed to do so. Furthermore, very often the alleged perpetrators had not been identified, or otherwise the purported perpetrators were members of the CSDF who were not answerable to the Russian Federation and whose conduct could not be

attributed to it (see paragraph 191 above). In this regard, they referred to Mr Girkin (Strelkov)'s statement (see paragraph 175 above), which according to them was hardly an indication of Russian military support. Similarly, no responsibility could be attributed to the Russian Federation for the actions of the authorities and civil institutions of Sevastopol and Crimea before 18 March 2014. There was no proper evidence that the actions of the authorities in Sevastopol and Crimea or the actions of self-defence units had been directed by the Russian Federation. Furthermore, there was nothing to suggest that the Russian Federation controlled the civil authorities in Crimea. In the respondent Government's submission, the events unfolding in Crimea in late February and the beginning of March 2014 had resulted from "the violent overthrow of constitutional government in [Kyiv]...", which had caused "immediate dissent in Crimea". The overall situation had led to the formation of local civil defence units and to local political moves by the authorities in Crimea and Sevastopol when they had asserted their autonomy and organised the "referendum" (paragraph 174 above). In this connection, they submitted an argument based on the case-law of the ICJ, namely *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Merits* (Judgment, *ICJ Reports* 1986, p. 14) and *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)* (Judgment, *ICJ Reports* 2007, p. 43), the latter referring to the ILC Articles on Responsibility of States for Internationally Wrongful Acts (UN GA A/RES/56/83), in particular Article 8 thereof concerning the attribution of conduct of persons or groups of persons directed or controlled by a State.

279. The respondent Government further maintained that the local authorities, notably the legislature, executive and judiciary, had been appointed and operated in accordance with Ukrainian legislation and had functioned as part of the Ukrainian State or, alternatively, in their own right on their "path to statehood". In this connection they denied that the appointment of Mr Aksenov – "a Crimean and therefore a Ukrainian national at the time" – as Head of the Council of Ministers of the ARC was proof of "effective control" by the Russian Federation over Crimea. Furthermore, the applicant Government had presented no probative evidence that Russian forces had secured the Parliament building and that the Russian Federation had taken control on 26 or 27 February 2014. They denied that the Russian Federation had had any control over those events, the authorities in Crimea and Sevastopol and the civil defence units. According to them, the Russian Federation had acquired jurisdiction over Crimea and Sevastopol when, "pursuant to the referendum and the reunification, these territories rejoined Russia" (see paragraphs 170, 173, 174, 180 and 181 above).

280. They also asserted that pursuant to the relevant bilateral agreements (see paragraphs 202-08 above), the applicant Government had consented to the presence of the Russian armed forces in Crimea (at all relevant times) and argued that "the fact that, between 1 and 17 March 2014, those armed forces

stood ready to assist the Crimean people in resisting attack by the Ukrainian armed forces, [did] not mean that the Russian Federation had effective control over Crimea in that period" (see paragraph 176 above). In order to illustrate the limited role of Russia's armed forces in the events complained of, in their memorial before the Grand Chamber the respondent Government referred to the excerpt from the interview which President Putin had given on 17 April 2014 to the Rossiya television channel, as part of a documentary entitled *Crimea: The way home* (see also the transcript reproduced in paragraph 177 above), in which he had said:

> "In order to ensure the normal expression of the will of the individuals living in Crimea, to be honest, we had to prevent the bloodshed and not to allow the armed forces, armed units of the Ukrainian Army deployed in Crimea, or the law enforcement agencies, to prevent the people from expressing their will. We had to disarm the military units of the Ukrainian army and law enforcement agencies or to convince them not to interfere with people expressing their opinion and, actually, to collaborate with us in that."

281. The respondent Government pointed out that the President of the Russian Federation had further clarified in that interview that the overall number of Russian troops deployed in Crimea in March 2014 had not exceeded the established limit of 20,000 personnel provided for by the Kharkiv Agreement (see paragraph 178 above).

282. They further submitted that there had been 20,315 Ukrainian servicemen during the relevant time, which according to them amounted to "a very substantial military presence" (see paragraph 171 above). Given Ukraine's huge military presence and its legal system and governmental institutions, said to have been operational in Crimea, the respondent Government submitted that Ukraine had exercised "effective control" in Crimea during that period. They also argued that Ukraine had not exercised its right of derogation from its Convention obligations under Article 15 of the Convention in respect of Crimea and Sevastopol regarding that period (before 18 March 2014).

283. At the hearing, the respondent Government further argued that the Russian soldiers deployed in Crimea at the time "were standing around and looking" and submitted that their presence might have deterred "a bloody intervention by the nationalists from mainland Ukraine". By deterring violence, Russian soldiers had not exercised any control or jurisdiction. No inferences of control could have been made on the basis "of the mere presence of the Russian forces [in Crimea] because [Ukraine] had almost equal forces of its own in Crimea exactly at the same time". According to them, the bilateral agreements did not require prior approval by Ukraine for any change in the Russian military presence in Crimea at the time. Accordingly, the Russian forces had been legitimately present by agreement with Ukraine. In any event, they submitted that the lawfulness of the increase of the military forces fell outside the scope of the Convention and therefore the Court's competence. As explained by President Putin in his numerous interviews, the

respondent State "had increased its military presence [in Crimea in order] to guarantee the protection of Russian military forces and objects. The President emphasised on many occasions that the Russian presence ensured that the Crimean population could make a democratic choice safely without fear of reprisal from the radicals".

284. In reply to questions put by judges at the hearing, the respondent Government asserted that, under the relevant agreements, the permitted number of BSF personnel in Crimea had been set at 25,000. The rationale for that ceiling could not be specified, but it was clear that Ukraine did not regard that number as a threat to its sovereignty or control. They further asserted that the number of Russian military servicemen in Crimea between 27 February and 18 March 2014 had never exceeded 12,000 people. However, they admitted that there had been some strengthening of the garrison associated with the BSF, but repeated that the number of personnel permitted under the Agreements had never been exceeded.

285. For those reasons, the respondent Government submitted that "the Court has no jurisdiction *ratione loci* to examine the events in Crimea before 18 March 2014 with Russia as a respondent State".

286. On the other hand, the respondent Government conceded that the Russian Federation had exercised jurisdiction over Crimea as from 18 March 2014, the date when the "Treaty of (Re)Unification" (Accession Treaty), as an "international treaty" (paragraph 168 above), had been signed between the Russian Federation and Crimea. It was from that date that "the institutions of government in Crimea became Russian institutions, albeit on a provisional basis until 21 March 2014" (the date of ratification of that Treaty). Whereas at the hearing they stated that as "from that date, Russia exercises full territorial jurisdiction in Crimea under Article 1 of the Convention", they submitted that "any attempts to examine the grounds of that jurisdiction [were] of speculative nature and fall outside the scope of the present proceedings". Similarly, both in their memorial and their written reply to questions put by the judges, they argued that it would be inappropriate and unfair for the Court to examine whether that jurisdiction was territorial or based on the "effective control" principle, as established in its case-law. According to them, "it would be inappropriate to address these sterile questions in any decision, because they would take the Court into questions concerning sovereignty between States that are outside its jurisdiction. The Russian Government objects ... to any proposal for the Court to exceed its jurisdiction in this way". Furthermore, it was a political question, which was neither possible nor appropriate for the Court to answer. Any answer would require an assessment of the nature of the "coup in [Kyiv]", and the fact that the "referendum" in Crimea, which led to "reunification", was a response to the imposition of an unconstitutional government. They concluded that "it would potentially embrace the role of States that are not parties to these proceedings".

2. The applicant Government

287. The applicant Government argued that the respondent State had had extraterritorial jurisdiction over Crimea ever since 27 February 2014, described as "the day of the coup". According to them, the respondent State had exercised "effective control" over Crimea "through its uninterrupted unlawful occupation and [its] annexation".

288. The "effective control" jurisdiction of the respondent State over Crimea since 27 February 2014 was based on two grounds, namely the strength of the Russian military presence in Crimea and the alleged support by the Russian Federation of both the local administration in Crimea, said to have been unlawfully elected on 27 February 2014, and the local paramilitary forces.

289. Regarding the Russian military presence in Crimea at the time, the applicant Government argued that, as of 1 January 2014, the permitted number of Russian servicemen in Crimea, under the Agreements and as specified in diplomatic note No.143 4/2 dsng, was set at 10,936. That note further specified the armament of the Russian Federation considered to have been lawfully stationed in Crimea during 2014 (see paragraphs 29 (xxxiii) and 36 above).

290. They maintained that in accordance with the Agreement between the Russian Federation and Ukraine on the Status and Conditions of the Presence of the BSF of the Russian Federation on the Territory of Ukraine, no deployment of additional troops or equipment and movement of troops or equipment outside designated Russian bases was authorised without the express consent of Ukraine's Ministry of Foreign Affairs (see paragraph 36 above) or prior authorisation by the Ministry of Defence (as argued in the written reply to judges' questions). Furthermore, any crossing of the State border of Ukraine by the BSF required permission from Ukraine's Navy Headquarters. The Russian military forces were not allowed to carry out any policing or public-order functions. Accordingly, they could not have engaged in deterrent activities, such as blocking the Ukrainian military and paramilitary units, assaulting free media, and unlawful apprehension, torture and detention of Ukrainian citizens.

291. Relying on the available evidence, they underlined the manner and extent to which that presence had started to increase "in breach of the Agreements" at the end of January 2014 and had continued to do so after the critical events of 27 February 2014 (see paragraphs 38-41, 48-53, 68-104 above). According to the applicant Government, on 12 March 2014 there had been 18,430 Russian troops in Crimea and on 15 March 2014 that figure had increased to 19,908 servicemen of the Russian Federation, of whom only 11,370 had been servicemen of their BSF. By 18 March 2014 there had been over 22,000 servicemen of the Russian Federation in Crimea (see paragraph 59 above). Regarding their protest notes (see paragraph 28 (i) above) sent to the Russian Government at the time, they submitted that "the Russian

Ministry of Foreign Affairs, [in so far as they responded] at all, did not contest the fact of the moving of the troops in Crimea without the Ukrainian consent".

292. The applicant Government argued that those troops "[had been] specialised and trained in and [had been] equipped for effective and prompt seizure and retention of a territory". They had been well-armed and had acted in an organised manner. According to them, from the very early days of the "invasion", the Russian troops had cut off the peninsula from mainland Ukraine, thereby preventing the Ukrainian authorities from sending any reinforcements to the Ukrainian troops that had remained blocked in Crimea.

293. The applicant Government also referred to the alleged activities (see paragraphs 49-53 and 68-104 above) of the Russian military forces at the time (control of entry and exit points into Crimea by land, sea and air; sabotage operations to block, restrain or disable (disarm) Ukrainian Air Force, Air Defence military units, Ukrainian ground forces and Ukrainian Naval and Maritime Border Guard Forces; and detention of Ukrainian soldiers), the aim of which was said to be to establish and consolidate Russia's military control over Crimea. They further asserted that "green men" had "participated in Crimea's seizure" and in some of the above activities (paragraphs 32 and 43 above). According to the applicant Government, those activities had been "plainly planned and centrally coordinated", as a result of which "by the end of the day on 27 February 2014, Russia had occupied Crimea and assumed effective control over [its] territory" (paragraph 51 above).

294. As regards the events of 27 February 2014, they averred that the members of the Supreme Council of the ARC had been "forcibly assembled, under duress from armed Russian military personnel" (see paragraph 46 above). They further reiterated (relying on documents, witness evidence and video-footage) that at 4.30 a.m. on 27 February 2014, over 100 heavily armed men, said to have been Russian Special Forces, had stormed the buildings of the Supreme Council and the Council of Ministers of Crimea. The Russian flag had been raised above the Parliament building. Russian soldiers had guarded its perimeter and snipers had taken positions on the roof. Armed Russian troops in uniform had patrolled the vicinity (see paragraph 42 above). Further evidence in this connection was said to be provided by the statement of Mr Igor (Ihor) Girkin, who had stated that the local militia under his authority had been involved in bringing the deputies of Supreme Council of the ARC to the session on 27 February 2014 to vote for the new Prime Minister Mr Aksenov and to adopt the decision to hold the "referendum", while at the same time they had the support of the Russian military forces, which were located in Sevastopol and in the suburbs of Simferopol (paragraphs 30(vi) and 48 above).

295. Regarding the alleged support by the respondent State of the local administration and paramilitary forces in Crimea, the applicant Government referred to the regular contacts since late 2013 between senior Russian politicians and senior local political actors in Crimea, including Mr Sergey Aksenov. They also referred to the creation of the CSDF, which was said to

have included pro-Russian paramilitary actors, such as members of the disbanded Berkut elite police unit loyal to former Ukrainian President Yanukovych and the Russian Cossacks, who allegedly had taken part in some of the military activities specified above. One of the leaders of the CSDF at the time had been Mr Girkin (see paragraph 33 above). Furthermore, they argued that the FSB had provided the members of the CSDF with armaments (paragraph 62 above).

296. Reference was also made to the statements given by President Putin that "behind the backs of the Crimean self-defence units, there were our soldiers. They acted in a very polite, but decisive and professional manner. There was no other way to help the people of Crimea to express their free will" (see paragraph 34 above) and that on the night of 22 to 23 February 2014, during a meeting with the heads of security agencies, he had said that he had taken the decision to "start working on the return of Crimea to the Russian Federation" (see paragraph 40 above). Another element was the exchange of hostages held either by the CSDF or the Russian military forces during the crisis, which had been negotiated by the Deputy Minister of Defence of the Russian Federation (see paragraphs 58 and 112 above).

297. Similarly, the applicant Government alleged that on 17 July 2014 the Crimean authorities had adopted People's Militia Act no. *22-3PK* "that [had] legalised the CSDF". Finally, the Ministry of Defence of the Russian Federation had awarded members of the CSDF a State medal "For the return of Crimea" (paragraphs 29(viii) and 66 above).

298. In their memorial before the Grand Chamber the applicant Government also invoked the "State agent authority and control" ground as a basis for the "jurisdiction" of the respondent State, alongside the "effective control" ground. In this connection they relied on certain allegations regarding deprivation of liberty and treatment to which the alleged victims had been subjected while in detention in the Ukrainian Military Commissariat in Simferopol, which was said to have been controlled by the CSDF, and the Russian Federation BSF's Military Prison in Sevastopol, allegedly controlled by Russian military personnel. Reference was made to several alleged incidents of detention and ill-treatment by the CSDF and/or Russian soldiers (with the latter involved more frequently after 18 March 2014, as indicated in paragraph 11 of the OHCHR 2017 Report) in the above facilities (see paragraphs 110-12 above). Some of the victims had been allegedly detained by the CSDF (and held in the Commissariat) and subsequently handed over to or taken by the Russian military personnel (and held in the Military Prison).

B. The third-party intervener (McGill Centre for Human Rights and Legal Pluralism, Faculty of Law, McGill University, Canada)

299. In submissions lodged on 30 November 2016, the third-party intervener addressed issues pertaining to the establishment of a State's

jurisdiction, the attribution of actions or omissions by non-State actors to a State and the general obligation to secure human rights and freedoms.

300. Concerning a State's Article 1 jurisdiction and referring to the Court's decision in *Banković and Others v. Belgium and Others* ((dec.) [GC], no. 52207/09, § 71, ECHR-2001 XII), the third-party intervener maintained that initially the Court had adopted a narrow interpretation of the concept of jurisdiction by holding that the exercise of extraterritorial jurisdiction was exceptional, limited to situations in which States exercised "all or some of the public powers normally to be exercised by that Government". Since then the Court had gradually moved towards a more flexible approach to State jurisdiction that favoured a wider protection of human rights, recognising an increasing number of exceptions to the territorial principle enshrined in Article 1 of the Convention. However, those "*ad hoc* adjustments" to the *Banković* approach had resulted in the Court's jurisprudence becoming less certain and coherent. According to the third-party intervener, the various exceptions to the territorial principle had been inconsistently "blended together" by the Court, thus complicating their application by domestic courts.

301. The third-party intervener therefore invited the Court to clarify its position by adopting a single comprehensive principle under which States would be regarded as exercising jurisdiction over a territory and individuals when it fell within their power or capacity, through the exercise of effective control or authority, to secure human rights in relation to a particular person or population in that territory. The scope of the obligation to secure human rights within that territory should, however, be "modulated" according to the actual degree of effective control or authority exercised by the State in the given circumstances. Such an approach based on the degree of control or authority exercised by a State would not only be consistent with the Court's case-law that had developed over the past decade, but it would also reflect the trend of other regional and international bodies, such as the ICJ, the Human Rights Committee and the African Commission on Human and Peoples' Rights. That would also ensure that States would be bound by a fair and realistic standard; it would create a balance between the rights of an individual and a State; and it would increase foreseeability because States would know that exercising control or authority outside their national territory would bring responsibility to ensure human rights and freedoms.

302. The third-party intervener also commented at length on the issue of attribution of a wrongful act to the State and the general duty of the State under the Convention to secure human rights and freedoms to everyone within its jurisdiction (an issue which the Court will examine on the merits, see paragraph 266 above).

C. The Court's assessment

1. General principles

303. The general principles relevant to jurisdiction under Article 1 of the Convention were summarised in *Al-Skeini and Others* (cited above) as follows:

> "130. Article 1 of the Convention reads as follows:
>
> 'The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of [the] Convention.'
>
> As provided by this Article, the engagement undertaken by a Contracting State is confined to 'securing' ('*reconnaître*' in the French text) the listed rights and freedoms to persons within its own 'jurisdiction' (see *Soering v. the United Kingdom*, 7 July 1989, § 86, Series A no. 161, and *Banković and Others*, cited above, § 66). 'Jurisdiction' under Article 1 is a threshold criterion. The exercise of jurisdiction is 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 (see *Ilaşcu and Others* [*v. Moldova and Russia* [GC], no. 48787/99], § 311[, ECHR 2004-VII]).
>
> (α) The territorial principle
>
> 131. A State's jurisdictional competence under Article 1 is primarily territorial (see *Soering*, cited above, § 86; *Banković and Others*, cited above, §§ 61 and 67; and *Ilaşcu and Others*, cited above, § 312). Jurisdiction is presumed to be exercised normally throughout the State's territory (see *Ilaşcu and Others*, cited above, § 312, and *Assanidze v. Georgia* [GC], no. 71503/01, § 139, ECHR 2004‑II). Conversely, acts of the Contracting States performed, or producing effects, outside their territories can constitute an exercise of jurisdiction within the meaning of Article 1 only in exceptional cases (see *Banković and Others*, cited above, § 67).
>
> 132. To date, the Court in its case-law has recognised a number of exceptional circumstances capable of giving rise to the exercise of jurisdiction by a Contracting State outside its own territorial boundaries. In each case, the question whether exceptional circumstances exist which require and justify a finding by the Court that the State was exercising jurisdiction extraterritorially must be determined with reference to the particular facts.
>
> (β) State agent authority and control
>
> 133. The Court has recognised in its case-law that, as an exception to the principle of territoriality, a Contracting State's jurisdiction under Article 1 may extend to acts of its authorities which produce effects outside its own territory (see *Drozd and Janousek* [*v. France and Spain*, 26 June 1992], § 91[, Series A no. 240]; *Loizidou* (preliminary objections), cited above, § 62; *Loizidou v. Turkey* (merits), 18 December 1996, § 52, *Reports of Judgments and Decisions* 1996-VI; and *Banković and Others*, cited above, § 69). The statement of principle, as it appears in *Drozd and Janousek* and the other cases just cited, is very broad: the Court states merely that the Contracting Party's responsibility 'can be involved' in these circumstances. It is necessary to examine the Court's case-law to identify the defining principles.
>
> 134. Firstly, it is clear that the acts of diplomatic and consular agents, who are present on foreign territory in accordance with provisions of international law, may amount to an exercise of jurisdiction when these agents exert authority and control over others

(see *Banković and Others*, cited above, § 73; see also *X. v. Germany*, no. 1611/62, Commission decision of 25 September 1965, Yearbook 8, p. 158; *X. v. the United Kingdom*, no. 7547/76, Commission decision of 15 December 1977, DR 12, p. 73; and *M. v. Denmark*, no. 17392/90, Commission decision of 14 October 1992, DR 73, p. 193).

135. Secondly, the Court has recognised the exercise of extraterritorial jurisdiction by a Contracting State when, through the consent, invitation or acquiescence of the Government of that territory, it exercises all or some of the public powers normally to be exercised by that Government (see *Banković and Others*, cited above, § 71). Thus, where, in accordance with custom, treaty or other agreement, authorities of the Contracting State carry out executive or judicial functions on the territory of another State, the Contracting State may be responsible for breaches of the Convention thereby incurred, as long as the acts in question are attributable to it rather than to the territorial State (see *Drozd and Janousek*, cited above; *Gentilhomme and Others v. France*, nos. 48205/99, 48207/99 and 48209/99, 14 May 2002; and *X. and Y. v Switzerland*, nos. 7289/75 and 7349/76, Commission decision of 14 July 1977, DR 9, p. 57).

136. In addition, the Court's case-law demonstrates that, in certain circumstances, the use of force by a State's agents operating outside its territory may bring the individual thereby brought under the control of the State's authorities into the State's Article 1 jurisdiction. This principle has been applied where an individual is taken into the custody of State agents abroad. For example, in *Öcalan* ([*v. Turkey* [GC], no. 46221/99], § 91[, ECHR 2005-IV]), the Court held that 'directly after being handed over to the Turkish officials by the Kenyan officials, the applicant was effectively under Turkish authority and therefore within the 'jurisdiction' of that State for the purposes of Article 1 of the Convention, even though in this instance Turkey exercised its authority outside its territory'. In *Issa and Others* ([*v. Turkey*, no. 31821/96, 16 November 2004]), the Court indicated that, had it been established that Turkish soldiers had taken the applicants' relatives into custody in northern Iraq, taken them to a nearby cave and executed them, the deceased would have been within Turkish jurisdiction by virtue of the soldiers' authority and control over them. In *Al-Saadoon and Mufdhi v. the United Kingdom* ((dec.), no. 61498/08, §§ 86-89, 30 June 2009), the Court held that two Iraqi nationals detained in British-controlled military prisons in Iraq fell within the jurisdiction of the United Kingdom, since the United Kingdom exercised total and exclusive control over the prisons and the individuals detained in them. Finally, in *Medvedyev and Others v. France* ([GC], no. 3394/03, § 67, ECHR 2010), the Court held that the applicants were within French jurisdiction for the purposes of Article 1 of the Convention by virtue of the exercise by French agents of full and exclusive control over a ship and its crew from the time of its interception in international waters. The Court does not consider that jurisdiction in the above cases arose solely from the control exercised by the Contracting State over the buildings, aircraft or ship in which the individuals were held. What is decisive in such cases is the exercise of physical power and control over the person in question.

137. It is clear that, whenever the State, through its agents, exercises control and authority over an individual, and thus jurisdiction, the State is under an obligation under Article 1 to secure to that individual the rights and freedoms under Section I of the Convention that are relevant to the situation of that individual. In this sense, therefore, the Convention rights can be 'divided and tailored' (compare *Banković and Others*, cited above, § 75).

(γ) Effective control over an area

138. Another exception to the principle that jurisdiction under Article 1 is limited to a State's own territory occurs when, as a consequence of lawful or unlawful military

action, a Contracting State exercises effective control of an area outside that national territory. The obligation to secure, in such an area, the rights and freedoms set out in the Convention, derives from the fact of such control, whether it be exercised directly, through the Contracting State's own armed forces, or through a subordinate local administration (see *Loizidou* (preliminary objections), cited above, § 62; *Cyprus v. Turkey*, cited above, § 76; *Banković and Others*, cited above, § 70; *Ilaşcu and Others*, cited above, §§ 314-16; and *Loizidou* (merits), cited above, § 52). Where the fact of such domination over the territory is established, it is not necessary to determine whether the Contracting State exercises detailed control over the policies and actions of the subordinate local administration. The fact that the local administration survives as a result of the Contracting State's military and other support entails that State's responsibility for its policies and actions. The controlling 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. It will be liable for any violations of those rights (see *Cyprus v. Turkey*, cited above, §§ 76-77).

139. It is a question of fact whether a Contracting State exercises effective control over an area outside its own territory. In determining whether effective control exists, the Court will primarily have reference to the strength of the State's military presence in the area (see *Loizidou* (merits), cited above, §§ 16 and 56, and *Ilaşcu and Others*, cited above, § 387). Other indicators may also be relevant, such as the extent to which its military, economic and political support for the local subordinate administration provides it with influence and control over the region (see *Ilaşcu and Others*, cited above, §§ 388-94)."

2. Application to the present case

304. The Court notes that the parties are in dispute as to the respondent State's "jurisdiction" over Crimea as from 27 February 2014. That dispute is of a different nature regarding the two periods of time under consideration.

305. As to the period between 27 February and 18 March 2014, the applicant Government contend that the respondent State exercised extraterritorial jurisdiction in Crimea, whereas the respondent Government argue that events in Crimea were not within its jurisdiction at that time.

306. As to the period after 18 March 2014, both parties agree that the respondent State exercises jurisdiction over Crimea, but their positions as to the basis on which that jurisdiction rests do not coincide. Whereas the applicant Government claim that the respondent State has exercised continuous and uninterrupted extraterritorial jurisdiction and invite the Court to dismiss the respondent State's arguments in this respect, the respondent Government have not explicitly invoked any particular ground (except at the hearing, however, where they stated that "from [18 March 2014], Russia [has] exercise[d] full territorial jurisdiction in Crimea under Article 1 of the Convention"; see paragraph 286 above) and have, moreover, invited the Court not to enter into the determination of the nature of its jurisdiction after that date.

307. The Court will examine these issues in turn.

(a) As to the period from 27 February to 18 March 2014

(i) General remarks

308. The Court notes that the respondent Government's general arguments concerning the jurisdictional issues under this head were that Article 1 jurisdiction was based on the principle of territoriality understood in the light of Article 56 of the Convention and that accordingly the application regarding the period under this head was incompatible *ratione loci* with the provisions of the Convention. Furthermore, they submitted an argument based on the ICJ's case-law concerning the attribution of conduct to States and their responsibility for internationally wrongful acts.

309. These arguments are essentially the same as those which the respondent Government advanced, *inter alia*, in *Georgia v. Russia (II)* (cited above, § 61), as well as those which the Netherlands Government raised in *Jaloud v. the Netherlands* ([GC], no. 47708/08, ECHR 2014).

310. Following the findings of the Commission in the case of *Cyprus v. Turkey* (nos. 6780/74 and 6950/75, Commission decision of 26 May 1975, DR 2, p. 125, § 9) and those of the Court in *Loizidou* ((preliminary objections), cited above, §§ 86-88) regarding the object and purpose of Articles 1 and 56 of the Convention respectively, in *Al-Skeini and Others* (cited above, § 140) the Court held, in the context of the "effective control" basis for extraterritorial jurisdiction under Article 1 of the Convention, as follows:

> "140. The 'effective control' principle of jurisdiction set out above does not replace the system of declarations under Article 56 of the Convention (formerly Article 63) which the States decided, when drafting the Convention, to apply to territories overseas for whose international relations they were responsible. Article 56 § 1 provides a mechanism whereby any State may decide to extend the application of the Convention, 'with due regard ... to local requirements', to all or any of the territories for whose international relations it is responsible. The existence of this mechanism, which was included in the Convention for historical reasons, cannot be interpreted in present conditions as limiting the scope of the term 'jurisdiction' in Article 1. The situations covered by the 'effective control' principle are clearly separate and distinct from circumstances where a Contracting State has not, through a declaration under Article 56, extended the Convention or any of its Protocols to an overseas territory for whose international relations it is responsible. ..."

311. In reply to the arguments based on the ICJ's case-law concerning a respondent State's responsibility under public international law for the impugned acts, the Court stated the following in *Jaloud* (cited above, § 154):

> "... the test for establishing the existence of 'jurisdiction' under Article 1 of the Convention has never been equated with the test for establishing a State's responsibility for an internationally wrongful act under international law."

312. The Court further refers to its findings in *Georgia v. Russia (II)* (cited above, § 64):

> "Article 35 § 3 of the Convention, which permits the Court to dismiss applications *inter alia* on the ground that they are incompatible with the provisions of the Convention, does not apply in respect of applications submitted under Article 33 of the Convention and accordingly cannot be applied either in such applications where the respondent Government raise the objection that particular complaints are incompatible with the Convention *ratione loci* or *ratione personae*. However, this cannot prevent the Court from establishing already at this preliminary stage, under general principles governing the exercise of jurisdiction by international tribunals, whether it has any competence at all to deal with the matter laid before it."

313. The Court finds no reason in the present case to depart from the practice described in paragraphs 310 to 312 above.

314. Since the jurisdictional issue regarding the period under this head is disputed between the parties, it has to be established whether it has been shown to the appropriate standard of proof (see paragraph 265 above) that there are exceptional circumstances capable of giving rise to the exercise of extraterritorial jurisdiction by the respondent State on a part of the territory of the applicant State during that time. As stated above (see paragraph 303), the answer to that question must be determined with reference to the particular facts of the case and the available evidence.

(ii) "Effective control" of Crimea

Military presence of the respondent State in Crimea

– *Introduction*

315. The Court notes that the framework for the presence and operations of the Russian military forces (BSF) in Crimea was provided for by a series of bilateral agreements between Ukraine and the Russian Federation of 1997 and 2010 (see paragraphs 202-08 above). It was not until 2 April 2014 that the Russian Federation declared these agreements terminated (see paragraph 200 above). Accordingly, it is not disputed between the parties that the agreements were valid and binding on the parties at the relevant time.

316. As specified in the Agreement on the parameters of the division of the BSF, the total number of personnel of the Russian BSF in Crimea should not have exceeded 25,000 troops, a figure which was not contested by the parties (see paragraphs 205 and 284 above). Pursuant to Article 4 § 2 of the Agreement on the Status and Conditions of the Presence of the BSF of the Russian Federation in the Territory of Ukraine (see paragraph 203 above), the respondent State was required to notify the applicant State of the total number of personnel and armaments of the Russian BSF to be present in Crimea in accordance with the list agreed by the Parties before 1 January on an annual basis. That Agreement further provided that the military formations of the Russian BSF in Crimea operated at their deployment sites (Article 6 § 1), and

that they could only carry out protective measures at their location sites and while in movement in cooperation with the competent Ukrainian authorities (Article 8 § 4). Furthermore, the transportation of, *inter alia*, troops and personnel, armament, military equipment and other material and technical means, by any means of transport in the interests of the BSF of the Russian Federation was to be carried out subject to border, customs and other types of State control in accordance with the Ukrainian laws in force (Article 15 § 1). Lastly, any movements of Russian military personnel outside designated places of deployment required a certain form of consent (Article 15 § 5) by the competent Ukrainian authorities, whether the Ukrainian Ministry of Foreign Affairs or the Ministry of Defence (see paragraph 290 above).

– *Strength of the respondent State's military presence in Crimea*

317. According to the diplomatic note of 30 December 2013 communicated by the respondent State to the Ukrainian authorities pursuant to the Agreements, the maximum number of personnel of the Russian BSF in Crimea for 2014 was set at 10,936. Furthermore, the note also specified the military equipment for the Russian BSF for 2014. The respondent Government did not argue, or produce any evidence to this effect, that that note had been replaced or had been otherwise invalid.

318. The applicant Government argued that the number of Russian troops in Crimea had started to increase sometime in late January 2014 (see paragraph 38 above). In this connection they provided a detailed and chronological outline of the manner in and extent to which that presence had started to increase (see paragraphs 38-41, 48, 52 and 67-104 above), which the respondent Government did not contest. According to the applicant Government, by 12 March 2014 the number of Russian troops had increased to 18,430, reaching 22,000 by 18 March 2014. The deployment of Russian military personnel was accompanied by a simultaneous transfer of military equipment. In support of the allegation that the Russian military personnel and armaments in Crimea differed in their composition and that their actual number went significantly beyond the figures specified in the annual notification, the applicant Government relied on evidence which was not contested by the respondent Government.

319. The respondent Government for their part also admitted the increase of Russian military personnel in Crimea, without providing any explanation of the legal basis on which that increase had occurred. In their memorial, their arguments in this respect did not go beyond the assertion that the overall number of Russian troops deployed in Crimea in March 2014 had not exceeded the overall personnel limit of 25,000 (or, as they submitted, 20,000; see paragraph 281 above) provided for under the Agreements. In their oral pleadings they stated that the number of Russian servicemen in Crimea at the time had been "almost equal" to the total of 20,315 Ukrainian servicemen (see paragraph 283 above). It was only in their written reply to the questions

put by judges at the hearing that they submitted, for the first time, that the number of Russian military servicemen in Crimea between 27 February and 18 March 2014 had never exceeded 12,000 (see paragraph 284 above).

320. The Court notes that it was not argued (nor was any evidence presented to this effect) that the respondent State had notified the competent authorities of the applicant State or that the latter had approved the contested increase of the Russian military presence in Crimea at the time. The Court further observes that no similar prior occasion when the actual number of Russian troops in Crimea had exceeded the figures specified in the annual notification or measures had been taken in respect of troop numbers or composition without prior notification or consent of the applicant State has been brought to its attention. In this connection the Court notes that consent to acts restricting national sovereignty, such as, in the present case, the increase of the Russian military presence on the territory of Ukraine, cannot be presumed. The Ukrainian government's protest notes sent to the Russian government at the relevant time (see paragraph 28 (i) above), in so far as they were responded to at all (see paragraphs 39 and 291 above) demonstrate the absence of such consent by the applicant State. In any event, and as argued by the respondent State (see paragraph 283 above), for the Court's assessment of the issues under this head, the question whether the increase of the respondent State's military presence in Crimea at the time was in compliance with the Agreements cannot be decisive. The Court's concern is rather the actual size and strength of the respondent State's military presence considered in the relevant context.

321. In view of the above, and notwithstanding the fact that troop numbers did not exceed the general limits set in the Agreements, the Court finds that the figures indicated above demonstrate that the number of Russian troops on the peninsula nearly doubled within a short space of time, namely between late January and mid-March 2014. In the Court's view, the increased military presence of the Russian Federation in Crimea during that period was, at the very least, significant. The respondent Government have not produced any evidence that the presence of Russian troops in Crimea had ever reached the same level as in the present case at any time since the entry into force of the Agreements.

322. Another relevant aspect of the increased military presence of the Russian Federation in Crimea at the time concerns the military capacity of the Russian armed forces. The applicant Government alleged that the Russian military forces stationed in Crimea had been "elite troops" (see paragraphs 32 and 52 (a) above) "equipped for effective and prompt seizure and retention of a territory" and that they had been better armed than the Ukrainian troops (see paragraph 292 above). Whereas the respondent Government submitted information about the structure of Ukrainian law-enforcement personnel in Crimea at the time (see paragraph 171 above), they did not contest the above allegations suggesting technical, tactical, military and qualitative superiority of the Russian military forces.

323. As to the reasons for the above-mentioned (increased) Russian military presence in Crimea at the time, the respondent Government submitted that the aim had been to "assist the Crimean people in resisting attack by the Ukrainian armed forces", to "ensure that the Crimean population could make a democratic choice safely without fear of reprisal from the radicals", to "ensure the normal expression of the will of the individuals living in Crimea" and/or "to ensure the protection of Russian military forces and objects" (see paragraphs 280 and 283 above).

324. The Court notes, firstly, that the purported grounds submitted by the respondent Government to justify the increase of the Russian military presence in Crimea have not been corroborated by any convincing evidence. In particular, the respondent Government did not refer to any evidence or any objective assessment, contemporaneous or otherwise, based on relevant material, that there had been any, let alone any real, threat to the Russian military forces stationed in Crimea at the time. On the other hand, and more importantly, the Court has particular regard to the uncontested statement by President Putin made in a meeting with heads of security agencies during the night of 22 to 23 February 2014, namely that he had taken the decision to "start working on the return of Crimea to the Russian Federation" (paragraph 4 of the OHCHR 2017 Report; see paragraphs 40, 227 and 296 above).

325. As noted above, the conduct of the Russian military forces in Crimea was regulated by the Agreement on the Status and Conditions of the Presence of the BSF of the Russian Federation in the Territory of Ukraine. Under Article 6 § 1 of that Agreement, the operations of the Russian BSF in Crimea were required to "respect the sovereignty of Ukraine, observe its laws, and avoid interfering with Ukraine's domestic affairs". More specifically, the Agreement provided (Article 6 § 1 and Article 8 § 4) that the operation of the military formations of the Russian BSF in Crimea should be limited to their deployment sites (protective measures could be undertaken outside deployment sites in cooperation with the competent Ukrainian authorities) (see paragraph 203 above).

326. Even assuming that the deployment and movements of the Russian military forces in the Ukrainian Autonomous Republic of Crimea at the time could have been understood as "protective" within the meaning of Article 8 § 4 of that Agreement (see paragraphs 39 and 203 above), the Court has already found that there was no concrete evidence to suggest that there had been any real threat to the Russian troops stationed in Crimea at the time. Furthermore, any such protective measures were to be applied "in cooperation with the competent Ukrainian authorities". The available material does not allow the Court to conclude that the requirement of cooperation in this respect was met in the present case. Furthermore, the (contemporaneous) diplomatic notes of the Ukrainian Government, objecting to the deployments and movements in question, reinforce the conclusion regarding the absence of such cooperation.

327. As to the other grounds invoked by the respondent State (see paragraph 323 above), the Court considers that, as argued by the applicant Government (see paragraphs 36 and 290 above), there is nothing in the Agreements that could be interpreted as allowing the Russian military units to carry out any policing or public-order functions in Crimea.

– *Conduct of the Russian military forces in Crimea*

328. The Court further notes that, contrary to the respondent Government's arguments that the Russian soldiers deployed in Crimea at the time had been passive bystanders (see paragraph 283 above), the applicant Government provided highly detailed, chronological and specific information, as well as video-footage, showing the active participation of Russian servicemen in the immobilisation of Ukrainian forces (see paragraphs 42-47, 49, 50-51, 55-57, 74, 82-84 and 96-98 above). These allegations concerned specific actions taken by the Russian military forces with a view to ensuring the control of entry and exit points into Crimea, operations to block or disable (disarm) Ukrainian military forces and the detention of Ukrainian soldiers. The applicant Government's account remained coherent throughout the proceedings before the Court, and involved consistent information regarding the manner, place and time of the alleged events, as well as the military formations of the respondent State involved. In this connection it is noteworthy that the respondent Government did not submit any evidence to refute the applicant Government's account, such as deployment records in relation to the identified military formations, over which the respondent Government necessarily have exclusive control. Nor did they provide any convincing arguments that could call into question the credibility of the applicant Government's version of events and the evidence submitted in support of it.

329. Similar considerations apply to the allegations that Russian servicemen were actively involved in the events of 27 February 2014 in the administrative buildings of the Supreme Council and the Council of Ministers of Crimea, resulting in the transfer of power to the new local authorities, which subsequently organised the "referendum", declared the independence of Crimea and took active steps towards its integration into the Russian Federation. The importance of the Russian military presence for the local administration in securing power was also confirmed by Mr Girkin, one of the leaders of the CSDF, whose members, as he has admitted, gathered the deputies so as to elect the members of the new Council of Ministers of Crimea, headed by Mr Aksenov (see paragraphs 47 and 294 above).

330. In addition to this, there are other elements which reinforce the credibility of the applicant Government's account.

331. Firstly, as noted above, in his statement during the night of 22 to 23 February 2014 President Putin told the heads of security agencies of the Russian Federation that he had taken the decision to "start working on the

return of Crimea to the Russian Federation". Secondly, the respondent Government confirmed that "between 1 and 17 March 2014 [the Russian troops in Crimea] stood ready to assist the Crimean people in resisting attack by the Ukrainian armed forces" (see paragraph 280 above). Thirdly, the Court notes that Resolution no. 48-SF of 1 March 2014 authorised the President of the Russian Federation to use armed forces on the territory of Ukraine "until the social and political situation in the country becomes normal" (see paragraph 199 above). Fourthly, the Court notes that the Defence Minister of the Russian Federation, Mr Sergey Shoigu, in the documentary *Crimea: The way home* (see paragraph 147 (x) above), asserted that the Russian Special Forces had seized the building of the Supreme Council in Simferopol on 27 February 2014.

332. Lastly, the Court considers pertinent the statement given by President Putin in his interview of 17 April 2014 to the Rossiya television channel (see paragraphs 34, 177, 280 and 296 above), confirming the following:

> "... we had to prevent the bloodshed and not to allow the armed forces, armed units of the Ukrainian Army deployed in Crimea, or the law enforcement agencies, to prevent the people from expressing their will. We had to disarm the military units of the Ukrainian army and law enforcement agencies or to convince them not to interfere with people expressing their opinion and, actually, to collaborate with us in that ...
>
> Of course, the Russian servicemen did back the Crimean self-defence forces. They acted in a civil[ised], but a decisive and professional manner, as I've already said. It was impossible to hold an open, honest, and dignified referendum and help people express their opinion in any other way." (English translation by Russian authorities available online.)

333. In this connection, the Court gives particular weight to the express acknowledgment that the Russian Federation "disarm[ed] the military units of the Ukrainian army and law enforcement agencies" and that "the Russian servicemen did back the Crimean self-defence forces".

334. In *El-Masri* (cited above, § 163) the Court held, referring to the judgment of the ICJ in *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)* (*Merits*, *ICJ Reports* 1986, p. 14, § 64), quoted in paragraph 222 above, that "in principle [it] will treat with caution statements given by government ministers or other high officials, since they would tend to be in favour of the government that they represent or represented. However, it also considers that statements from high-ranking officials, even former ministers and officials, who have played a central role in the dispute in question are of particular evidentiary value when they acknowledge facts or conduct that place the authorities in an unfavourable light. They may then be construed as a form of admission."

335. Having regard to all of the above, there is sufficient evidence for the Court to conclude that during the relevant period the respondent State exercised effective control over Crimea. It is therefore not necessary, for the purposes of establishing "jurisdiction" under Article 1, to determine whether

the respondent State exercised detailed control over the policies and actions of the local administration (see *Al-Skeini and Others*, cited above, § 138).

336. The fact that Ukraine did not avail itself of the right of derogation from its Convention obligations in respect of Crimea regarding that period (see paragraph 282 above) is irrelevant for the above findings concerning the respondent State's jurisdiction under Article 1 of the Convention.

337. Consequently, the Court dismisses the respondent Government's objection *ratione loci*.

(b) As to the period after 18 March 2014

338. The Court notes that it is common ground between the parties that the respondent State has exercised jurisdiction over Crimea after 18 March 2014. However, as noted above, their positions differ as to the legal basis of that jurisdiction (see paragraph 306 above). Unlike the applicant Government, who assert that that jurisdiction is based on the "effective control" ground, the respondent Government consider that the determination of that issue "would be inappropriate" because it "would take the Court into questions concerning sovereignty between States that are outside its jurisdiction".

339. The Court reiterates that it is not called upon to decide whether Crimea's admission, as a matter of Russian law, into the Russian Federation was lawful from the standpoint of international law (see paragraph 244 above, and also the ICJ judgment cited in paragraph 223 above).

340. It further reiterates that the respondent State's jurisdiction under Article 1 of the Convention is a necessary prerequisite for the Court's exercise of its competence under Article 19 of the Convention (see paragraph 264 above). The parties did not disagree.

341. In this connection the Court is empowered, in so far as and only to the extent necessary for the exercise of its competence under Article 19 of the Convention to "ensure the observance of the engagements undertaken by the High Contracting Parties in the Convention and the Protocols thereto", to determine the nature of the jurisdiction exercised by a respondent State over a given territory. The Court notes, in this context, that this is also in line with the approach taken both by the ICJ (see 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. the Russian Federation)*, *Preliminary Objections* (ICJ, 8 November 2019, pp. 21 and 46, § 29) and by a number of international arbitral tribunals which have ruled on complaints lodged with the Permanent Court of Arbitration against the Russian Federation under the Agreement between the Government of the Russian Federation and the Cabinet of Ministers of Ukraine on the Encouragement and Mutual Protection of Investments of 27 November 1998 by businesses located in Crimea (see, in particular, *Everest Estate LLC and others v. the Russian Federation* (PCA

Case No. 2015-36, 2 May 2018) and *Public Joint Stock Company "State Savings Bank of Ukraine"(JSC Oschadbank*) *v. the Russian Federation* (PCA Case No. 2016-14, 26 November 2018); see paragraph 29 (xxiii) above). The approach adopted by those tribunals has also been confirmed, following a challenge by the Russian Federation, by the Swiss Federal Court (see, in particular, judgment no. 4A_398/2017 of 16 October 2018; judgment no. 4A_246/2019 of 12 December 2019; and judgment no. 4A_244/2019 of 12 December 2019).

342. Having regard to the scope of the case as defined above (see paragraphs 236-48 above), the Court finds that it is necessary to consider the nature or legal basis of the respondent State's jurisdiction over Crimea in relation to three specific complaints advanced by the applicant Government. These are the complaints brought under Article 6 of the Convention and under Article 2 of Protocol No. 4, as well as the one brought under Article 14 of the Convention taken in conjunction with Article 2 of Protocol No. 4. The complaint under Article 6 § 1 is formulated as a violation of the requirement for a "tribunal established by law" arising out of the "[u]nlawful requalification of Ukrainian judgments under Russian legislation in breach of Article 6 of the Convention". In any assessment of this complaint at the merits stage of the proceedings, the Court would, in accordance with its consistent case-law, have to consider the provisions of "domestic" law; it would, therefore, be necessary to determine what the applicable "domestic" law was. It would be impossible for the Court to examine this complaint without first determining whether the relevant "domestic law" by reference to which this complaint is to be assessed is that of Ukraine or that of the Russian Federation.

343. The complaint under Article 2 of Protocol No. 4 concerns the alleged restrictions of freedom of movement between Crimea and mainland Ukraine resulting from the *de facto* transformation by the respondent State of the administrative border line into a State border (between the Russian Federation and Ukraine). Article 2 § 1 of Protocol No. 4 provides that "[e]veryone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence". This provision would therefore not be applicable if the jurisdiction exercised by the Russian Federation over Crimea at the relevant time took the form of territorial jurisdiction rather than that of "effective control over an area".

344. When considering the nature or legal basis of the jurisdiction exercised by the Russian Federation over Crimea at the relevant time, the Court's starting-point is that the concept of "jurisdiction" for the purposes of Article 1 of the Convention must be considered to reflect the term's meaning in public international law (see *Gentilhomme and Others v. France*, nos. 48205/99 and 2 others, § 20, 14 May 2002; *Banković and Others*, cited above, §§ 59-61; and *Assanidze v. Georgia* [GC], no. 71503/01, § 137, ECHR 2004-II).

345. From the standpoint of public international law, the words "within their jurisdiction" in Article 1 of the Convention must be understood to mean that a State's jurisdictional competence is primarily territorial (see *Banković and Others*, cited above, § 59), but also that jurisdiction is presumed to be exercised normally throughout the State's territory (see *Al-Skeini and Others*, cited above, § 131). This is also the position under general international law as reflected in Article 29 of the UN Vienna Convention on the Law of Treaties of 1969, which provides that "unless a different intention appears from the treaty or is otherwise established, a treaty is binding upon each party in respect of its entire territory".

346. The Court notes in that context that the applicant State ratified the Convention on 11 September 1997 in respect of its territory within the internationally recognised borders as at that time, including Crimea as an "inseparable constituent part of Ukraine" (see in particular Articles 2 and 134 of the Constitution of Ukraine, cited in paragraph 198 above). In accordance with the above principles, no change to the sovereign territory of Ukraine having been accepted or notified by the applicant State, the Court must therefore assume that the applicant State's jurisdiction extends to the entirety of its territory, including Crimea.

347. By contrast, the Court notes that when the respondent State ratified the Convention on 5 May 1998, also in respect of its territory within the internationally recognised borders as at that time, neither the respondent State nor any other State asserted or accepted that Crimea formed part of the territory of the Russian Federation.

348. As the respondent Government have asserted and the Court accepts, it is not for the Court to determine whether and to what extent the Accession Treaty of 21 March 2014 has, consistently with public international law, changed the sovereign territory of either the respondent or the applicant State. The respondent State further invited the Court not to enter into the determination of the nature of its jurisdiction after 18 March 2014 (see paragraph 306 above). Accordingly, the Court cannot but note that the respondent Government have not, in fact, advanced a positive case that the sovereign territory of either party to the proceedings has been changed. Furthermore, the Court also notes in this context that a number of States and international bodies have refused to accept any change to the territorial integrity of Ukraine in respect of Crimea within the meaning of international law (see paragraphs 211, 214 and 216-217 above). As the Arbitral Tribunal observed in paragraph 174 of its above-mentioned Award of 21 February 2020 (see paragraph 244 above), "the effect of factual and legal determination made in the UNGA Resolutions [UNGA Resolution 68/262 on the territorial integrity of Ukraine (see paragraph 211 above), as reaffirmed in subsequent UNGA Resolutions 73/263, 71/205, and 72/190 (see paragraphs 212-213 above)] depends largely on their content and the conditions and context of their adoption[, as] does the weight to be given to such resolutions by an international court or tribunal". Nevertheless, the Court considers that, for the

purposes of the present case, these acts cannot be disregarded (see, *mutatis mutandis*, *Loizidou v. Turkey* (merits), 18 December 1996, § 56, *Reports of Judgments and Decisions* 1996-VI).

349. Consequently, for the purposes of this admissibility decision, the Court will proceed on the basis of the assumption that the jurisdiction of the respondent State over Crimea is in the form or nature of "effective control over an area" rather than in the form or nature of territorial jurisdiction.

(c) "State agent authority" jurisdiction

350. The applicant Government's arguments under this head concern alleged victims who were said to have been held in two facilities in Crimea and ill-treated by the Russian soldiers and/or members of the Crimean self-defence units. The arguments under this head were based on alleged knowledge and tolerance by the Russian authorities.

351. Having regard to the above findings regarding the respondent State's jurisdiction under the "effective control" ground, the Court does not consider it necessary to decide whether the violations alleged by the applicant Government also fall within the respondent State's jurisdiction on the "State agent authority" principle.

(d) Conclusion

352. The Court considers that the alleged victims of the administrative practice complained of by the applicant Government fall within the "jurisdiction" of the respondent State and that the Court therefore has competence to examine the application. As noted in paragraph 266 above, this conclusion is without prejudice to the question whether the respondent State is responsible under the Convention for the acts which form the basis of the applicant Government's complaints, which belongs to the merits phase of the Court's procedure.

V. EXHAUSTION OF DOMESTIC REMEDIES AND ALLEGED EXISTENCE OF AN ADMINISTRATIVE PRACTICE

A. The parties' submissions

1. The respondent Government

353. The respondent Government maintained that the applicant Government had provided only "an abstract description of actions", which could not be regarded as an administrative practice. Since "Ukraine failed to prove the existence of 'administrative practice', the effective domestic remedies exhaustion rule applie[d]".

354. As for the period between 27 February and 18 March 2014, the respondent Government submitted that the alleged victims should have tried remedies provided under the Ukrainian legal system or, where a Russian

national (serviceman) had committed a crime in violation of the Convention, they should have applied to the prosecuting and judicial authorities of the Russian Federation in accordance with the Criminal Code of the Russian Federation. Furthermore, the respondent Government asserted that the Ukrainian authorities had not sought, of their own motion or at the request of interested parties, legal assistance from the Russian authorities in order to obtain relevant documents for the protection or restoration of human rights and freedoms.

355. As for the period after 18 March 2014, the respondent Government submitted that Russian law applied in Crimea and that there was a functioning legal system, including courts and a criminal prosecution service. As set out in the Accession Treaty, there had been a "transitional period" (ending on 1 January 2015) during which the existing Crimean laws had continued to apply. During that time, the existing courts in Crimea had remained competent to decide in the name of the Russian Federation and had applied the Russian procedural rules; incumbent judges had remained in office provided they had acquired Russian nationality; and their decisions had been subject to an appeal to the Russian Supreme Court (or Supreme Commercial Court) in accordance with the procedural rules of the Russian Federation. As of 26 December 2014, all pending cases had been transferred to the newly established federal courts and bodies. If new bodies or agencies had to be established in accordance with Russian law, incumbent judges and law-enforcement officers had priority in the selection process, which was carried out under specific rules. Since May 2014, five of the seven courts of general jurisdiction in Crimea had had full contingents of sitting judges (see paragraphs 182-84 above).

356. According to the respondent Government, for each allegation raised by the applicant Government there existed a remedy under Russian law, which could have been used by individual complainants before the courts in Crimea. In this connection they stated the following:

> "Almost in all cases mentioned by Ukraine there has been no genuine attempt by the alleged victims to exhaust domestic remedies. Instead, in some cases, the alleged victims have refused to cooperate with Russia's investigative authorities. In most of these cases, initial domestic complaints, if filed, were brief and formalistic with no evidence in support of the allegations made. Relevant detail has only been alleged in the proceedings before this Court."

357. The respondent Government submitted that an approach in which the respondent State was accused of having refused to take any measures to investigate and punish the perpetrators, without any examples of exhaustion of the effective domestic remedies being given, "fit[ted] a pattern of sponsored 'strategic litigation' against Russia, designed to create a picture of human rights violation without examination of the facts".

358. That the remedies were effective, both in theory and practice, was confirmed in the case of Mr Karachevskyi (referred to by the applicant Government), whose killing had been the subject of an investigation which

had led to the identification and punishment of the perpetrator. The respondent Government also referred to the "thorough inquiry" and "extensive investigation" by the Russian authorities into the disappearance of Mr Reshat Ametov (and his death) (see paragraphs 186 and 187 above).

359. In any event, they denied that the aim of the present case was to prevent the continuation of the alleged administrative practice, given the absence of a request to that effect by the applicant Government and the passage of a considerable amount of time.

2. The applicant Government

360. In their written submissions and at the hearing, the applicant Government maintained that the rule on exhaustion of domestic remedies under Article 35 of the Convention did not apply to allegations, such as those made in the present case, of an administrative practice of violations of the Convention. In their view, the available evidentiary material contained "clear and consistent" evidence corroborating the alleged administrative practice, in particular the element of "official tolerance".

361. In any event, "'courts' and administrative mechanisms of the subordinate local administration in Crimea", as "emanations of an entity resulting from an unlawful occupation", should not be accorded any legal recognition. Accordingly, individual victims were not required to make use of the "domestic courts". In the alternative, and relying on the OHCHR 2017 Report and PACE Resolution 2133 (2016) (paragraph 7.2. of the Resolution 2133 (2016) and paragraphs 10 and 222 of the OHCHR 2017 Report; see paragraphs 215 and 227 above), they denied that any remedies were, in practice, accessible, available and effective.

362. Furthermore, they argued that the respondent Government had failed to identify the steps that had been taken to investigate and hold accountable the numerous public officials implicated in the alleged violations. The respondent Government had also failed to demonstrate that there had been practical and effective remedies available in relation to the alleged violations. The suspension of the investigation in 2015 into the death of Mr Reshat Ametov; the lack of any investigation into the killing of Serhii Kakorin and the alleged detention and torture by the CSDF of several people (see paragraph 110 (h) above); and the downgraded legal classification (homicide in self-defence) and the lenient penalty imposed (two years' imprisonment in an open prison) in the case of Mr Karachevskyi (see paragraph 122 (a) above) all illustrated the culture of impunity.

B. The Court's assessment

363. The Court reiterates that the rule of exhaustion of domestic remedies as embodied in Article 35 § 1 of the Convention applies to State applications (Article 33), in the same way as it does to "individual" applications

(Article 34), when the applicant State does no more than denounce a violation or violations allegedly suffered by "individuals" whose place, as it were, is taken by the State. On the other hand and in principle, the rule does not apply where the applicant State complains of a practice as such, with the aim of preventing its continuation or recurrence, but does not ask the Court to give a decision on each of the cases put forward as proof or illustrations of that practice (see *Georgia v. Russia (I)* (dec.), cited above, § 40; *Ireland v. the United Kingdom*, judgment cited above, § 159; *Cyprus v. Turkey*, Commission decision, cited above; and *Denmark v. Turkey*, cited above). The Court notes that the ICJ adopted a similar approach in its recent 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. the Russian Federation)* (*Preliminary Objections*, 8 November 2019, at p. 46, § 130; see paragraph 223 above), the relevant part of which reads as follows:

> "130. The Court notes that, according to Ukraine, the Russian Federation has engaged in a sustained campaign of racial discrimination, carried out through acts repeated over an appreciable period of time starting in 2014, against the Crimean Tatar and Ukrainian communities in Crimea. The Court also notes that the individual instances to which Ukraine refers in its submissions emerge as illustrations of the acts by which the Russian Federation has allegedly engaged in a campaign of racial discrimination. It follows, in the view of the Court, that, in filing its Application under Article 22 of CERD, Ukraine does not adopt the cause of one or more of its nationals, but challenges, on the basis of CERD, the alleged pattern of conduct of the Russian Federation with regard to the treatment of the Crimean Tatar and Ukrainian communities in Crimea. In view of the above, the Court concludes that the rule of exhaustion of local remedies does not apply in the circumstances of the present case."

364. The Court has already found that the applicant Government limited the scope of the case to the alleged existence of an administrative practice of violations of the Convention. They clearly and unequivocally stated that their aim "was not to seek individual findings of violations ... but rather to invoke the jurisdiction of the Court to establish the existence of the pattern of violations alleged, put an end to them, and prevent their recurrence" (see paragraph 235 above). Accordingly, the present case falls under the latter category of inter-State cases (see paragraph 363 above), namely complaints relating to a practice.

365. In view of the above, the Court finds that the exhaustion rule does not apply in the circumstances of the present case. Accordingly, the Court dismisses the respondent Government's objection of non-exhaustion of domestic remedies.

366. As noted above (see paragraph 262), it has been consistently held that the prima facie evidentiary threshold, as the appropriate standard of proof required at the admissibility stage regarding allegations of an administrative practice, needs to be satisfied so as to render the exhaustion requirement inapplicable to this category of cases. Only if both component elements of the alleged "administrative practice" (the "repetition of acts" and "official

tolerance"; see paragraph 263 above) are sufficiently substantiated by prima facie evidence does the exhaustion rule under Article 35 § 1 of the Convention not apply. In the absence of such evidence, it will not be necessary for the Court to go on to consider whether there are other grounds, such as the ineffectiveness of domestic remedies, which exempt the applicant Government from the exhaustion requirement. In that event, as noted above, the complaint of an administrative practice cannot on substantive grounds be viewed as admissible and warranting the Court's examination on the merits (see paragraph 262 above).

367. The only question, therefore, that needs to be addressed in the present case is whether there is sufficient evidence to establish, to the applicable standard of proof at the admissibility stage in inter-State cases (prima facie evidence), that there was an administrative practice in relation to each of the complaints made by the applicant Government. Such evidence would at this stage of the proceedings be required regarding both the "repetition of acts" and "official tolerance", both being constituent elements of an administrative practice.

368. Any conclusion by the Court as to the admissibility of the complaint of an administrative practice is without prejudice to the question whether the existence of an administrative practice is at a later stage established on the merits "beyond reasonable doubt", and if so, whether in this respect any responsibility under the Convention could be attributed to the respondent State. These are questions which, as noted in paragraph 262 above, can only be determined after an examination of the merits.

VI. ADMISSIBILITY OF THE COMPLAINTS OF AN ADMINISTRATIVE PRACTICE

A. General remarks as to the evidence

1. The parties' submissions

(a) The respondent Government

369. The respondent Government argued that the applicant Government's allegations of an administrative practice were vague and unclear, as the alleged victims, perpetrators and dates of the alleged events had not always been clearly identified. Furthermore, they had not been supported by "proper primary evidence" from the alleged victims. At the hearing, the respondent Government submitted that there had been no relevant physical or medical evidence in support of certain allegations. For that reason, they considered that "the application [was] generally defective in failing to make out a prima facie case on attribution of alleged breaches of the Convention to Russia". They denied that there was prima facie evidence regarding the "repetition of acts" or "official tolerance" and invited the Court either to declare the

application inadmissible or to carry out "a thorough examination of each incident and [to] individualis[e] the inter-State complaint".

370. As regards witness evidence, the respondent Government submitted that it had not been obtained in a valid procedure before competent authorities, but had been collected by the Agent of the applicant Government; it had been obtained three years after the alleged events; and no explanation had been given as to why the alleged victims had not tried any available domestic remedy. At the hearing, they added that no explanation had been provided as to why that evidence had not been submitted together with the application, but only three years later. No information was provided as to the whereabouts and safety of the witnesses in question after the alleged events.

371. Furthermore, the respondent Government contested the credibility of evidence provided by certain witnesses, in particular Mr Burgomistrenko and Mr Get, both Ukrainian servicemen, because they had contained "declarative and political statements without any apparent basis in personal knowledge of relevant facts". Similar arguments were made regarding evidence provided by some allegedly foreign-sponsored individuals who were said to have been promoting "blatant propaganda" against the Russian Federation (reference was made to Ms M.T. and Mr B., who were allegedly involved in various organisations, some mentioned below).

372. The material from the Ukrainian authorities was incomplete as it contained no information about any investigating measures being taken by those authorities. The respondent Government also opposed the admission in evidence of information gleaned from the media (at least as sole evidence). Lastly, they criticised written material published by certain NGOs, such as the Ukrainian Helsinki Human Rights Union, Civic Solidarity, the Center for Civil Liberties, the Crimean Human Rights Group, the Crimean Human Rights Field Mission and Truth Hounds. In this connection they stated, *inter alia*, the following:

> "Civic Solidarity [is] an obscure organisation [that] has a website ... with an IP address ... located in Chicago, Illinois, USA. Civic Solidarity appears to be an assemblage of what [is reported] as separate organisations. Some of these are once again funded by the U.S. Government through USAID (United States Agency for International Development) and/or the NED (National Endowment for Democracy), Mr [George] Soros and the Dutch Government through various routes. The funding of others is obscure. One role of Civic Solidarity appears to be to obscure the channeling of money to 'Truth Hounds', an organisation producing purported 'evidence' against Russia. The Dutch authorities that now appear indirectly to finance Truth Hounds were involved in this earlier propaganda too ... Center for Civil Liberties has produced an annual report for 2017 showing that its major sponsors include the Ministry of Foreign Affairs of the Netherlands, the Netherlands Helsinki Committee, the International Renaissance Foundation of Mr Soros and Freedom House, financed by the U.S. State Department ..."

373. As to the extensive reference by the applicant Government to the OHCHR 2017 Report, at the hearing the respondent Government argued that there had been no fact-finding mission in Crimea during the preparation of

the Report and that no one from the working group had visited Crimea. Monitoring missions had refused to accept the conditions of entry into Crimea (visa requirements). Furthermore, the respondent Government asked how the Report could draw "far-reaching conclusions" of "serious accusations of human rights violations" given the lack of access to primary evidence. It was unclear whether the working group had requested and received information from State officials about the alleged facts. The Report neither identified the alleged victims, nor did it contain information about the circumstances in which the alleged violations had occurred (but relied instead on the Crimean Human Rights Group and the Ukrainian Helsinki Human Rights Union, the head of the latter at the time being Mr B., said to have been "paid for by the US State Department"). Those defects raised serious doubts as to the reliability of the information presented in the Report. Accordingly, in their opinion, the Report could not be used as a basis for the fair examination and establishment of legal facts. Similar arguments were raised as regards the Human Rights Watch Report on Crimea.

374. Finally, the respondent Government stated at the hearing that the failure of the applicant Government to provide sufficient and convincing direct evidence notwithstanding the considerable lapse of time since the events complained of should not be seen in isolation, but "in the context of a massive propaganda campaign against Russia from 2014 by the Ukrainian authorities and their foreign sponsors". As an illustration they referred to an allegedly manipulated picture of a Russian soldier in Eastern Ukraine. According to them, "targeting Russia ha[d] become part of business (activities) of Ukrainian oligarchs and of the strategic litigation by the Ukrainian Government and its allies."

(b) The applicant Government

375. In support of the alleged existence of an administrative practice amounting to human rights violations, the applicant Government referred to various pieces of evidence, in particular reports of "reliable independent international organisations", such as the OHCHR 2017 Report (covering the period from 22 February 2014 to 12 September 2017; see paragraph 2 of the Report) and the Commissioner's Report (7-12 September 2014), as well as the Human Rights Watch Report (based on "field trips to Crimea in March and October 2014 and telephone interviews with people displaced from Crimea"), which, according to them, provided "enough evidence of an administrative practice to surmount the relevant threshold at an admissibility hearing". They further relied on domestic and international materials, as well as "first hand witness testimony", which they had been able to gather "despite obstruction from Russia", given that since the end of February 2014, it had not been possible for the applicant State to carry out any investigation on the ground. The respondent State had also prevented independent human rights monitors and investigators (including those from UN agencies) from

accessing Crimea. For those reasons, the evidence that the applicant Government was able to collect had largely been provided by witnesses who had fled Crimea and lived in Ukraine, or by those independent monitors who had been able to access Crimea.

376. At the hearing, the applicant Government reiterated that the above-mentioned reports were credible and contained sufficient compelling evidence of the alleged pattern of violations targeting perceived political opponents of "the Russian occupation" that was above the evidentiary threshold required at the admissibility stage in an inter-State case. The OHCHR reports had recorded only allegations made by witnesses who had been directly interviewed and whose testimony "had been corroborated and independently verified". As stated by them, "the UN reports describe a dramatic worsening of the human rights situation in Crimea since the Russian occupation began, together with serious accountability vacuum in relation to human rights violations committed against dissenters by the security forces and other pro-Russian elements in Crimea".

2. The Court's assessment

377. As to the respondent Government's submissions that some of the applicant Government's allegations were unclear and vague, the Court refers to its findings that the issues put before it are of a legal nature and that they are sufficiently clear and precise for a judicial examination by the Court (see paragraph 238 above).

378. As regards the objections concerning the admissibility and/or adequacy of certain pieces of evidence adduced by the applicant Government in support of the admissibility of their complaints under this head, the Court considers it important to reiterate the following aspects of its consistent case-law.

379. In proceedings before the Court, there are no procedural barriers to the admissibility of evidence or pre-determined formulae for its assessment. This is because "being master of its own procedure and of its own rules ..., [the Court] has complete freedom in assessing not only the admissibility and the relevance but also the probative value of each item of evidence before it ... [I]t is not bound, under the Convention or under the general principles applicable to international tribunals, by strict rules of evidence" (see *Ireland v. the United Kingdom*, judgment cited above, §§ 209-10).

380. As a consequence, and subject to its approach to the burden of proof (see paragraph 258 above), the Court therefore adopts those conclusions of fact which are, in its view, supported by the free evaluation of all material before it irrespective of its origin, including such inferences as may flow from the facts and the parties' submissions and conduct.

381. As regards the witness testimonies of Ukrainian officials, the Court reiterates that it is entitled "to rely on evidence of every kind, including, in so far as it deems them relevant, documents or statements emanating from

governments, be they respondent or applicant, or from their institutions or officials" (see *Ireland v. the United Kingdom*, judgment cited above, § 209). However, as emphasised previously (see paragraph 334 above) "statements given by government ministers or other high officials" are to be "treat[ed] with caution ... since they would tend to be in favour of the government that they represent or represented" (see *El-Masri*, cited above, § 163). Applying these principles, the mere fact that such evidence emanates from Ukrainian officials does not therefore in itself render it inadmissible. Similarly, the procedure and the time when that evidence was collected, namely by the Agent of the applicant Government for the purposes of the proceedings before the Court three years after the alleged events, do not render that evidence *per se* inadmissible. The Court accepts, on the evidence before it and 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 and witnesses and alleged victims might reasonably have feared possible persecution by the post-February 2014 authorities in Crimea. In this connection it takes note of the following statement by the Council of Europe's Commissioner for Human Rights (see paragraph 228 above):

> "24. In the wake of the events of February-March [2014], some of the [ethnic Ukrainians] decided to leave the region because they no longer felt secure, while others preferred to refrain from openly stating and/or manifesting their views." (See also PACE Resolution 2133 (2016), cited in paragraph 215 above.)

382. The Court will make allowance for this. It further finds that no other convincing arguments militating against the credibility of witness evidence were provided by the respondent Government.

383. The Court likewise does not consider that evidence obtained from media reporting is *per se* inadmissible. However, it accepts that such evidence is to be treated with a degree of caution when evaluating its weight. As the ICJ noted in its judgment in *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)* (*Merits*, ICJ *Reports* 1986, p. 40; see paragraph 222 above):

> "62. ... A large number of documents has been supplied in the form of reports in press articles ... the Court has been careful to treat them with great caution ...
>
> 63. ... although it is perfectly proper that press information should not be treated in itself as evidence for judicial purposes, public knowledge of a fact may nevertheless be established by means of these sources of information, and the Court can attach a certain amount of weight to such public knowledge ... On the basis of information, including press and broadcast material, which was 'wholly consistent and concordant as to the main facts and circumstances of the case', the Court was able to declare that it was satisfied that the allegations of fact were well-founded ..."

384. The Court further observes that certain pieces of evidence (reports by local NGOs and allegedly foreign-sponsored individuals), the admissibility and probative value of which was challenged by the respondent Government (see paragraphs 370 and 372 above), were not ultimately relied on by the applicant Government in their memorial to the Grand Chamber.

Furthermore, in the light of the principles summarised above (see paragraphs 379-380 above), the Court rejects the respondent Government's argument that in order to be regarded as admissible, an allegation of administrative practice must be supported by direct evidence emanating from the alleged victims.

385. The respondent Government also disputed the probative value of the information contained in the OHCHR 2017 Report and the Human Rights Watch Report on Crimea (see paragraph 373 above).

386. In this connection, the Court notes that it has often attached importance to materials originating from reliable and objective sources, such as, for instance, the United Nations, as well as from reputable non-governmental organisations, or governmental sources (see *Saadi v. Italy* [GC], no. 37201/06, § 131, ECHR 2008; *Hirsi Jamaa and Others v. Italy* [GC], no. 27765/09, § 118, ECHR 2012; *NA. v. the United Kingdom*, no. 25904/07, § 119, 17 July 2008; and *M.S.S. v. Belgium and Greece* [GC], no. 30696/09, § 255, ECHR 2011). In assessing their probative value, the Court is conscious of the need to show a degree of caution since "widespread reports of a fact may prove on closer examination to derive from a single source, and such reports, however numerous, will in such case have no greater value as evidence than the original source" (see *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, *Merits*, Judgment, *ICJ Reports* 1986, p. 40, § 63; see paragraph 222 above).

387. In *J.K. and Others v. Sweden* ([GC], no. 59166/12, §§ 88-89, 23 August 2016) the Court outlined the methodology to be applied when assessing the probative value of such reports:

> "88. In assessing the weight to be attached to country material, the Court has found in its case-law that consideration must be given to the source of such material, in particular its independence, reliability and objectivity. In respect of reports, the authority and reputation of the author, the seriousness of the investigations by means of which they were compiled, the consistency of their conclusions and their corroboration by other sources are all relevant considerations ...
>
> 89. The Court also recognises that consideration must be given to the presence and reporting capacities of the author of the material in the country in question ... The Court appreciates the many difficulties faced by governments and NGOs gathering information in dangerous and volatile situations. It accepts that it will not always be possible for investigations to be carried out in the immediate vicinity of a conflict and, in such cases, information provided by sources with first-hand knowledge of the situation may have to be relied on."

388. In *Sufi and Elmi v. the United Kingdom* (nos. 8319/07 and 11449/07, § 232, 28 June 2011) the Court added that it would not disregard a report simply on account of the fact that its author had not visited the area in question and had instead relied on information provided by sources.

389. The Court notes the means by which the reports in issue were compiled (see paragraph 35 of the OHCHR 2017 Report and the Human Rights Watch Report) and finds that the reliability of these reports, as well as

the relative probative value of all available evidence, will be considered not only on the basis of whether they corroborate each other, but also in the light of the allegations by the applicant Government, confirmed in the reports by intergovernmental organisations (IGOs) and relevant international bodies, that the respondent State refused human rights monitoring bodies unhindered access to Crimea (see, for example, the relevant UN General Assembly Resolutions (A/RES/71/205, A/RES/72/190 and A/RES/73/263); the Concluding Observations of the UN HRC and the UN Committee against Torture; paragraph 2 of the OHCHR 2017 Report; paragraph 53 of the Commissioner's Report; and paragraph 4 of the Report of the Human Rights Assessment Mission on Crimea (6–18 July 2015), 17 September 2015: see paragraphs 212-213, 225-27 and 230 above). In this connection, the Court notes that the respondent Government have asserted that "there ha[d] been a repeated problem with monitoring missions [and] that there ha[d] been politicisation of their work". According to them, members of those missions "ha[d] refuse[d] to undertake visa procedures applied by the Russian Federation, which [we]re clearly necessary because of security concerns" (see paragraph 373 above). In the Court's opinion, the imposition of such requirements, involving prior authorisation of individual members of the monitoring bodies by the receiving State, is to be regarded as a refusal by the respondent State to grant human rights monitoring bodies unhindered access to Crimea, notwithstanding the calls by the relevant multilateral bodies for it to enable immediate access for international monitors.

390. The Court considers it legitimate to draw 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. After all, in both situations the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities of the respondent State. As noted above (see paragraphs 256 and 380), the Court may draw relevant inferences from the respondent Government's conduct in this respect, as it has done previously in inter-State cases.

391. In the light of the criteria defined above, the Court will assess the evidence available to it in order to determine whether or not the applicant Government's allegations of an administrative practice incompatible with the Convention during the period under consideration, namely between 27 February 2014 and 26 August 2015 (see paragraph 238 above), are substantiated to the prima facie standard of proof required at the admissibility stage of the proceedings. Any findings by the Court that an allegation of an administrative practice is inadmissible by reason of the absence of sufficient prima facie evidence are without prejudice to the right of individuals to bring individual applications under Article 34 of the Convention.

B. Prima facie evidence of an administrative practice complained of by the applicant Government

1. Article 2 complaints

392. The applicant Government complained of a pattern of killing and shooting, and the enforced disappearance of perceived opponents of the Russian "occupation" (in particular Ukrainian soldiers, ethnic Ukrainians and Tatars), as well as a lack of an appropriate investigation into such allegations, in violation of the substantive and procedural limbs of Article 2 of the Convention.

393. 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."

(a) Alleged administrative practice of substantive violations of Article 2 of the Convention

(i) The parties' submissions

394. The applicant Government referred to several individual cases in support of the alleged pattern of killing and shooting, namely the deaths of Mr Reshat Ametov (suspected to have been killed by the CSDF); Mr Sergii Kokurin (an officer of the Armed Forces of Ukraine shot on 18 March 2014, allegedly by a Russian sniper); Mr Karachevskyi (Ukrainian naval officer), killed on 6 April 2014 by a Russian serviceman (convicted by a final court judgment); and Mr Mark Ivanyuk (16-year-old student allegedly beaten to death on 20 April 2014 by Crimean militants). Reference was also made to Captain V. Fedun (allegedly wounded by gunfire in an attack by the Russian troops and the CSDF) and the death of a 57-year-old Crimean Tatar and her 2-year-old grandchild (whose corpses were found on the banks of a river) (see paragraphs 108 (a) and (b) and 122 above). The applicant Government also relied on the OHCHR 2017 Report and the Commissioner's Report, which noted the deaths of Mr Ametov, Mr Karachevskyi and Mr Ivanyuk.

395. As to the alleged pattern of enforced disappearances, the applicant Government relied on the relevant information contained in the OHCHR 2017 report and the Commissioner's Report. They also referred to the 2014 annual report of the Russian Ombudsperson Ella Pamfilova, according to which she had received reports of thirteen cases in which Crimean Tatars had

disappeared and twenty-four instances in which Ukrainians had disappeared; and the alleged disappearance of Vasyl Chernysh, an activist (15 March 2014) (see paragraphs 108 (c), 120 and 122 above).

396. The respondent Government submitted that Mr Ametov's death had been tragic and that the perpetrators, whose identity was unknown, should be brought to justice. However, they denied that his death should be attributed to the Russian Federation. As to Mr Karachevskyi's death, they submitted that the investigation had led to the identification and punishment of the Russian serviceman responsible for his death. The investigation into the death of the 57-year-old Crimean Tatar and her 2-year-old grandchild had established that they had fallen into a river because a dam had collapsed (the criminal proceedings against a water engineer "could not prove that his negligence actually caused the deaths"). Furthermore, there was no adequate evidence in support of the alleged killing of Mr Sergii Kokurin. According to them, Mr Ivanyuk's case illustrated the manufactured allegations of racial hatred and violence brought by the applicant Government, although in practice the case concerned a road accident. In any event, they argued that there was no prima facie evidence to show the existence of an "administrative practice".

397. As to the alleged pattern of disappearances, the respondent Government did not refer to any individual incident alleged by the applicant Government in their memorial.

(ii) The Court's assessment

(α) As to the alleged administrative practice of killing and shooting

398. The Court notes that in their memorial the applicant Government referred to four individual cases of alleged killing (see paragraph 394 above). The IGO reports addressed some of those cases, but they neither specified that other such incidents had occurred during the period under consideration nor made any suggestion or reached any conclusions of systemic killings. No evidence was submitted that the death of the 57-year-old Crimean Tatar and her 2-year-old grandchild could fall under the alleged practice. Similar considerations apply to the single incident of the alleged shooting on 18 March 2014 (Captain V. Fedun).

399. In such circumstances, the Court considers that the alleged incidents of killing and shooting during the period under consideration were not "sufficiently numerous" to amount to a "pattern or system" (see paragraph 261 above) and that accordingly, the required standard of proof (prima facie evidence) has not been met in relation to the complaint under this head. It is therefore not necessary for the Court to examine whether there was sufficient evidence of "official tolerance" as regards this particular allegation.

400. Accordingly, this complaint is inadmissible on the ground that there is insufficient prima facie evidence and must be rejected in accordance with Article 35 § 4 of the Convention.

(β) As to the alleged administrative practice in respect of disappearances

401. The Court considers that the available material concerning alleged enforced disappearances, consisting primarily of the conclusions set out in the OHCHR 2017 Report ("the highest number of enforced disappearances in a single month occurred in March 2014, when at least 21 persons were abducted in Crimea"; "seven went missing in 2014, two in 2015 ..."; see paragraphs 101-02 of the Report), the Commissioner's Report (see paragraph 15 of the Report), the information contained in the 2015 UN HRC Concluding Observations (see paragraph 225 above) and the uncontested information emanating from the 2014 annual report of the Russian Ombudsperson (see paragraph 122 above), establishes a prima facie basis for the required "repetition of acts" within the meaning of the Court's case-law during the period under consideration.

402. As to the "official tolerance" element of an administrative practice, the Court reiterates that it may be found to exist on two alternative levels: that of the direct superiors of those immediately responsible for the acts involved or that of a higher authority who knew or ought to have known of the acts in question (see paragraph 261 above). In both scenarios, cognisance of such a practice at the level of the direct superiors of those immediately responsible or of the higher authorities of the State is required.

The Court considers that the available material provides prima facie evidence of "official tolerance" of the alleged administrative practice under this head. In particular, where the acts complained of under this head, as alleged by the applicant Government and noted in the IGO reports, had allegedly been committed by members of the CSDF (and a Cossack group) as potential perpetrators, the Court takes note of the public statement by President Putin that "the Russian servicemen did back the Crimean self-defence forces" (see paragraph 332 above). Further evidence is provided by the uncontested allegation that in April 2014 the members of the CSDF were awarded medals "For the return of Crimea" by the Ministry of Defence of the Russian Federation, and that in June and July 2014 the Crimean Parliament "endorsed a proposal to 'legalise' those forces through an act ..." (paragraph 36 of the Commissioner's Report; see paragraph 228 above). These factors appear to have led the OHCHR to conclude that the members of the CSDF "have been recognized as agents of the State" (paragraph 89 of the OHCHR 2017 Report; see paragraph 227 above).

403. Inferences as to the "official tolerance" by the respondent State to the required prima facie threshold may also be drawn from the conclusions in the OHCHR 2017 Report revealing a failure by the Russian judicial system to address the allegations under this head (paragraphs 11, 13 and 222 thereof).

404. In conclusion, the Court considers that, on the whole, there is sufficient prima facie evidence of the alleged administrative practice of enforced disappearances during the period under consideration.

405. Accordingly, the respondent Government's objection that there is no prima facie evidence of the alleged administrative practice under this head is dismissed. The Court further considers that this complaint is not inadmissible on any other grounds listed in Article 35 §§ 1 and 4 of the Convention. It must therefore be declared admissible.

(b) Alleged administrative practice of a lack of an effective investigation

(i) The parties' submissions

406. The applicant Government reiterated their arguments that there had been a "manifest failure by the Russian authorities to carry out an adequate investigation" into the events complained of under this head. They further referred to the relevant parts of the IGO reports.

407. The respondent Government referred to the investigation carried out into the deaths of Mr Karachevskyi (see paragraph 187 above) and Mr Ametov (see paragraph 186 above), the latter having been "artificially obstructed" by the Ukrainian authorities, given their failure to reply to a request by the Russian authorities for legal assistance through the provision of information on telephone calls.

(ii) The Court's assessment

408. In view of the available material of relevance to the complaint under this head (see, for example, paragraphs 10, 13, 85, 103 and 222 of the OHCHR 2017 Report), and the above considerations regarding the alleged existence of an administrative practice of violations of the substantive limb of Article 2 of the Convention (see paragraphs 398-405 above), the Court's findings as to the alleged existence of an administrative practice of procedural violations of Article 2 are as follows.

409. Having regard to the fact that there is insufficient prima facie evidence of the alleged pattern of killing and shooting (see paragraph 400 above), the complaint of an administrative practice of a lack of an effective investigation of that alleged pattern of substantive violations of Article 2 of the Convention also falls to be declared inadmissible.

410. Accordingly, this complaint is inadmissible on the ground that there is insufficient prima facie evidence and must be rejected in accordance with Article 35 § 4 of the Convention.

411. On the other hand, the Court finds that the available material identified above provides sufficient prima facie evidence of an administrative practice of a lack of an effective investigation under Article 2 into the alleged administrative practice of enforced disappearances during the period under consideration.

412. Accordingly, the respondent Government's objection that there is no prima facie evidence of the alleged administrative practice under this head is dismissed. The Court further notes that this complaint is not inadmissible on any other grounds listed in Article 35 §§ 1 and 4 of the Convention. It must therefore be declared admissible.

2. Complaints under Articles 3 and 5

413. The applicant Government complained under this head of a pattern of inhuman and degrading treatment and torture, and unlawful detention of perceived opponents of the Russian "occupation" (in particular Ukrainian soldiers, ethnic Ukrainians and Tatars, as well as journalists). Articles 3 and 5 of the Convention, in so far as relevant, read as follows:

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 ..."

(a) The parties' submissions

(i) The applicant Government

414. The applicant Government argued that the Russian military and security personnel, the CSDF and local collaborators had committed numerous instances of kidnapping, torture, inhuman or degrading treatment and unlawful detention of Ukrainian military personnel, pro-Ukrainian and Tatar activists and journalists. In their memorial before the Grand Chamber, they referred to numerous alleged individual instances of ill-treatment (sometimes described as torture) and detention by Russian military forces, the CSDF, "representatives of the 'special services'" or "unknown persons in uniform without insignia", said to have occurred during the period under consideration. In some cases, the victims alleged to have been detained by the CSDF had subsequently been handed over to Russian military personnel. In support of their allegations under this head, the applicant Government provided testimonies of alleged witnesses and victims and relied on the relevant conclusions in the IGO reports. They also referred to the alleged cooperation between the Russian authorities and the CSDF, arguing that the Ministry of Defence of the Russian Federation had negotiated the release of some hostages held in custody not only by the Russian military forces, but also by the CSDF (see paragraphs 110-12 and 123 above).

(ii) The respondent Government

415. The respondent Government submitted that the allegations under this head were vague and that the alleged victims had not always been identified. Furthermore, some of the alleged victims had denied the events complained of, which had resulted in the termination of the criminal investigation into the allegations of their abduction (see paragraphs 143 (iv) and (v) and 191-93 above). They also maintained that some alleged victims had been "apprehended or taken in for questioning because of their involvement or suspected involvement in criminal activity". According to them, the mere fact of apprehension did not mean that the deprivation of liberty had been carried out in breach of Article 5 of the Convention. Reference was made to Mr Kvych (suspected of storing ammunition), Mr Dub (convicted of petty hooliganism), Mr Mokrushin (intoxication and use of obscene language in public), Mr Pashayev and Mr Kizgin (both suspected of an unlawful journalistic activity) (see paragraph 196 above). They also submitted that most of the alleged victims had never complained to any relevant domestic authorities (see paragraph 184 above).

(b) The Court's assessment

416. The Court considers that the available evidentiary material is sufficient to amount to prima facie evidence of the "repetition of acts" during the period under consideration "which are sufficiently numerous and interconnected" to amount to "a pattern or system" in breach of Articles 3 and 5 of the Convention. Not only is there a multiplicity of concordant testimonies by alleged witnesses and victims (confirmed in paragraph 89 of the OHCHR 2017 Report), but the OHCHR 2017 Report also refers to "multiple and grave violations of the right to physical and mental integrity ... committed by [or 'attributed to'] state agents of the Russian Federation in Crimea" or "by armed individuals allegedly belonging to the Crimean self-defence and one Cossack group". This report further notes that "most of [the documented multiple allegations of violations of the right to liberty] occurred in 2014" (paragraphs 85, 95 and 101 of the OHCHR 2017 Report). The allegations under this head are restated by other IGOs, such as the relevant UN Committees (see paragraphs 225-226 above), the Council of Europe's Commissioner for Human Rights (paragraphs 30 and 34 of the Commissioner's Report), the ODIHR and HCNM (paragraphs 120 and 132 of the 2014 report, which refer to a "disturbing pattern of violations"; see paragraph 229 above), as well as by NGOs. The concordance of the details of the allegations under this head given by the alleged victims and the IGOs is significant in this regard. Furthermore, the respondent Government admitted that some of the alleged victims (referred to by the applicant Government) had been "apprehended or taken for questioning". The respondent Government's arguments that some alleged victims had subsequently denied the allegations under this head are to be seen in the context at the time, as

established by the IGOs (paragraph 91 of the OHCHR 2017 Report). In any event, the respondent Government's arguments under this head concern issues to be considered at the merits stage.

417. As regards the "official tolerance" element of the administrative practice, the Court points to its considerations in paragraph 402 above, which apply to the allegations under this head in so far as they concern the members of the CSDF and alleged perpetrators other than the regular Russian military forces themselves, as well as the arguments relating to official tolerance at the level of higher authorities (see paragraph 403 above). A further indication in this connection is provided by the uncontested allegation that the Ministry of Defence of the Russian Federation negotiated with the Ukrainian authorities concerning the release of hostages held by the CSDF.

418. In respect of the acts allegedly committed by Russian servicemen themselves, at this stage of the proceedings the available evidence is sufficient to satisfy the Court that the "official tolerance" element at the level of direct supervisors is established to the appropriate standard.

419. Accordingly, the respondent Government's objection that there is no prima facie evidence of the alleged administrative practice under this head regarding the period under consideration is dismissed. The Court further notes that the complaints under this head are not inadmissible on any other grounds listed in Article 35 §§ 1 and 4 of the Convention. They must therefore be declared admissible.

3. Article 6 complaint

420. The applicant Government complained of "unlawful requalification" of the Ukrainian judgments in Crimea under Russian legislation, in violation of Article 6 of the Convention.

421. This Article, in so far as relevant, reads as follows:

Article 6 § 1

> "In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law ..."

(a) The parties' submissions

422. The applicant Government submitted that since March 2014 the local courts had discontinued all pending appeal proceedings under Ukrainian law, in violation of fair-trial guarantees under Article 6 of the Convention. Ukrainian criminal legislation had been repealed and prison sentences had been reclassified in accordance with Russian Federation law, sometimes to the detriment of detainees (see paragraph 124 above). In this connection they referred to the relevant conclusions in the OHCHR 2017 Report (see paragraph 227 above).

423. The respondent Government made no specific comments under this head. However, in the context of their submissions regarding the exhaustion of domestic remedies, they admitted that Russian law had applied in Crimea since 18 March 2014 and that after the transitional period, all pending cases had been transferred to the newly established courts and bodies of the Russian Federation (see paragraph 355 above).

(b) The Court's assessment

424. According to the Court's understanding of the applicant Government's submissions, the allegations under Article 6 concern the extension of the laws of the Russian Federation to Crimea and the resulting effect that courts in Crimea had been set up and applied substantive and procedural laws of the Russian Federation, in violation of Ukrainian laws. Accordingly, the applicant Government challenged the court system in Crimea as from 27 February 2014, arguing that it could not be considered to have been "established by law" within the meaning of Article 6 of the Convention.

425. From the parties' submissions and the available material, the Court finds that the measures complained of (mentioned, *inter alia*, in paragraphs 7, 112 and 220 of the OHCHR 2017 Report) derive and are a direct consequence of the Accession Treaty of 18 March 2014, by virtue of which Crimea and the city of Sevastopol were, as a matter of Russian law, admitted as constituent entities of the Russian Federation (see paragraph 209 above).

426. The Court reiterates that the issue of the legality, as a matter of international law, of Crimea's admission into the Russian Federation and its consequent legal status thereafter is outside the scope of the case (see paragraph 244 above).

427. In any event, given the regulatory nature of those measures, they applied throughout the entire territory of Crimea; they were binding for all courts and applied to all judicial proceedings and to all people concerned. These factors therefore represent sufficient prima facie evidence of an alleged administrative practice under this head.

428. Accordingly, the respondent Government's objection that there is no prima facie evidence of the alleged administrative practice under this head is dismissed. The Court further considers that this complaint is not inadmissible on any other grounds listed in Article 35 §§ 1 and 4 of the Convention. It must therefore be declared admissible. This finding is without prejudice to the Court's consideration of the Convention-specific issue raised by the applicant Government, namely whether the measures in issue affected the legality of the courts in Crimea within the meaning of Article 6 of the Convention, an issue which is to be determined at the merits stage.

4. Article 8 complaints

429. The Court notes that the applicant Government raised the following complaints under this head: (1) unlawful automatic imposition of Russian citizenship; (2) transfer of "convicts" to the territory of the Russian Federation; (3) arbitrary raids of private dwellings of perceived opponents of the Russian "occupation" (in particular the homes of Ukrainian soldiers, ethnic Ukrainians and Tatars); and (4) arbitrary raids of places of worship and confiscation of religious property. As regards the latter set of complaints, the Court, being the master of the characterisation to be given in law to the facts of a case (see paragraph 236 above), considers that they are to be examined under Article 9 of the Convention (see below).

430. 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."

431. The Court will assess in turn the complaints under this head.

(a) "Unlawful automatic imposition of Russian citizenship"

(i) The parties' submissions

432. The applicant Government maintained that the Accession Treaty had provided for "automatic citizenship" for all Ukrainians and stateless persons unless they explicitly rejected it within one month. As a consequence, a person intending to retain Ukrainian citizenship was required to submit a personal application to that effect. They further alleged that various practical obstacles had been created by the authorities of the respondent State for those who had sought to opt out of Russian citizenship, such as: the need for provision of extensive personal information; a lack of a thorough examination and timely information on the outcome by the relevant authorities; a lack of information about the consequences of such an application; and short time-limits for the submission of such an application. They also addressed the particular situation of certain categories of people (orphans and newborns) who had been forced to receive Russian citizenship. According to them, the refusal to receive Russian citizenship had deprived people of the right to social benefits, access to medical services and certain payments (see paragraphs 126-31 above). They referred to the conclusions set out in the IGO reports, including the Commissioner's Report (paragraphs 45-51) and OHCHR 2017 Report (paragraphs 55-72).

433. The respondent Government did not offer any specific comments as regards the substance of this complaint.

(ii) The Court's assessment

434. The Court notes that the applicant Government complained under this head about certain specific citizenship-related issues deriving from the regulatory measures introduced in Crimea following its admission, as a matter of Russian law, as a constituent entity of the Russian Federation. As alleged by the applicant Government (see paragraphs 127-128 above), and noted by the IGOs, pursuant to those measures (envisaged in Article 5 of the Accession Treaty; see paragraph 209 above) all permanent residents of Crimea were to be recognised as Russian citizens unless they opted out within a one-month time-limit and declared that they would retain their Ukrainian citizenship.

435. It further observes that the applicant Government's grievances under this head, as formulated in their memorial (see paragraph 233 above), were limited to the alleged practice involving people who had sought to opt out of Russian citizenship (the alleged lack of an effective opportunity to make an informed choice and the related practical obstacles) and the resulting effects of that decision. The applicant Government also complained that it was impossible for certain categories of people to opt out of Russian citizenship. Accordingly, the Court's examination will be confined to the alleged practice in the operation of the system of opting out of the automatic imposition of Russian citizenship.

436. In this connection the Court reiterates that, although a "right to nationality" similar to that in Article 15 of the Universal Declaration of Human Rights is not guaranteed by the Convention or its Protocols, it has previously stated that it does not exclude the possibility that an arbitrary denial of citizenship might in certain circumstances raise an issue under Article 8 of the Convention because of the impact of such a denial on the private life of the individual (see *Karassev v. Finland* (dec.), no. 31414/96, ECHR 1999-II; *Slivenko v. Latvia* (dec.) [GC], no. 48321/99, ECHR 2002-II (extracts); *Riener v. Bulgaria*, no. 46343/99, §§ 153-54, 23 May 2006; *Genovese v. Malta*, no. 53124/09, § 30, 11 October 2011; *K2 v. the United Kingdom* (dec.), no. 42387/13, § 49, 7 February 2017; and *Alpeyeva and Dzhalagoniya v. Russia*, nos. 7549/09 and 33330/11, § 108, 12 June 2018).

437. While no right to renounce citizenship is guaranteed by the Convention or its Protocols, the Court cannot rule out the possibility that an arbitrary refusal of a request to renounce citizenship might in certain circumstances also raise an issue under Article 8 of the Convention if such a refusal has an impact on the individual's private life (see *Riener*, cited above, §§ 153-54).

438. The Court observes that the applicant Government's allegations were corroborated by the relevant IGO reports. In particular, the Commissioner's Report stated that "the wish of the persons concerned was not always taken into account through the above-mentioned process" and that "a whole range of important issues related to their future status has not been clarified ..."

(paragraphs 46 and 50 of the Report). The OHCHR 2017 Report further specified that "residents of Crimea who opted out of Russian Federation citizenship became foreigners" and that "they ... [we]re deprived of important rights ..." (paragraphs 61-62 of the Report). The UN HRC's Concluding Observations contain similar remarks (see paragraph 225 above). The respondent Government did not submit any counter-arguments.

439. In view of the foregoing, the Court finds that the regulatory nature and the content of the measures complained of provide in themselves sufficient prima facie evidence of both elements ("repetition of acts" and "official tolerance") of an alleged administrative practice contrary to Article 8 of the Convention.

440. Accordingly, the respondent Government's objection that there is no prima facie evidence of the alleged administrative practice concerning the system for opting out of Russian citizenship during the period under consideration is dismissed. The Court further considers that this complaint is not inadmissible on any other grounds listed in Article 35 §§ 1 and 4 of the Convention. It must therefore be declared admissible.

(b) "Transfer of convicts to the territory of the Russian Federation"

(i) The parties' submissions

441. The applicant Government submitted that "a sizeable number of convicts have been transferred to the Russian Federation ... transfers of pre-trial detainees have also taken place." According to them, "as of December 2017, more than 4,700 Ukrainian prisoners were transferred from occupied Crimea to 69 correctional institutions on the territory of the Russian Federation located in 32 constituent entities of the Russian Federation. Ukrainian prisoners, as well as their family members and relatives continue to experience negative consequences as a result of such transfers" (see paragraph 125 above). Reference was made to the information contained in the OHCHR 2017 Report (paragraphs 116-19 thereof).

442. The respondent Government did not provide any specific comments as regards the substance of this complaint.

(ii) The Court's assessment

443. The Court notes at the outset that the applicant Government did not raise this complaint in the original applications, notwithstanding that such transfers had occurred at the relevant time (see paragraphs 116-17 of the OHCHR 2017 Report and paragraph 272 of the Report on Preliminary Examination Activities 2019 of the Office of the Prosecutor, International Criminal Court; see paragraph 224 above). Accordingly, it did not form part of the case originally relinquished to the Grand Chamber under Article 30 of the Convention. The issue of the transfer of "convicts" from Crimea to the territory of the Russian Federation was raised for the first time in the applicant Government's memorial before the Grand Chamber dated 28 December

2018. The President did not give notice of it to the respondent Government subsequently.

444. The Court considers that it cannot, on the basis of the material in the case file, determine the admissibility of this complaint and that it is therefore necessary, in accordance with Rule 51 § 1 read together with Rule 71 § 1 of the Rules of Court, to give notice of this part of the application to the respondent Government.

445. It further observes that on 10 August 2018 the applicant State submitted another inter-State application (application no. 38334/18) against the respondent State complaining of an administrative practice in violation of several Articles of the Convention. On 27 August 2018 the President notified this case to the respondent Government under Rule 51 § 1.

446. Having regard to the significant overlap between the "transfer of convicts" complaint under this head and application no. 38334/18, the Grand Chamber considers that it is in the interests of the efficient administration of justice to join application no. 38334/18 to the present case (application no. 20958/14), in accordance with Rule 42 § 1 read together with Rule 71 § 1. As a consequence, the Court considers it appropriate to examine both the admissibility and the merits of both the "transfer of convicts" complaint and application no. 38334/18 at the same time as the merits stage of these proceedings, as it is authorised to do in "exceptional cases" under Article 29 § 2 of the Convention, and to invite the respondent Government, subject to further directions, to submit their observations on the admissibility and merits of this part of the case, pursuant to Rule 51 § 3 and Rule 58 § 1 read together with Rule 71 § 1.

(c) "Arbitrary raids of private dwelling houses"

(i) The parties' submissions

447. The applicant Government maintained under this head that there had been a systematic practice adopted after 21 March 2014 by the Russian authorities and their proxies in the local subordinate administration. In this connection they referred to several alleged incidents of unlawful searches of private homes of Crimean Tatars, including alleged searches of the houses of Mr Isaev and Mr Mustafa Salman (3 and 4 September 2014), and of the houses of more than ten Tatars in the village of Zhuravky (2 April 2015). They also mentioned the alleged search by members of the Crimean FSB of the Russian Federation of the house of Ms Anna Andriivska, a journalist (13 March 2015; see paragraph 132 above). Reference was also made to the relevant information in the OHCHR 2017 Report.

448. The respondent Government did not provide any specific comments as regards the substance of this complaint.

(ii) The Court's assessment

449. The Court notes that according to the OHCHR 2017 Report, there were "up to 150 police and FSB raids" of houses and other private premises, of which at least ten were carried out on 4 and 5 September 2014 (see paragraphs 105-07 of the Report). Furthermore, the Commissioner's Report of 2014 refers to a "number of [such] searches" (paragraph 21) and the Human Rights Watch Report of 2014 also notes searches of "dozens" of private homes between August and October 2014 (see paragraphs 228 and 231 above). These figures, which the respondent Government did not contest, are capable of being regarded, at this stage of the proceedings, as constituting prima facie evidence in support of the alleged "repetition of acts" under this head during the period under consideration. The criteria regarding the alleged "official tolerance" element of an administrative practice, discussed in paragraph 402 above, are likewise fulfilled in relation to the complaint under this head.

450. Accordingly, the respondent Government's objection that there is no prima facie evidence of the alleged administrative practice under this head during the period under consideration is dismissed. The Court further considers that this complaint is not inadmissible on any other grounds listed in Article 35 §§ 1 and 4 of the Convention. It must therefore be declared admissible.

5. Article 9 complaints

451. The applicant Government complained of the existence of an administrative practice of harassment and intimidation of religious leaders not conforming to the Russian Orthodox faith (in particular Ukrainian Orthodox priests and imams), in violation of Article 9 of the Convention. As noted in paragraph 429 above, their allegations of "arbitrary raids of places of worship" and "confiscation of religious property" are to be examined under this head.

452. Article 9 of the Convention reads as follows:

> "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."

(a) The parties' submissions

453. The applicant Government referred to alleged incidents in which priests of Christian confessions not affiliated with the Russian Orthodox Church had been harassed or forced to leave Crimea. Greek Catholic priests

had on many occasions allegedly faced threats and persecution, resulting in four out of six of them leaving Crimea (including Rev. Bogdan Kostetskyy and Rev. Mykola Kvych, the latter also allegedly being detained in his church on 15 March 2014 for several hours; see paragraphs 110 and 113 above). They further alleged that most of the twenty-three Turkish imams and teachers on the peninsula had left Ukraine for the same reason. They also maintained that there had been a practice of "unlawful expropriation of churches and other religious property" (see paragraphs 110 (j), 113, 133 and 134 above). Reference was made to the relevant information in the IGO reports, in particular the OHCHR 2017 Report, the Commissioner's Report of 2014 and the Human Rights Watch Report of 2014.

454. The respondent Government did not provide any specific comments as regards the substance of the complaints under this head.

(b) The Court's assessment

455. The Court notes that the applicant Government's allegations under this head are consistent with the conclusions in the IGO reports. The latter refer to a "series of incidents", a "number of searches" and "informative talks" with "scores of persons" (an allegation which the respondent Government seemingly admitted in respect of Rev. Kvych; see paragraph 196 above), as well as threats and persecution of priests. The alleged victims of those incidents were "representatives of minority confessions", namely priests of Christian confessions not affiliated with the Russian Orthodox Church, imams and other adherents to Islam. The impugned acts reported to have occurred in 2014 (for example, the seizure, closure or storming of churches of the Ukrainian Orthodox Church of the Kyiv Patriarchate; searches of eight out of the ten Muslim religious schools (madrassas); the setting on fire of a mosque and a house belonging to a church; damage to a Muslim cemetery and a car belonging to a priest; and confiscation of religious literature) allegedly targeted "the religious facilities (churches)" belonging to those confessions. The alleged effect of those incidents was that a considerable number of ministers and imams left Crimea and that the Ukrainian Orthodox Church of the Kyiv Patriarchate lost control over a significant number of churches belonging to it (see paragraphs 137 and 140 of the OHCHR 2017 Report and paragraphs 21-22 and 25 of the Commissioner's Report). Allegations of intimidation and harassment of religious communities, including attacks on the Ukrainian Orthodox Church, the Greek Catholic Church and the Muslim community, were also noted in the UN HRC Concluding Observations of 2015 (see paragraph 225 above). Allegations of "searches of mosques and Islamic schools" in 2014 were also reported by NGOs (see paragraph 231 above).

456. In the Court's opinion, the above figures (seen in context) and the alleged resulting effect are capable of being regarded, at this stage of the proceedings, as constituting sufficient prima facie evidence in support of the

alleged "repetition of acts" complained of under this head during the period under consideration.

457. The available material points to several alleged perpetrators of the impugned acts, namely "armed and masked members of the security forces", FSB officers, Cossacks and members of the CSDF, in respect of whom the arguments outlined in paragraphs 402 and 403 above regarding implied tolerance on the part of both the direct superior and a higher authority likewise apply. The evidence provided also shows that the competent authorities had been specifically alerted to the acts complained of at the time. This is an additional element militating in favour of the alleged cognisance on the part of the higher authorities (see paragraph 25 of the Commissioner's Report).

458. The above, coupled with the absence of any counter-arguments or examples of any measure being taken in this respect by the respondent State, provides a sufficient prima facie basis for the "official tolerance" element of the alleged administrative practice under this head.

459. Accordingly, the respondent Government's objection that there is no prima facie evidence of the alleged administrative practice under this head during the period under consideration is dismissed. The Court further notes that these complaints are not inadmissible on any other grounds listed in Article 35 §§ 1 and 4 of the Convention. They must therefore be declared admissible.

6. Article 10 complaints

460. The applicant Government complained of the existence of an administrative practice of "suppression" of non-Russian media, including the closure of Ukrainian and Tatar television stations, as well as apprehension and intimidation of, and seizure of material from, international journalists.

461. 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."

462. The Court will assess each of the complaints under this head in turn.

(a) "Suppression of non-Russian media, including the closure of Ukrainian and Tatar television stations"

(i) The parties' submissions

463. The applicant Government maintained that on 1 March 2014, nearly all Ukrainian television channels in Crimea had been jammed by the Russian military forces. On the same date, the building of the Centre for Investigative Journalism, an agency based in Simferopol that had run investigative projects and journalist training, was stormed and briefly occupied by the CSDF. Furthermore, on 29 June 2014 the local providers of cable television in Simferopol had stopped broadcasting Crimean Tatar and Ukrainian television channels, such as Inter, 1+1, 2+2, 5 channel, ICTV, Novyy kanal, News 24, HTH and Rada, and switched to broadcasting Russian television channels, such as NTV, Rossiya and Rossiya 24. According to the applicant Government, the suppression of independent media had been an important tool of the Russian "occupation", which had constituted a clear and systematic violation of Article 10 of the Convention (see paragraphs 114 and 115 above). They referred, *inter alia*, to the relevant information contained in the OHCHR 2017 Report and other related material.

464. The respondent Government did not engage with the substance of the allegations under this head.

(ii) The Court's assessment

465. The Court notes that the available material, in particular the OHCHR 2017 Report (see paragraphs 155-57 and 221 of the Report), suggests that in March 2014 all Ukrainian television channels were shut down and that the only Ukrainian-language newspaper (*Krymska*) was banned from distribution. In addition, some Tatar-language media outlets were either denied re-registration or denied licences to work (and accordingly ceased to exist). As reported by Roskomnadzor, the official media regulatory body of the Russian Federation, on 1 April 2015 – over a year after Crimea had been admitted, under Russian law, as a constituent entity of the Russian Federation – only 232 media outlets were authorised to operate, as compared to the 3,000 media outlets previously registered under Ukrainian regulations. Alleged violations of freedom of expression and information, including harassment of the media (pro-Ukrainian and Crimean Tatar media outlets), were also noted, *inter alia*, in the UN HRC Concluding Observations of 2015 and the 2014 Human Rights Watch Report (see paragraphs 225 and 231 above).

466. In view of the above-mentioned incidents, which were not contested by the respondent Government and which appear to have resulted from a general government policy, the Court is of the opinion that there is sufficient prima facie evidence of the alleged administrative practice of interference with non-Russian media during the period under consideration.

467. Accordingly, the respondent Government's objection that there is no prima facie evidence of the alleged administrative practice under this head

during the period under consideration is dismissed. The Court further considers that this complaint is not inadmissible on any other grounds listed in Article 35 §§ 1 and 4 of the Convention. It must therefore be declared admissible.

(b) "Apprehension and intimidation of, and seizure of material from, international journalists"

(i) The parties' submissions

468. In their memorial before the Grand Chamber, the applicant Government referred to the alleged incidents (reported by the media) of 11 and 13 March 2014 in which journalists from the Norwegian public broadcaster NRK, the Italian television channel Sky TG24 and the French television broadcaster Canal+ had been stopped and threatened by armed men. On those occasions, their equipment and video-footage had been confiscated (see paragraphs 116-18 above). No other allegation or incident was raised and no reference was made to any IGO report regarding the complaint under this head.

469. The respondent Government submitted that the journalist of the French television Canal+ referred to (and identified) by the applicant Government had been apprehended because he had unlawfully entered the territory of a military base (paragraph 196 above). No further comments were provided.

(ii) The Court's assessment

470. The Court notes that the applicant Government's allegations under this head were limited to only three alleged incidents involving the short-term detention of foreign journalists and the seizure of their equipment, which had taken place in the first half of March 2014. In this connection they referred to media articles published in March 2014. No testimonies from any of the victims or from witnesses, nor any other evidence was provided in support. Furthermore, it has not been argued that IGOs have made any relevant findings under this head.

471. In view of the foregoing, the Court considers that the evidence provided in support of the allegations under this head does not provide a sufficient prima facie basis for establishing the "repetition of acts" element of an administrative practice within the meaning of the Court's case-law.

472. Accordingly, this complaint is inadmissible on the ground that there is insufficient prima facie evidence and must be rejected in accordance with Article 35 § 4 of the Convention.

7. Article 11 complaints

473. The applicant Government complained under this head of the existence of an administrative practice of unlawful and discriminatory

prohibition of public gatherings and manifestations of support for Ukraine or the Tatar community, as well as intimidation and arbitrary detention of organisers of demonstrations.

474. Article 11 of the Convention reads as follows:

> "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."

(a) The parties' submissions

475. The applicant Government maintained that since 1 March 2014 there had been peaceful protests aimed at supporting the territorial integrity of Ukraine. However, the protesters had been frequently harassed, intimidated and assaulted by members of the CSDF. In this connection they referred to alleged incidents of 6 and 9 March 2015 in which several persons had been arrested and held in police custody for several hours in relation to their participation in a mass meeting of opponents of the separation of Crimea from Ukraine and their use of Ukrainian symbols during a mass meeting marking the anniversary of the birth of Taras Shevchenko. In support of their allegations, they relied on witness testimonies (see paragraphs 119 and 123 (e) and (f) above), as well as the relevant conclusions in the OHCHR 2017 Report (see paragraphs 147-52 of the Report).

476. The respondent Government did not provide any arguments as regards this complaint.

(b) The Court's assessment

477. The Court considers that the available evidentiary material, which was not contested by the respondent Government, provides sufficient prima facie evidence during the period under consideration as to the "repetition of acts" element of an administrative practice as defined in the Court's case-law. Noteworthy in this connection are the conclusions, *inter alia*, in the OHCHR 2017 Report about the regulatory nature of the measures complained of, which appear to have resulted from a general government policy. They also provide sufficient evidence (to the required standard) of the purported "official tolerance" element of the administrative practice alleged under this head.

478. The above considerations are sufficient for the Court to conclude, at this stage of the proceedings, that the available material, taken as a whole, provides a sufficient basis for a prima facie case of an administrative practice

during the period under consideration contrary to Article 11 of the Convention.

479. Accordingly, the respondent Government's objection that there is no prima facie evidence of the alleged administrative practice under this head during the period under consideration is dismissed. The Court further considers that this complaint is not inadmissible on any other grounds listed in Article 35 §§ 1 and 4 of the Convention. It must therefore be declared admissible.

8. Complaint under Article 1 of Protocol No. 1

480. The applicant Government complained under this head of the existence of an administrative practice of expropriation without compensation of the property of Ukrainian soldiers, civilians and private enterprises.

481. Article 1 of Protocol No. 1 of the Convention reads as follows:

> "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."

(a) The parties' submissions

482. The applicant Government alleged "widespread nationalisation of ... private property, as well as instances of unlawful seizure of property" and referred to two cases in which the Permanent Court of Arbitration had ruled (in 2018) in favour of private companies and a commercial bank, respectively, which had sued the respondent State for expropriation of their property in Crimea (see paragraphs 136-38 above). They also relied on relevant findings by the IGOs.

483. The respondent Government did not submit any counter-arguments.

(b) The Court's assessment

484. In the Court's view, the regulatory nature of the measures complained of and their widespread application, as described in the IGO reports (see paragraphs 16 and 170-75 of the OHCHR 2017 Report, which indicates "large scale expropriation of public and private property"; paragraph 35 of the Commissioner's Report; and paragraphs 67 and 70 of the ODIHR and HCNM Report of 2015, the latter noting that "countless other public and private properties have also reportedly been seized under recently enacted legislation"), provide sufficient prima facie evidence of (both of the necessary elements of) an administrative practice of nationalisation of the "property of civilians and private enterprises" during the period under

consideration. These IGO reports are further corroborated by a number of arbitration awards made under the Agreement between the Government of the Russian Federation and the Cabinet of Ministers of Ukraine on the Encouragement and Mutual Protection of Investments of 27 November 1998 (see, in particular, *Everest Estate LLC and others v. the Russian Federation* (PCA Case No. 2015-36, 2 May 2018) and *Public Joint Stock Company "State Savings Bank of Ukraine"(JSC Oschadbank) v. the Russian Federation* (PCA Case No. 2016-14, 26 November 2018); see paragraph 29 (xxiii) above).

485. Accordingly, the respondent Government's objection that there is no prima facie evidence of the alleged administrative practice under this head during the period under consideration is dismissed. The Court further considers that this complaint is not inadmissible on any other grounds listed in Article 35 §§ 1 and 4 of the Convention. It must therefore be declared admissible.

486. On the other hand, the applicant Government submitted no evidence as to the alleged practice of nationalisation of "property of Ukrainian soldiers" during the period under consideration. Nor can any such inference be drawn from the IGO reports. In such circumstances, this particular aspect of the complaint cannot be said to meet the evidentiary threshold (prima facie) required at the admissibility stage.

487. Accordingly, this complaint is inadmissible on the ground that there is no prima facie evidence and must be rejected in accordance with Article 35 § 4 of the Convention.

9. Complaints under Article 2 of Protocol No. 1

488. The applicant Government complained under this head of "the suppression of the Ukrainian language in schools and persecution of Ukrainian-speaking children at school".

489. Article 2 of Protocol No. 1 of the Convention reads as follows:

> "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."

(a) The parties' submissions

490. The applicant Government maintained that "the suppression of education in the Ukrainian and Tatar languages has been a key objective of the Russian occupation". As stated by them, "prior to the invasion", in Crimea there had been seven Ukrainian-language schools and fifteen schools in which the language of instruction was Crimean Tatar. Furthermore, there had been 500 schools in which some classes had been available in the Ukrainian language and numerous public schools in which it had been possible for Tatar students to study in their native language. By the end of 2014, some form of

education in Ukrainian had been available in only twenty secondary schools. By a decree of 30 December 2014, the Crimean authorities had approved a "State Programme for Development of Education and Science in the Republic of Crimea for 2015-2017", which had not envisaged access to education in a person's mother tongue.

491. They also alleged that children and their parents had been persecuted for speaking Ukrainian or demonstrating an apparently pro-Ukrainian position. FSB officers had visited schools and required the teachers to provide the names of children who had spoken Ukrainian in public. Parents had been warned by the authorities of the risk of prosecution "for separatism" (see paragraph 140 above). Reference was made to the relevant conclusions in the OHCHR 2017 Report.

492. The respondent Government denied the allegations under this head, arguing that education in both the Tatar and the Ukrainian languages was offered alongside education in Russian. The "small changes" that had occurred in the proportions of the school population studying in different languages reflected changes in demand against the background of the recent tensions.

(b) The Court's assessment

493. The Court is aware of the apparent formal protection sought to be provided by Article 10 § 1 and Article 19 § 2 of the 2014 "Constitution of the Republic of Crimea" in relation to the use of the Ukrainian and Crimean Tatar languages. However, the Court takes note of the findings as to the actual position at the relevant time as set out in the OHCHR 2017 Report (paragraphs 195-200). As stated in that Report, the number of students educated in Ukrainian "dropped dramatically" during the period under consideration, namely from 12,694 students in the 2013/14 academic year to 2,154 in the 2014/15 academic year. There was a similar decrease in the number of Ukrainian schools (from seven to one) and the number of classes (from 875 to 28) from 2013 onwards. Furthermore, by the end of 2014, "Ukrainian as a language of instruction had been removed from university-level education in Crimea". Those alleged figures cannot be regarded as "small", contrary to the argument by the respondent Government. Furthermore, the applicant Government's allegations of threats and harassment relating to the use of the Ukrainian language in the context of education were also noted in that Report. The evidence suggests that as a result of all the above, "education in the Ukrainian language had almost disappeared from Crimea" (see paragraph 17 of the OHCHR 2017 Report).

494. The available material further suggests that the situation complained of resulted from the introduction of the Russian Federation's education standards in Crimea, as the respondent State's policy. The respondent Government did not present any argument to contest that allegation. In such circumstances, given that the alleged administrative practice under this head

was based on legislative/regulatory measures (a relevant factor for the "official tolerance" element) that apparently applied at all levels of education ("repetition of acts"), the Court considers that there is sufficient prima facie evidence of the alleged practice in relation to the use of the Ukrainian language in Crimea during the period under consideration.

495. Accordingly, the respondent Government's objection that there is no prima facie evidence of the alleged administrative practice under this head during the period under consideration is dismissed. The Court further notes that these complaints are not inadmissible on any other grounds listed in Article 35 §§ 1 and 4 of the Convention. They must therefore be declared admissible.

10. Complaint under Article 2 of Protocol No. 4

496. The applicant Government's complaint under this head concerns the construction and enforcement of an "illegal border" at the administrative boundary line with mainland Ukraine.

497. Article 2 of Protocol No. 4 reads as follows:

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."

(a) The parties' submissions

498. The applicant Government argued that "Russia's policy of consolidating its border control to incorporate Crimea has resulted in unjustified restrictions on freedom of movement into and out of Crimea ...". They also referred to the relevant passages of the OHCHR 2017 Report.

499. The respondent Government did not provide any specific comments as regards the substance of this complaint.

(b) The Court's assessment

500. The Court notes that the applicant Government's allegations under this head concern the alleged restrictions of freedom of movement between Crimea and mainland Ukraine resulting from the *de facto* transformation by the respondent State of the administrative border line into a State border

(between the Russian Federation and Ukraine). Accordingly, they fall to be examined under paragraph 1 of Article 2 of Protocol No. 4 to the Convention. They were not disputed by the respondent Government and were furthermore confirmed, *inter alia*, in paragraphs 123 to 127 and 223 of the OHCHR 2017 Report. The Court observes that the *de facto* transformation by the respondent State of the administrative border line into a State border is a direct consequence of the Accession Treaty of 18 March 2014 pursuant to which Crimea and the city of Sevastopol were, as a matter of Russian law, admitted as constituent entities of the Russian Federation (see paragraph 209 above).

501. The Court reiterates that the issue of the legality, as a matter of international law, of Crimea's admission into the Russian Federation and its consequent legal status thereafter is outside the scope of the case (see paragraph 244 above).

502. In any event, in the Court's view, the regulatory nature of the measure complained of and its general application to all people concerned represent prima facie evidence of the alleged practice under this head.

503. Accordingly, the respondent Government's objection that there is no prima facie evidence of the alleged administrative practice under this head during the period under consideration is dismissed. The Court further considers that this complaint is not inadmissible on any other grounds listed in Article 35 §§ 1 and 4 of the Convention. It must therefore be declared admissible.

11. Complaints under Article 14, taken in conjunction with Articles 8, 9, 10 and 11 of the Convention and with Article 2 of Protocol No. 4 to the Convention

504. The applicant Government complained of discriminatory legal and administrative measures targeting the Tatar population. As noted in paragraph 234 above, these complaints are to be examined under Article 14 of the Convention.

505. Article 14 reads as follows:

> "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."

(a) The parties' submissions

506. The applicant Government's allegations under this head concerned frequent summonses of Tatars by the police and the Public Prosecutor of Crimea; the initiation of criminal proceedings against Tatars; the prohibition of broadcasting of Tatar television channels; and the prohibition of public meetings (see paragraph 141 above). They also complained that the alleged restrictions of the freedom of movement resulting from the transformation of the administrative border line between Crimea and mainland Ukraine into a

State border had affected "particularly its Tatar population". In this connection, reference was made to several instances in which Crimean Tatars had been barred from entering the territory of Crimea for several years (see paragraph 139 above, also noted in paragraph 21 of the Commissioner's Report). In support they relied, *inter alia*, on PACE Resolution 2133 (2016) (paragraph 8), and information contained in reports by IGOs and some local NGOs, and media articles.

507. The respondent Government did not present any counter-arguments regarding the substance of the complaints under this head.

(b) The Court's assessment

508. The Court considers noteworthy the concordance between the conclusions of the IGOs and NGOs as to the core allegations under this head. The relevant reports contain consistent information that Tatars in Crimea were "particularly targeted" (see, for example, paragraph 12 of the OHCHR 2017 Report and the Human Rights Watch Report). In this connection they refer to "intrusive" (or "invasive") searches of private properties, mosques and Islamic schools that "disproportionately" affected the Tatar community and were said to have been carried out by "armed and masked members of the security forces", namely "local police and Russia's FSB, but also [by] dozens of unidentified armed, masked men" (see, for example, paragraph 12 of the OHCHR 2017 Report, paragraph 21 of the Commissioner's Report and the Human Rights Watch Report). Similarly, they conclude that harassment (by Crimea's prosecutor's office and the FSB) and the shutting down of media outlets have "disproportionately" affected Crimean Tatars (paragraph 221 of the OHCHR 2017 Report and the Human Rights Watch Report), as was the case with the alleged ban on mass public gatherings by Crimean Tatars and the sanctions imposed on Tatars on that account (arrests, interrogations, fines; see paragraph 152 of the OHCHR 2017 Report). Similar considerations apply to the alleged existence of an administrative practice under this head related to the freedom of movement of Crimean Tatars (see paragraphs 9 and 127 of the OHCHR 2017 Report, paragraph 21 of the Commissioner's Report and paragraph 23 (e) of the UN HRC Concluding Observations). The UN HRC recommended in its Concluding Observations of 2015 that the respondent Government ensure that "Crimean Tatars [were] not subject to discrimination and harassment" (see paragraph 225 above). Furthermore, the PACE stated that "the cumulative effect of [the] repressive measures [was] a threat to the Tatar community's very existence as a distinct ethnic, cultural and religious group" (see paragraph 8 of Resolution 2133 (2016); see paragraph 215 above). Lastly, the Court notes that in the recent judgment of 8 November 2019 the ICJ declared admissible similar complaints that the applicant State had brought against the respondent State under the International Convention on the Elimination of All Forms of Racial Discrimination (see paragraph 223 above).

509. In the Court's view, the available material provides a sufficient prima facie basis for the alleged "repeated acts" during the period under consideration and "official tolerance" (for the reasons advanced in respect of the complaints raised under the same substantive Articles (Articles 8, 9, 10 and 11) of the Convention), and therefore for an administrative practice under this head.

510. Accordingly, the respondent Government's objection that there is no prima facie evidence of the alleged administrative practice under this head during the period under consideration is dismissed. The Court further notes that these complaints are not inadmissible on any other grounds listed in Article 35 §§ 1 and 4 of the Convention. They must therefore be declared admissible.

FOR THESE REASONS, THE COURT, BY A MAJORITY

1. *Lifts* the interim measure indicated to the parties on 13 March 2014 in relation to Crimea under Rule 39 of the Rules of Court;

2. *Holds* that the facts complained of by the applicant Government fall within the "jurisdiction" of the Russian Federation within the meaning of Article 1 of the Convention, and *dismisses* the respondent Government's preliminary objection of incompatibility *ratione loci* with the provisions of the Convention and the Protocols thereto in that regard;

3. *Dismisses* the respondent Government's preliminary objection that the application "lacks the requirements of a genuine application";

4. *Declares* that the rule of exhaustion of domestic remedies is not applicable in the circumstances of the case and accordingly *dismisses* the respondent Government's preliminary objection of non-exhaustion of domestic remedies;

5. *Declares* admissible, without prejudging the merits, the applicant Government's complaints regarding the period under consideration concerning:
   (a) the alleged existence of an administrative practice of enforced disappearances and of a lack of an effective investigation into the alleged existence of such an administrative practice, in violation of Article 2 of the Convention;
   (b) the alleged existence of an administrative practice of ill-treatment, in violation of Article 3 of the Convention;
   (c) the alleged existence of an administrative practice of unlawful detention, in violation of Article 5 of the Convention;

(d) the alleged existence of an administrative practice of extending the Russian Federation's laws to Crimea and the resulting effect that as from 27 February 2014 the courts in Crimea could not be considered to have been "established by law" within the meaning of Article 6 of the Convention;
(e) the alleged existence of an administrative practice of unlawful automatic imposition of Russian citizenship (regarding the system of opting out of Russian citizenship), in violation of Article 8 of the Convention;
(f) the alleged existence of an administrative practice of arbitrary raids of private dwellings, in violation of Article 8 of the Convention;
(g) the alleged existence of an administrative practice on account of the harassment and intimidation of religious leaders not conforming to the Russian Orthodox faith, arbitrary raids of places of worship and confiscation of religious property, in violation of Article 9 of the Convention;
(h) the alleged existence of an administrative practice of suppression of non-Russian media, in violation of Article 10 of the Convention;
(i) the alleged existence of an administrative practice of prohibiting public gatherings and manifestations of support, as well as intimidation and arbitrary detention of organisers of demonstrations, in violation of Article 11 of the Convention;
(j) the alleged existence of an administrative practice of expropriation without compensation of property from civilians and private enterprises, in violation of Article 1 of Protocol No. 1 to the Convention;
(k) the alleged existence of an administrative practice of suppression of the Ukrainian language in schools and harassment of Ukrainian-speaking children at school, in violation of Article 2 of Protocol No. 1 to the Convention;
(l) the alleged existence of an administrative practice of restricting the freedom of movement between Crimea and mainland Ukraine, resulting from the *de facto* transformation (by the respondent State) of the administrative border line into a State border (between the Russian Federation and Ukraine), in violation of Article 2 of Protocol No. 4 to the Convention;
(m) the alleged existence of an administrative practice targeting Crimean Tatars, in violation of Article 14 of the Convention, taken in conjunction with Articles 8, 9, 10 and 11 of the Convention;
(n) the alleged existence of an administrative practice targeting Crimean Tatars, in violation of Article 14 of the Convention, taken in conjunction with Article 2 of Protocol No. 4 to the Convention;

6. *Decides* to give notice to the respondent Government of the complaint about the alleged transfers of "convicts" to the territory of the Russian

Federation, in violation of Article 8 of the Convention, in accordance with Rule 51 § 1 read together with Rule 71 § 1 of the Rules of Court;

7. *Decides* to join application no. 38334/18 to the present case, in accordance with Rule 42 § 1 read together with Rule 71 § 1 and to examine, exceptionally, the admissibility and merits of the complaints raised therein together with the above-mentioned transfer of "convicts" complaint at the same time as the merits stage of the proceedings in accordance with Article 29 § 2 of the Convention and to invite the respondent Government to submit their observations on the admissibility and merits of this part of the case, pursuant to Rule 51 § 3 and Rule 58 § 1 read together with Rule 71 § 1;

8. *Declares* the remainder of application no. 20958/14 inadmissible.

Done in English and in French and delivered at a public hearing in the Human Rights Building, Strasbourg, on 14 January 2021.

Søren Prebensen	Robert Spano
Deputy to the Registrar	President