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Russian military presence in Ukraine and its impact on human rights situation

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Abstract

The issue of foreign military presence in the context of respect for human rights will remain one of the important issues on the agenda for all East European countries, including Ukraine. The case of legislative regulation of staying in Ukraine of the Black Sea Fleet of the Russian Federation demonstrates clearly the Russian strategic approach for using all available hybrid mechanisms to strengthen its influence on neighbouring states, including the use of law as a kind of hybrid warfare triggering abuses of human rights and threatening human security as such. The insufficient detailing and the low level of practical implementation of basic laws, regulating the presence of the Russian military base (the Black Sea Fleet) on the territory of Ukraine as well as the lack of unified strategic approach, reinforced by incomplete use of the potential of international organizations in the field of human rights protection, led to a low indicator of the practical use of the legal framework to monitor the situation on the ground and conduct investigations of the revealed violations of human rights and freedoms. Ukraine together with the international community should continue work on searching ways to make the Russian Federation to uphold its obligations under international human rights law in the Crimea and to respect obligations that apply to it pursuant to international humanitarian law.

Historical and political background of the presence of the Russian Black Sea Fleet on the territory of Ukraine

After the collapse of the Soviet Union in 1991, the newly founded independent states faced the issue of division of the USSR Armed Forces, including the land and naval military bases. On 30 December 1991, in Minsk, the leaders of the post-Soviet independent countries agreed that they would establish their own military forces on the basis of units of the former USSR Armed Forces that were stationed on the territory of the respective countries, with the exception of “strategic” (nuclear) forces that should have remained under the unified command of the Commonwealth of Independent States (CIS) – a regional intergovernmental organisation founded by the former USSR republics.

In accordance with this logic, Ukraine should have inherited those units of the Soviet Black Sea Fleet that were deployed on the territory of Ukraine, including in the Crimean Peninsula with the major naval basis in the city of Sevastopol. On 5 April 1992, the president of Ukraine, Leonid Kravchuk, issued the *Decree On the transfer of the Black Sea Fleet under administrative subordination of the Ministry of Defence of Ukraine*. But Moscow strived to preserve control over the Black Sea Fleet, and just in two days after Kravchuk’s Decree, on 7 April 1992, Russian president Boris Yeltsin, issued the *Decree On the transition of the Black Sea Fleet under the jurisdiction of the Russian Federation*.¹

Some of the Black Sea Fleet officers and warships’ crews began to take an oath of allegiance to Ukraine, while some others – to Russia; the general atmosphere of relations in the fleet deteriorated. To avoid possible confrontation, Ukrainian and Russian presidents cancelled the abovementioned decrees, and at the meeting on 23 June 1992, they agreed to avoid unilateral steps and to hold negotiations on the issue of the post-Soviet Black Sea Fleet heritage.² On 3 August 1992, the presidents signed *Agreement between Ukraine and the Russian Federation on the principles of formation of the Naval Forces of Ukraine and the Naval Fleet of Russia on the basis of the Black Sea Fleet of the former USSR*. It was agreed that the former USSR Black Sea Fleet to be divided between Ukraine and Russia (Article 1); during the following three years of “transitional period”, the Fleet to be governed by Joint Command “appointed upon a consensus” of Ukrainian and Russian presidents (Articles 2, 3 and 4), the Fleet personnel to consist of Ukrainian and Russian conscripts in equal proportions (50% by 50%) who take oath to the state of their respective citizenship (Articles 5 and 6); during the transition period, Ukraine and Russia to jointly use the existing system of naval basing and logistical support (Article 8).³

On 17 June 1993, presidents of Ukraine and Russia signed the *Agreement on urgent measures for the formation of the Naval Forces of Ukraine and the Naval Fleet of Russia on the basis of the Black Sea Fleet*. It was envisaged that the Fleet to be divided in equal proportions (50% by 50%) between Ukraine and Russia (Article 2); the bilateral Interstate Commission to be established for negotiating the practical issues of division of the Fleet and conditions for basing of the Naval Forces of Ukraine and the Naval Fleet of Russia (Article 4).⁴

In practice, the “Joint Command” of the Black Sea Fleet followed instructions only from Moscow. Without consultations with Kyiv, some modern warships and equipment were redeployed to the other fleets that were under the sole Moscow control (e.g., one of the most modern and valuable Soviet warships, the aircraft carrier *Admiral Kuznetsov* was redeployed

¹ <https://old.flot2017.com/file/show/none/4587>

² https://zakon.rada.gov.ua/laws/show/en/643_018

³ https://zakon.rada.gov.ua/laws/show/en/643_020

⁴ https://zakon.rada.gov.ua/laws/show/en/643_046

from the Black Sea Fleet to the Russian Northern Fleet). Warships with Ukrainian crews were often deprived of possibility to use the navigation and hydrographic equipment of the Black Sea Fleet,⁵ the conscripts of Ukrainian citizenship were put under moral pressure by Russian officers and often unjustly dismissed from service.⁶

Ukraine-Russia negotiations on fleet took place against the backdrop of constant Moscow's political and economic pressure on Kyiv, Russia's attempts to gain full control over the whole post-Soviet Black Sea Fleet and simultaneous support of the pro-Russian separatist in the Crimea aiming at separation this Autonomous Republic from Ukraine and its unification with Russia. Thus, on 21 May 1992, the Russian parliament (Supreme Council) passed *Resolution on the legal assessment of decisions of the highest state authorities of the RSFSR to change the status of the Crimea adopted in 1954*. The decisions of 1954 on transferring the Crimea from the Russian SFSR to the Ukrainian SSR was declared as legally invalid.⁷ On 9 July 1993, the Russian parliament also passed *Resolution on the status of the city of Sevastopol*, declaring the "Russian federal status of the city of Sevastopol".⁸ On 5 December 1996, the upper house of the Russian parliament (Federation Council) adopted *Statement on the status of the city of Sevastopol*, calling Ukraine to negotiate on the "Russian status of the city of Sevastopol".⁹ There were also many other similar declarations and statements of the Russian state bodies and officials. Russian officers of the Black Sea Fleet participated in separatist activities in the Crimea, especially in the city of Sevastopol, e.g. the premises of the Black Sea Fleet headquarters were provided for separatist meetings; Russian fleet officers openly supported separatist "president" of the Crimea Yuriy Meshkov.¹⁰

Russia linked negotiations on fleet to the issues of oil and gas supplies to Ukraine and often threatened to cut off such supplies.¹¹ Moscow also linked settlement of the fleet issues to the signing of the bilateral *Treaty on Friendship, Cooperation, and Partnership between Ukraine and the Russian Federation*. (This treaty, finally signed on 31 May 1997, three days after signing the agreements on division of the Black Sea Fleet and conditions for Russian Fleet staying on the territory of Ukraine, was important for Kyiv because it provided that both countries "respect the territorial integrity of each other and confirm the inviolability of the existing borders between them", and build their bilateral relations on principles of "non-use of force or threat of force, including economic and other means of pressure, the right of peoples to freely dispose of their destiny, non-interference in internal affairs".¹²)

Long and difficult negotiations resulted in *Ukraine-Russia Agreement on the Black Sea Fleet*, signed on 9 June 1995, in Sochi, by presidents Leonid Kuchma and Boris Yeltsin. According to this agreement, the property of the Black Sea Fleet to be divided in equal proportions 50% by 50% (Article 3), but Ukraine to receive only 18.3% of all ships and vessels of the post-Soviet Black Sea Fleet while Russia to receive 81.7% (Article 4); the main base of the Russian Black Sea Fleet with its headquarters to remain in the city of Sevastopol (Article 2); the Mixed Ukrainian-Russian State Commission had to develop the specific parameters of division of the Fleet's objects (Article 11).¹³

⁵ <http://www.hai-nyzhnyk.in.ua/doc/2017doc.krym-chornom-flot.php> ; <http://bintel.com.ua/uk/article/kak-delilsja+-chernomorskij-flot-po-bratski/>

⁶ <https://tyzhden.ua/Publication/3799> ; <http://bintel.com.ua/uk/article/krym-94-2/>

⁷ <http://zakon.7law.info/base51/part1/d51ru1212.htm>

⁸ <https://www.crimea.kp.ru/daily/26205/3091201/>

⁹ <http://sevkrimrus.narod.ru/ZAKON/1996-405.htm#1>

¹⁰ <http://bintel.com.ua/uk/article/kak-delilsja+-chernomorskij-flot-po-bratski/> ; <http://bintel.com.ua/uk/article/krym-94-chast%27-5-pochti-vojna/>

¹¹ <http://bintel.com.ua/uk/article/kak-delilsja+-chernomorskij-flot-po-bratski/> ; <http://bintel.com.ua/uk/article/krym-6-na-pike-obshheflotskogo-psihoza/>

¹² https://zakon.rada.gov.ua/laws/show/643_006

¹³ https://zakon.rada.gov.ua/laws/show/643_082

The terms of the abovementioned Sochi agreement shaped the basis for three major Ukraine-Russia agreements, finally signed on 28 May 1997, in Kyiv, namely: 1) *Agreement on the status and conditions of presence of the Russian Federation Black Sea Fleet on the territory of Ukraine*,¹⁴ 2) *Agreement on the parameters of division of the Black Sea Fleet*,¹⁵ 3) *Agreement on the mutual payments related to division of the Black Sea Fleet and presence of the Russian Federation Black Sea Fleet on the territory of Ukraine*.¹⁶ In particular, the agreements set the strength of the Russian Black Sea Fleet deployed in the Crimea, specified the places, land plots and objects of infrastructure to be used by Russian Fleet, as well as basic conditions for such deployment and usage. The agreements also outlined the contours for settlement of legal issues related to the presence of the Russian naval base in Ukraine, issues related to human rights, social security, environmental protection, etc. Agreements were concluded for 20 years, with possibility of further prolongation for the further five-year periods.

In order to guarantee the temporal status of the Russian Fleet's deploying in the Crimea, the Constitution of Ukraine, adopted on 28 June 1996, stated that "location of foreign military bases shall not be permitted on the territory of Ukraine" (Article 17). Transitional Provisions of the Constitutions envisaged that "the use of existing military bases on the territory of Ukraine for the temporary stationing of foreign military formations is possible on the terms of lease, by the procedure determined by the international treaties of Ukraine ratified by the Verkhovna Rada of Ukraine" (Paragraph 14 of the Transitional Provisions).¹⁷

It should be noted that the assessment of value of the Black Sea Fleet warships and infrastructure objects was carried out in 1995-1996 by the Ukrainian-Russian commission under the conditions of constant pressure of Moscow that was threatening to cut off oil and gas supplies to Ukraine. Due to that pressure, Kyiv had nothing but to abandon its initial intention to calculate the costs of lease of 18,232.62 hectares of land and 4,591 buildings in accordance with the international practice,¹⁸ and to agree on dozens of times less lease cost of \$97.75 million annually (counted as repayment of a part of the Ukrainian state debt before Russia).¹⁹

In 2007-2009, Kyiv attempted to address the issues of proper inventory of the land plots and infrastructure objects in the Crimea leased by the Russian Black Sea Fleet, but Moscow disagreed to negotiate on these issues. Moscow also ignored Kyiv's protests against usage of the Russian Black Sea Fleet warships in the Russian-Georgian war of 2008, as well as Kyiv's demands to withdraw the Russian FSB agents from the Crimea.²⁰ During the presidency of Victor Yushchenko, the Ukrainian government declared that the agreements of 1997 would not be extended and the Russian Black Sea Fleet would have to withdraw from the territory of Ukraine after 2017.²¹

Just in two months after Viktor Yanukovich became president of Ukraine, he signed with his Russian counterpart Dmitry Medvedev the *Agreement on the issues of the Black Sea Fleet's presence on the territory of Ukraine*. The agreement, signed on 21 April 2010, in Kharkiv, extended three Ukraine-Russia agreements on fleet of 1997 for the next 25 years beyond 2017 (until 2042) with possibility of further renewals for the five-year periods (Article 1). The annual rent for the Russian Black Sea Fleet staying on the territory of Ukraine was defined as

¹⁴ https://zakon.rada.gov.ua/laws/show/643_076

¹⁵ https://zakon.rada.gov.ua/laws/show/643_075 ; http://search.ligazakon.ua/l_doc2.nsf/link1/MU97259.html

¹⁶ https://zakon.rada.gov.ua/laws/show/643_077

¹⁷ [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL\(2003\)086-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL(2003)086-e)

¹⁸ <http://www.golos.com.ua/article/219601> ; <https://www.pravda.com.ua/articles/2005/08/15/3012439/>

¹⁹ https://zakon.rada.gov.ua/laws/show/643_077

²⁰ <https://www.unian.info/society/234108-russia-says-fsb-to-stay-in-crimea.html>

²¹ <https://www.unian.info/society/148224-no-russian-fleet-in-ukraine-beyond-2017-ukrainian-pm.html>

\$100 million plus a gas price discount at \$100 per each thousand cubic meters when gas price is \$333 and higher, or 30% discount when gas price is lower than \$333 (Article 2).²²

Many legal and practical issues of the presence of the Russian Black Sea Fleet and related militaries and equipment on the territory of Ukraine (such as movements of the Russian military units outside their deployment sites, taxation and customs clearance of the imported materials and technical equipment, registration of residence places of the Russian military personnel and civilians etc.) have never been clearly settled due to Moscow's constant delaying and blocking of the corresponding negotiations. Ukraine's attempts to settle these issues failed both during the Viktor Yushchenko presidency (2005-2010) as well as during the rule of his pro-Russian successor Viktor Yanukovich (2010-2014).

Only on 17 December 2013, in the midst of Euromaidan protests in Ukraine, the Russian-Ukrainian Interstate Commission headed by Viktor Yanukovich and Vladimir Putin decided to instruct the Governments of both countries "to accelerate the inventory work on the land plots and real estate objects located on them, used by the Black Sea Fleet of the Russian Federation on the territory Ukraine" (Point 21), "to complete the preparation for signing of the draft intergovernmental agreements: on the coordination of movements related to the activities of the military units of the Black Sea Fleet of the Russian Federation on the territory of Ukraine, outside their deployment sites; on the procedure for crossing the state border of Ukraine by warships, support vessels, aircraft, and military personnel of the Black Sea Fleet of the Russian Federation; on registration at the place of residence (stay) of military personnel and civilians of the Black Sea Fleet of the Russian Federation and their family members in the migration authorities of Ukraine" (Point 22); "to regulate the taxation of the structural units of the Black Sea Fleet of the Russian Federation and the customs clearance of materials and technical equipment imported in the interests of the Fleet into the territory of Ukraine" (Point 23), etc.²³ But this work has never been implemented.

In February-March 2014, taking advantage of the temporal vacuum of power in Ukraine due to escape from the country of then-president Viktor Yanukovich, Russian militaries, mainly from the Black Sea Fleet forces, occupied the Crimea and the city of Sevastopol and captured all the Ukrainian naval infrastructure in the peninsular and 54 out of 67 Ukrainian naval ships.²⁴ On 18-21 March 2014, the Russian Federation annexed the Crimea. On 31 March 2014, upon the proposal of president Vladimir Putin, the Russian parliament (State Duma) denounced all treaties and agreements with Ukraine on the Black Sea Fleet.²⁵ On 22 November 2018, the Ukrainian parliament amended the Constitution of Ukraine deleting the Paragraph 14 of the Transitional Provisions which envisaged the possibility for the stationing of foreign military bases on the territory of Ukraine.²⁶

²² https://zakon.rada.gov.ua/laws/show/643_359

²³ <http://kremlin.ru/supplement/1585>

²⁴ <http://tass.com/russia/724901>

²⁵ <http://tass.com/russia/725964>

²⁶ <https://zakon.rada.gov.ua/laws/show/2680-19#n13>

Analysis of legal provisions regulating Russian (foreign) military presence in Ukraine through the lens of human rights protection

Basic bilateral agreements between Ukraine and the Russian Federation regulating the issue of Russian military presence on the territory of Ukraine, particularly in the Autonomous Republic of Crimea, were mentioned in the previous part of the report. Majority of these documents related to the status and conditions of the Black Sea Fleet of the Russian Federation. For a more complete picture, it is also advisable to consider other documents regulating the presence of any foreign troops on the territory of Ukraine.

An approach we use in this analysis is predominantly retrospective on its nature, since most of the mentioned bilateral documents and agreements ceased to exist after the illegal annexation of the Crimean Peninsula by Russia and its aggression in the East of Ukraine.

Nevertheless, the research methodology goes beyond the simple content analysis of partly abandoned legal norms against agreed oversight's benchmarks on human rights violations. This methodology is based on more general concept aimed to reveal the Russian strategic approach for using all available hybrid mechanisms to strengthen its influence on neighbouring states, including the use of law as a kind of hybrid warfare against the post-Soviet independent countries.

Generally, the basic agreements on division of the Black Sea Fleet were prepared in a hurry and under political pressure from Moscow, the professional qualifications of some members of the Ukrainian delegation were not meeting current requirements, and the Russians used this situation with might and main.²⁷

Among principal objectives to achieve by the Russian Federation upon signing these documents were the future annexation/occupation of the Crimean Peninsula and the city of Sevastopol, as well as executing political and military pressure on the Ukrainian Government.

The following characteristics could be applied to explain the way of the Russian Federation concluded/implemented abovementioned agreements in hybrid lawfare manner in various domains influencing human rights and human security as such, namely:²⁸

- *Legal Theory domain*: claiming Russia's status as the USSR legal successor when beneficial; asserting Russia's right to "spheres of interests" and state sovereignty over crucial objects; using historical narratives to legalize its aggressive behaviour; expropriating foreign assets to compensate the lack of own ones and counteracting the property rights restoration by Ukraine; domination of the Russian legislation over the Ukrainian one; free interpretation of the agreed measures; fake accusations of Ukrainian counterparts;
- *Customary International Law domain*: emphasizing the fluidity of international law over peremptory legal norms; asserting Russian cultural value over individual rights; asserting right to military exercises on Ukrainian territory;
- *Humanitarian Law domain*: asserting the Russian Federation's "responsibility to protect" approach; promoting Russian citizenship in Ukraine and thus creating new ethnic realities; claiming oppression and violation of minority rights; targeting civilian to trigger humanitarian and other crises;
- *Law of Armed Conflict domain*: exploiting Russian fears of "encirclement by NATO";

²⁷<https://www.pravda.com.ua/articles/2005/09/7/3013078/>

²⁸ <https://geostrategy.org.ua/images/3.ppt>

- *International Treaties domain*: using zero-sum game culture while negotiating; exploiting legal loopholes to claim non-performance of Ukraine; using the Russian Federation’s payments to Ukrainian citizens within the Russian Federation’s orbits;
- *Maritime Law domain*: exploiting historical narrative to assert warm ports assets; portraying Azov and Black Seas as “Russian seas”; impeding maritime traffic to Ukrainian ports, etc;

The issue of human rights protection in these treaties should be considered in the broad context of using the basic human security approach, since there is no clear reference to human rights protection in these treaties as it should be legally defined in line with world best practices.²⁹ Generally, provisions for using a kind of monitoring/oversight mechanisms were incorporated in all basic bilateral agreements, but they were rather blurred. Thus, it confirms once again that legal uncertainty was always in favour of the Russian side to serve as a basic precondition for the application of hybrid lawfare.

For the purpose of convenience, we elaborated the table to indicate basic documents that ensure control/oversight mechanisms related to human rights violations by foreign troops deployed in Ukraine (please, see Annex A). General provisions for executing control measures were envisaged in three basic Agreements regulating the presence of the Russian Black Sea Fleet in Ukraine, namely: *Agreement on urgent measures for the formation of the Naval Forces of Ukraine and the Naval Fleet of the Russian Federation on the basis of the Black Sea Fleet (1993)*³⁰; *Agreement on the Black Sea Fleet (1995)*³¹; and *Agreement on the status and conditions of presence of the Russian Federation Black Sea Fleet on the territory of Ukraine (1997)*³².

In order to solve the practical issues of the Black Sea Fleet distribution and to develop conditions for stationing the Naval Forces of Ukraine and the Naval Fleet of the Russian Federation, according to the provisions of the *Agreement on urgent measures for the formation of the Naval Forces of Ukraine and the Naval Fleet of the Russian Federation on the basis of the Black Sea Fleet*, the *Interstate Commission* was created with equal number of representatives and experts from Ukraine and the Russian Federation. The personal composition of the Ukrainian and Russian parts of the Commission and its Regulations were subject to approval respectively by the President of Ukraine and the President of the Russian Federation, who were in charge of its work (Article 4).³³

Later in 1995, the *Russian-Ukrainian Joint Commission* consisting of the state delegations of the Russian Federation and Ukraine at the talks on the Black Sea Fleet was created to monitor the fulfilment of the accords on the Black Sea Fleet, as it was stated in the *Agreement on the Black Sea Fleet* (Article 11).³⁴

In the *Agreement on the status and conditions of presence of the Russian Federation Black Sea Fleet on the territory of Ukraine*, the creation of the *Russian-Ukrainian Joint Commission* was repeated once again to resolve disputes concerning the interpretation and application of this agreement. If the Joint Commission was unable to resolve submitted dispute, it should be resolved *through diplomatic channels* as soon as possible (Article 24).³⁵

Hence, *the main monitoring body* to control the activities of the Russian Federation Black Sea Fleet activities on the territory of Ukraine, including on human rights issues, was *the Russian-*

²⁹ <http://eesri.org/2017/08/human-security-worlds-practices-and-ukraines-perspective/>

³⁰ https://zakon.rada.gov.ua/laws/show/en/643_046

³¹ https://zakon.rada.gov.ua/laws/show/643_082

³² https://zakon.rada.gov.ua/laws/show/643_076

³³ https://zakon.rada.gov.ua/laws/show/en/643_046

³⁴ https://zakon.rada.gov.ua/laws/show/643_082

³⁵ https://zakon.rada.gov.ua/laws/show/643_076

Ukrainian Joint Commission with direct supervision by the President of Ukraine and the President of the Russian Federation. Control functions over the activities of the Russian military units were also to be carried out by the competent authorities of Ukraine (Article 8).³⁶ However, the term “*competent authorities of Ukraine*” was not explicitly defined in the agreement creating a loophole for Russian side to voluntarily interpret some provisions in its favour.

Based on the available evidences, *the Russian-Ukrainian Joint Commission was an ineffective institution* where the Russian Federation artificially delayed the process of considering any controversial issues.³⁷

Regarding the jurisdiction and investigation of human rights violations, these provisions were not mentioned directly, but formally fell within the agreed mechanisms contained in the basic Agreement and provided for the jurisdiction of both Parties, with the hidden domination of the Russian one.

So, the Russian military units were obligated to carry out their activities in places of deployment in accordance with *the legislation of the Russian Federation*, while respecting sovereignty of Ukraine and adhering to its legislation without any interference in the internal affairs of Ukraine (Article 6). Military units at their places of deployment and during redeployment could take protective and security measures in accordance with *the procedure established in the Armed Forces of the Russian Federation*, in co-operation with *the competent authorities of Ukraine* (Article 8). Movements related to the activities of military formations outside the places of their deployment should be carried out with consent of *the competent authorities of Ukraine* (Article 15).³⁸

Issues of jurisdiction related to the presence of military formations on the territory of Ukraine were regulated as follows (Article 19):³⁹

1. In cases of crimes committed by persons from military formations or members of their families on the territory of Ukraine, *the laws of Ukraine should be applied and the courts, the prosecutor's office and other competent authorities of Ukraine should operate.*

2. *The laws of the Russian Federation should be applied and the courts, the prosecutor's office and other competent bodies of the Russian Federation should operate:*

a) in the case of crimes committed against the Russian Federation by persons from military formations or members of their families, who are citizens of the Russian Federation, as well as crimes committed against persons from military formations or members of their families, who are citizens of the Russian Federation;

b) in the case of committing crimes by persons from military formations being on official duties at places of deployment of military formations.

3. *The competent authorities of Ukraine and the Russian Federation might apply to each other with a request for the transfer or acceptance of jurisdiction over individual cases.*

Despite the detailed mechanism for executing jurisdiction and conducting investigations of violations and the agreed monitoring process, the effectiveness of their practical implementation was very low. In practice, the Russian side acted at its own discretion, bypassing the agreed framework of jurisdiction. There were no negotiations at the

³⁶ https://zakon.rada.gov.ua/laws/show/643_076

³⁷ <https://www.pravda.com.ua/articles/2005/09/7/3013078/>

³⁸ https://zakon.rada.gov.ua/laws/show/643_076

³⁹ https://zakon.rada.gov.ua/laws/show/643_076

intergovernmental level within the framework of the Russian-Ukrainian Joint Commission due to the reluctance and delay of the Russian side.

Given the significant quantitative indicators of the Russian military presence in the Crimea (before its illegal annexation by the Russian Federation), including in the city of Sevastopol (150 military objects) and beyond (another 53 objects), the number of violations by the Russian side related to the fundamental rights and freedoms of Ukrainian citizens on the peninsula was also significant. Regardless of this, the command of the Black Sea Fleet of the Russian Federation under any pretexts refused to provide the Ukrainian side with the opportunity to control the fleet activities, including in the framework of the implementation of political-military commitments undertaken by the Parties under the auspices of the OSCE.⁴⁰

One of the most sensitive was the issue of *illegal use by the Russian Black Sea Fleet of existing Ukrainian objects of navigation and hydrographic support*, around which the main disputes took place with the participation of Ukrainian civil activists. Without coordination with Ukrainian counterparts, the Russian side took active measures to strengthen the protection of arbitrary used objects of navigation and hydrographic support, groundlessly referring to the legislation of the Armed Forces of Russian Federation. Such actions posed a direct threat to the lives of protesters – Ukrainian activists, who did not realize that they could be shot while attempting to infiltrate the navigation object located on Ukrainian territory and arbitrary occupied by the troops of the Russian Federation.⁴¹

The regular deployment of marine units and their landing on the sovereign territory of Ukraine took place outside any contractual framework, not to mention the facts of the use of the forces of the Russian Black Sea Fleet against a third country while they were formally stationing in Ukraine (operations in Chechnya, Georgia, the former Yugoslavia).⁴²

As a part of comprehensive approach to the monitoring process, it is also worth mentioning the provisions of the *Treaty of Friendship, Cooperation, and Partnership between Ukraine and the Russian Federation*. According to the Treaty, in order to protect the rights of its citizens residing on the territory of the other Party, Ukraine and the Russian Federation were obliged to comply with the obligations of *the documents of the Organization for Security and Cooperation in Europe (OSCE)* and other generally recognized principles and norms of international law, agreements within the Commonwealth of Independent States, they were the Parties to (Article 10).⁴³

The Office for Democratic Institutions and Human Rights (ODIHR), the Higher Commissioner on National Minorities (HCNM) as well as *the OSCE Mission to Ukraine (1994-1999)* should be mentioned when making a closer look at *the OSCE activities in the Crimean Peninsula*. These independent OSCE Institutions and field presence were formally involved in the process of the human rights monitoring on the Crimean Peninsula, including related activities of the Russian Black Sea Fleet. Based on the results, the effectiveness of all these bodies on the ground was rather low, because of the absence of clear mandate, overlapping structures that led to some frictions between them, especially in the initial phase of the work in Crimea. Partly, this was the fault of the Ukrainian side, which did not instruct on a more complete use of the potential of the OSCE (there were no overall concept or strategy for using the OSCE potential), and preferred to move on to a so-called “new form of cooperation” – the OSCE Project Co-ordinator in Ukraine, who started on June 1, 1999.⁴⁴

⁴⁰ https://zn.ua/ARCHIVE/nu_i_namayachili.html

⁴¹ <https://tyzhden.ua/News/29072>

⁴² <https://www.pravda.com.ua/articles/2005/09/7/3013078/>

⁴³ https://zakon.rada.gov.ua/laws/show/643_006

⁴⁴ <https://www.clingendael.org/publication/improving-effectiveness-osce-missions-case-ukraine>

From a formal point of view, *the Law of Ukraine on the Procedure for Admission and Conditions of Stay of Units of Armed Forces of Other States on the Territory of Ukraine*, dated to February of 2000, should be mentioned. According to the Document, *the Cabinet of Ministers of Ukraine, the Council of Ministers of the Autonomous Republic of Crimea, the Ministry of Defence of Ukraine, other central and local executive authorities and local self-government bodies* were defined to control over the activities of units of the armed forces of other States (including the Russian Federation) on the territory of Ukraine (Article 23). In case of a person of military or civilian personnel of a unit of the armed forces of another state is suspected of committing a crime on the territory of Ukraine, the command of the unit should assist *the law enforcement agencies of Ukraine* in fulfilling their duties regarding carrying out operational-search activities and *investigative actions in accordance with the laws of Ukraine* (Article 22). *The Ministry of Defence of Ukraine* should annually submit to the President of Ukraine and the Verkhovna Rada of Ukraine information on the presence of units of armed forces of other countries on the territory of Ukraine (Article 26). All provisions of this Law should be applicable to staying of the Russian Black Sea Fleet in Ukraine as well. But in practice, the Russian side circumvented the provisions of this Law.⁴⁵

The annexation of Crimea became the culminating point for which Russia used all possible means, including *hybrid warfare* reinforced by ineffective mechanisms for monitoring and investigating human rights violations by the Russian militaries. After the illegal annexation of the Crimean peninsula by the Russian Federation and its unleashing aggression in the east of Ukraine, the Ukrainian side, in order to prevent similar scenarios in the future, adopted a series of measures at the legislative level aimed at protecting human rights and freedoms, including on the Ukrainian territories temporarily occupied/controlled by the Russian Federation. In particular, the functions for monitoring the observance of human rights are entrusted to *the Cabinet of Ministers of Ukraine and the Ombudsman*, as well as emphasis is placed on the use of the potential of *international human rights organizations*. Two respective laws were adopted, namely *the Law of Ukraine on Ensuring Civil Rights and Freedoms, and the Legal Regime on the Temporarily Occupied Territory of Ukraine*, dated to April of 2014,⁴⁶ and *the Law of Ukraine on the peculiarities of State policy on ensuring Ukraine's State sovereignty over temporarily occupied territories in Donetsk and Luhansk regions*, dated to January of 2018.⁴⁷

In addition, *the responsibility of the Ministry of Defence and the Ministry of Foreign Affairs of Ukraine was also expanded* in the area of monitoring activities of the units of foreign armed forces temporarily deployed on the territory of Ukraine. Particularly, the Ministry of Defence of Ukraine should prepare and submit to the Ministry of Foreign Affairs of Ukraine proposals for the participation of military units, individual servicemen and employees of the Armed Forces in international peacekeeping operations, provision of military assistance to foreign states, sending units of the Armed Forces to other states, admission and conditions of stay of units of armed forces of other States on the territory of Ukraine.⁴⁸ The Ministry of Foreign Affairs of Ukraine, in its turn, should exercise general supervision over the implementation of international treaties of Ukraine, including by other parties, ensuring the implementation of rights arising from such treaties for Ukraine, make proposals to the President of Ukraine or the Cabinet of Ministers of Ukraine to take the necessary measures to ensure the implementation of international treaties of Ukraine.⁴⁹

⁴⁵ <https://zakon.rada.gov.ua/laws/show/1479-14>

⁴⁶ <https://zakon.rada.gov.ua/laws/annot/en/1207-18>

⁴⁷ <https://mfa.gov.ua/ua/news-feeds/foreign-offices-news/62541-on-the-law-of-ukraine-on-the-peculiarities-of-state-policy-on-ensuring-ukraines-state-sovereignty-over-temporarily-occupied-territories-in-donetsk-and-luhansk-regions>

⁴⁸ <https://zakon.rada.gov.ua/laws/show/671-2014-%D0%BF>

⁴⁹ <https://zakon.rada.gov.ua/laws/show/281-2016-%D0%BF>

The *Civil-Military Cooperation* (CIMIC) unit of the Armed Forces of Ukraine is also entrusted with the task of monitoring the socio-political situation in the areas where the units of the foreign armed forces are located on the territory of Ukraine.⁵⁰

Thus, the legal frameworks for monitoring/investigating human rights violations by foreign troops formally were established, but in a more generalized form, which applies to all units of the foreign armed forces temporarily stationed in Ukraine.

At the same time, the low level of practical implementation of basic laws, the lack of a unified strategic approach, incomplete use of the potential of international organizations in the field of human rights protection, lead to a low indicator of the practical use of the legal framework to monitor the situation on the ground and conduct investigations of the revealed violations of human rights and freedoms. All above-mentioned basic bilateral agreements between Ukraine and the Russian Federation regulating the Russian military presence on the territory of Ukraine were used by the Russian Federation as a hybrid lawfare component being an important element of the comprehensive hybrid war against Ukraine and other post-Soviet states.

⁵⁰ <https://civic.com.ua/kerivni-dokumenti-z-pitan-cvs-zsu>

Impact of the Russian military presence in Ukrainian Crimea on the human rights situation

The presence of the Black Sea Fleet of the Russian Federation on the territory of Ukraine led to numerous violations of human rights, although most of such cases were not properly registered and investigated, due to the weakness of mechanisms of legal regulation, Russia's ignoring of the relevant interstate agreements as well as of Ukrainian legislation and international humanitarian law, and the lack of normal conditions for the work of human rights organizations.

In analysis of the impact of the Russian Black Sea Fleet presence on the human rights situation, it is advisable to distinguish the following three periods:

- 1) from the declaration of independence of Ukraine in 1991 to the beginning of the armed seizure of the Crimean Peninsula by the Russian Federation in February 2014;
- 2) from the beginning of the armed seizure and illegal annexation of the Crimea by the Russian Federation to the withdrawal of Ukrainian servicemen from the peninsula (February-April 2014);
- 3) the period after the illegal annexation of to the Autonomous Republic of Crimea and the city of Sevastopol by the Russian Federation.

Prior to the armed seizure of the Crimean Peninsula in 2014, the presence of the Russian Black Sea Fleet negatively impacted the human rights situation in the following dimensions:

- violation of the rights of Ukrainian servicemen by Russian officers and commanders in the period before division of the post-Soviet Black Sea Fleet;
- intimidation by threat to use military force against Ukrainian civilian and military institutions in the Crimea;
- illegal actions of Russian servicemen against Ukrainian civilians, including beating and detention;
- violation of the rules of movement through Ukraine's territory of Russian military personnel, equipment and ammunition outside the territory of their permanent deployment;
- environmental pollution and thus violation of right to a safe environment.

In the first half of the 1990s, despite the Ukraine-Russia agreement that servicemen on ships and military objects of the post-Soviet Black Sea Fleet would be free to take an oath of allegiance to the state of their citizenship,⁵¹ in practice, those servicemen who choose to serve Ukraine often became subjects to mental pressure and physical abuse by Russian officers and commanders. They faced the unbearable working conditions and humiliation of their human dignity – Russian officers called them 'traitors', imposed unmotivated punishments, prevented them from getting promoted and often dismissed from service on trumped-up pretexts.⁵²

The cases of beatings of Ukrainian servicemen by their Russian counterparts also took places. For example, one of the officers of the 174th anti-aircraft missile brigade of Ukraine was beaten only for wearing a cape with the coat of arms of Ukraine. There was also the case when at night a group of Russian marines broke into the location of Ukraine's air defence base and threw smoke bombs into barracks with soldiers.⁵³

⁵¹ https://zakon.rada.gov.ua/laws/show/en/643_018

⁵² <http://bintel.com.ua/uk/article/krym-94-2/>

⁵³ <https://tyzhden.ua/Publication/3799>

In early 1990s, intimidation by threat to use Russian military force against Ukrainian civilian and military institutions in the Crimea was an often case. Here are just some examples:

- On 28 January 1994, during military exercise, two Su-27 aircrafts of the 43rd naval assault regiment of the Russian Black Sea Fleet simulated approach to combat course for the use of airborne weapons in the area of deployment of Ukrainian navy ships;⁵⁴
- On 20 May 1994, the Su-17 aircrafts from Gvardiiske airfield during the exercise simulated rocket-propelled bombing at Ukrainian troops in the Crimea;⁵⁵
- On 7 September 1994, the naval helicopters of the Russian Black Sea Fleet made several rounds of the building of Ukrainian Naval Forces' headquarters, where command and staff exercises were held;⁵⁶
- in 1994, combat vehicles of the Russian Black Sea Fleet repeatedly appeared on the entrance to and on the streets of Crimean cities without warning the Ukrainian authorities (so that it looked like a military seizure of the cities).⁵⁷

In June 2009, the Russian fleet servicemen used physical force against three dozen Ukrainian civilians who participated in the peaceful protests near the Black Sea Fleet Officers' House and the Russian Black Sea Fleet headquarters building. (Defrauded investors protested against the Construction Management Corporation of the Russian Black Sea Fleet which failed to comply with its obligations on commercial housebuilding of four multi-storeyed houses on the Astana Kesayev Str. in Sevastopol.)⁵⁸

In August 2011, the Russian Black Sea Fleet servicemen seized and detained eight activists of the All-Ukrainian Youth NGO “Student Brotherhood” who protested against the illegal seizure and use of the Ukrainian “Sarych” lighthouse. This lighthouse along with several others was unauthorizedly used by the Russian Fleet servicemen, despite the fact that it was not included to the list of objects to be used by the Russian Fleet under the Ukraine-Russia agreements.⁵⁹

Article 15 of the *Agreement on the status and conditions of presence of the Russian Federation Black Sea Fleet on the territory of Ukraine (1997)* provides that “Movements related to the activities of military formations outside the places of their deployment shall be carried out with consent of the competent authorities of Ukraine”.⁶⁰ However, in practice, the Russian side systematically violated this provision, posing threats to the safety and life of Ukrainian citizens by redeploying even the explosive ammunition without consent of the competent Ukrainian authorities. Following another incident of movement of the Black Sea Fleet combat missiles through the city of Sevastopol without consent of the Ukrainian authorities, on 23 July 2009, the Ministry of Foreign Affairs of Ukraine issued a protest to the Russian Federation.⁶¹ But despite Kyiv's protests, the Russian side continued to ignore the relevant provisions of the bilateral agreement.

Outdated technologies and the lack of proper cleaning systems on warships and coastal infrastructure of the Russian Black Sea Fleet lead to significant negative environmental impacts in the Crimea. Dirt and pollutants from ships and other military objects have been dumped directly into the sea and into the air for decades.⁶² It negatively impacted the whole ecosystem of the peninsula, health of the population and ecological situation in the Crimean

⁵⁴ <http://bintel.com.ua/uk/article/sevastopol%27-krym-rossija/>

⁵⁵ <http://bintel.com.ua/uk/article/separatisty-nachinajut-i-proigryvajut/>

⁵⁶ <http://bintel.com.ua/uk/article/krym-8-raskol/>

⁵⁷ <http://bintel.com.ua/uk/article/separatisty-nachinajut-i-proigryvajut/>

⁵⁸ <https://www.unian.ua/society/235040-viyskovoslujbovtsi-chf-rf-pobilisya-z-jertvami-budivelnoji-aferi.html>

⁵⁹ <https://tyzhden.ua/News/29072>

⁶⁰ https://zakon.rada.gov.ua/laws/show/643_076

⁶¹ <http://www.hai-nyzhnyk.in.ua/doc/2017doc.krym-chornom-flot.php>

⁶² <http://vmv.kymu.edu.ua/v/09/16.htm>

resorts. According to environmentalists, in the bays of Sevastopol, the concentration of petroleum products was 180 times higher than the maximum permissible norms; ships and coastal objects of the Russian Black Sea Fleet daily dumped thousands of tons of untreated wastewater into the sea.⁶³ A threat to the ecology of the Crimea is also posed by the military depots of the Russian Black Sea Fleet, where the expired ammunition is stored.⁶⁴

The Russian side ignored requests of the Ukrainian official bodies and NGOs to provide reliable information on environmental risks and the need for modernization of the treatment facilities of ships and infrastructure objects of the Black Sea Fleet. The BSF command denied Ukrainian state environmental officials from access to fleet objects and estimation of the environmental situation. On 18 August 2009, the Ministry of Foreign Affairs of Ukraine issued a protest to the Russian Federation regarding the violation of environmental standards by the Black Sea Fleet in Sevastopol Bay,⁶⁵ but the Russian side continued to ignore the environmental issue.

The year of 2014 became the most indicative regarding the threats posed by the Russian military base deployed on the territory of Ukraine. The capabilities of the Russian Black Sea Fleet were used for the armed seizure, occupation and subsequent illegal annexation of Ukrainian Crimea by the Russia Federation that led, along with other negative consequences, to a critical deterioration in the human rights situation on the peninsula.

In February-March 2014, without consent of the Ukrainian side and in violation of the relevant bilateral agreements, Russia substantially increased its military presence in the Crimea. Russian soldiers without insignia seized the local authorities of the Autonomous Republic of Crimea and blocked Ukrainian military units, threatening to use weapons. Under conditions of military occupation, on 16 March 2004, the illegitimate 'referendum' was held in the Crimea that was not recognized by the OSCE, the UN and other international organizations. On 18 March 2004, in Moscow, Russian president Vladimir Putin and the self-proclaimed 'leaders' of the Crimea and the city of Sevastopol Sergey Aksenov, Vladimir Konstantinov and Alexei Chaly signed the so-called treaty "on the admission of the Crimea to the Russian Federation".⁶⁶ International organizations and most countries do not recognize the legitimacy of this 'treaty' and of the annexation of the Crimea by the Russian Federation.

It is important to note that in his interview with Radio "Europe1" and TV "TF1", Russian president Vladimir Putin openly acknowledged the participation of Russian servicemen deployed in the Crimea in conducting the so-called 'referendum' that became a pretext for the illegal annexation of peninsular by Russia. Putin said the following: "Russian troops were in Crimea under the international treaty on the deployment of the Russian military base. It's true that Russian troops helped Crimeans hold a referendum on their (a) independence and (b) desire to join the Russian Federation".⁶⁷

During the military seizure of the Crimea, the Russian side committed detentions, beatings and shelling on Ukrainian servicemen, two of whom were killed.

Thus, on 18 March 2014, during the Russian attack with using of automatic weapon on the premises of the Ukrainian Cartographic Centre in Simferopol, ensign of the Ukrainian Armed Forces Serhiy Kokurin was killed, captain Valentin Fedunik was seriously injured by the firearms, and the Centre's chief, colonel Andrew Andryushin was illegally detained.⁶⁸ On 19 March 2014, the Russian side unlawfully detained the commander of the Ukrainian Navy

⁶³ <https://www.unian.ua/politics/351825-ekologi-vimagayut-dani-pro-shkodu-vid-chf.html>

⁶⁴ <http://vmv.kymu.edu.ua/v/09/16.htm>

⁶⁵ <http://www.hai-nyzhnyk.in.ua/doc/2017doc.krym-chornom-flot.php>

⁶⁶ <http://publication.pravo.gov.ru/Document/View/0001201403180024>

⁶⁷ <http://en.kremlin.ru/events/president/news/45832> ; <http://kremlin.ru/events/president/news/45832>

⁶⁸ <https://ua.krymr.com/a/29204232.html>

Serhiy Gaiduk,⁶⁹ depriving him of possibility to fulfil his duties. No one was punished for these crimes.

Despite the promise of the Russian leadership to allow Ukrainian military personnel to peacefully leave the Crimea, actually they were subjected to moral pressure and threats of physical violence before leaving the peninsula. On 6 April 2014, in the premises of a military hostel where Ukrainian servicemen lived, Russian junior sergeant Yevgeny Zaitsev shot to death the unarmed Ukrainian major of the 10th Saki Brigade of the Naval Aviation Stanislav Karachevsky. On the same day, Russian servicemen beat and unreasonably detained for 5 days Ukrainian captain Artem Yermolenko. For the murder of Ukrainian serviceman, the Russian-controlled Crimean garrison military court sentenced sergeant Zaytsev to just 2 years in the lightweight regime penal colony.⁷⁰

Among other crimes committed during the Russian occupation of the Crimea, human rights defenders note the use of civilians as a 'human shield'. On 26 February 2019, the Prosecutor's Office of the Autonomous Republic of Crimea, the Ukrainian Helsinki Human Rights Union and the Regional Center for Human Rights reported on the transfer to the International Criminal Court of the evidence that Russian servicemen intentionally moved civilians to the military objects of the Ukrainian Armed Forces in the Crimea staying behind their backs during blocking and capture of these military objects. It was a war crime provided for in Article 8 of the Rome Statute of the International Criminal Court, a violation of Article 28 of the IV Geneva Convention and of Article 51 of the Additional Protocol (I) to Geneva Conventions, as well as of the Rule 97 of the Customary International Humanitarian Law.⁷¹

Following the military occupation and the illegal annexation of Crimea by the Russian Federation, those Ukrainian servicemen, who did not agree to betray the oath and go into service in the Russian Armed Forces, were forced to leave the peninsula. Thus, 6010 servicemen, of whom 3991 served in the Armed Forces of Ukraine, 1177 in the National Guard, 519 in the State Border Service, 242 in the Security Service of Ukraine, 20 in the Department of the State Guard, and 61 in the State Space Agency,⁷² were forced to leave the Crimea together with their families and to move to the mainland of Ukraine, often without proper living conditions.

Due to the mental pressure and deprivation of civil rights of those who refused to accept Russian citizenship after the illegal annexation of the Crimea, some 50-60 thousand civilians were forced to leave the peninsula, of whom 33.5 thousand were officially registered in Ukraine as internally displaced persons.⁷³ Thus, more than fifty thousand inhabitants of the peninsula lost their homes, property, and places of work and study.

The period after the illegal annexation of the Crimea by the Russian Federation is characterized by a critical deterioration in the situation with human rights. Human rights violations became systematic and blatant, with bold disregard of Ukrainian legislation and international humanitarian law. Such violations are committed by the law enforcement and security service officers appealing to the Russian legislation (that has no legal effect in the territory of the Ukrainian Crimea), and by the so-called 'unknown persons' with the connivance of law enforcement agencies. Persons suspected of disloyalty to the occupation regime, primarily

⁶⁹ <https://www.bbc.com/news/world-europe-26656617>

⁷⁰ <https://www.radiosvoboda.org/a/27738783.html>

⁷¹ https://ark.gp.gov.ua/ua/news.html?_m=publications&_c=view&_t=rec&id=246320

⁷² <https://tsn.ua/ukrayina/matios-oprilyudniv-kilkist-ukrayinskih-viyskovih-yaki-zalishilisia-v-okupovanomu-krimu-585526.html> ; https://dt.ua/UKRAINE/pislya-aneksiyi-krimu-virnimi-prisyazi-zalishilisia-mayzhe-chotiri-tisyachi-ukrayinskih-viyskovih-minoboroni-259371_.html

⁷³ <https://ua.krymr.com/a/eskender-bariiev-rosiia-robyt-use-shchob-pozbutysia-nebazhanoho-naselennia-v-krymu/30097807.html>

Ukrainian and Crimean Tatar civic activists, are most often subjected to unjustified persecution, torture, detention and even murder.

During and after the military seizure of the Crimea by Russia, a number of violations of the 1949 Geneva Conventions (on the Protection of Victims of War) took place, despite the fact that these conventions were ratified by the Soviet Union in 1954, and accordingly are applicable to the Russian Federation as the successor to the USSR. In particular, according to the norms of the Geneva Conventions, Russia as an occupying power (recognized as such by resolutions of the UN General Assembly of 2016-2017⁷⁴) has no right to force the inhabitants of the occupied territories to serve in its armed forces; the courts must act only in accordance with the legislative provisions in force at the time when the offense was committed; the occupying state is prohibited from changing the status of officials or judges in the occupied territories; the occupying power should allow religious ministers to provide spiritual support to their fellow believers, and etc. In fact, these and other norms of the Geneva Conventions are blatantly violated by the Russian Federation.⁷⁵

Cases of human rights violations in the illegally annexed Crimea, collected by the international organisations and human rights NGOs take hundreds of pages. Below we provide a brief overview of some important publications and resources on human rights violations in the occupied Crimea.

In September 2019, during the 74th session of the UN General Assembly, the first report of the UN Secretary-General “Situation of human rights in the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine” was presented.⁷⁶ The report provides general overview of the civil, political, economic, social, cultural and other rights violations in the occupied Crimea. The report describes situation on the following human rights:

Civil and political rights

A. Right to nationality

B. Administration of justice and fair trial rights

C. Rights to life, liberty and security

D. Right to physical and mental integrity

E. Rights of detainees

F. Freedom of thought, conscience and religion

G. Freedoms of opinion and expression

H. Freedoms of peaceful assembly and association

I. Right to maintain one’s identity, culture and tradition

Economic, social and cultural rights

A. Right to education in one’s native language

B. Property rights

Prohibition on forced conscription

Population transfers

In particular, the report of the UN Secretary-General emphasizes that automatic granting of Russian citizenship to Crimean residents can have a negative impact on the enjoyment of rights that are inextricably linked to citizenship, particularly freedom of movement and residence rights. And this is indeed the case, as Crimean residents who have refused Russian citizenship are automatically considered foreigners deprived of their right to permanently reside in the Crimea and under threat of being deported.

⁷⁴ <https://undocs.org/ru/A/C.3/72/L.42>

⁷⁵ <https://www.radiosvoboda.org/a/30103168.html>

⁷⁶ <https://undocs.org/A/74/276> ; <https://undocs.org/ru/A/74/276>

The report notes violations by Russia as occupying power of the 1949 Geneva Conventions, in particular, of the right to a fair trial. After the occupation of the Crimea, Russian authorities repealed Ukrainian penal legislation on the peninsula and requalified the criminal sentences of all pre-conflict detainees in accordance with the criminal law of the Russian Federation. Some of the pre-conflict prisoners have been transferred to penal colonies in the Russian Federation; requests from detainees to meet with Ukrainian consular officers were rejected.

The report notes that since the annexation of the Crimea, 42 facts of enforced disappearance of people have been identified. As of 30 June 2019, 28 of them had been released, 2 were being held in custody, one Crimean Tatar activist had been found dead, and 11 were still missing.

Torture and ill-treatment of individuals deprived of their liberty are also noted in the report, especially regarding those suspected in “anti-Russian” activities. The conditions of detention do not meet international humanitarian standards; medical assistance is inadequate. But even in cases of credible complaints on torture and ill-treatment, criminal investigations have not been launched and no perpetrators have been brought to justice.

After the illegal annexation, all religious communities in the Crimea have been obliged to re-register under the laws of the Russian Federation that led to a drop in the number of registered religious organizations. The refusal of the Ukrainian Orthodox Church of the Kyiv Patriarchate and some other religious organizations to re-register due to their non-recognition of the Russian annexation of the peninsula, led to the loss of their legal status and related property and other rights. After receiving physical threats several priests have left the Crimea. At least 67 Crimean Tatars have been charged for offences related to terrorism and/or extremism for alleged affiliation with Hizb ut-Tahrir and Tablighi Jamaat (Muslim groups that are prohibited in the Russian Federation). Several members of the Crimean congregation of Jehovah's Witnesses have also been arrested.

The independent journalistic activity, freedoms of opinion and expression as well as freedoms of peaceful assembly and association are restricted. The Office of the United Nations High Commissioner for Human Rights (OHCHR) documented cases of individuals detained for expressing dissenting views towards authorities of the Russian Federation. In October 2017, 80 Muslims were prosecuted for conducting single-person protests against criminal cases against other Muslims.

The Crimean Tatar Mejlis was prohibited, and activists of the Crimean Tatar national movement were persecuted by the Russian authorities. Activities related to Ukrainian culture were restricted, and some Ukrainian activists were forced to leave the Crimea due to intimidations. The availability of education in the Ukrainian language has sharply decreased. The number of students instructed in the Ukrainian language dropped 51 times – from 12,694 in 2013 to 249 children in 2018. Cases in which the school administration rejected explicit requests from parents to use Crimean Tatar as the language of instruction were documented.

Since the illegal annexation of the Crimea, at least 4,671 real estate assets have been expropriated as part of the so-called ‘nationalization’, including the seizure of real property of private companies and individuals conducted without compensation that was the open violations of the property rights.

In violation of the 1949 Geneva Conventions, the Russian Federation forces residents of the occupied Crimea to serve in its armed forces. At least 18,000 Crimean residents have been conscripted into the Russian armed forces. There had been at least 29 guilty verdicts rendered in criminal prosecutions of Crimean men for draft evasion since 2017.

In 2017-2018, the Crimean courts ordered the forcible transfer of at least 947 Crimean residents who refused to accept Russian citizenship, at least 109 of whom were forcibly

removed from the peninsula by the law enforcement authorities of the Russian Federation. (A much larger number of Crimea residents left peninsula on their own, due to mental pressure and restriction of civil rights.) At the same time, in violation of the international humanitarian law, mass migration of residents of the Russian regions to the occupied Crimea is taking place. In 2014-2018, more than 140,000 Russian citizens were resettled to the Crimea peninsula from different regions of the Russian Federation.⁷⁷

Human rights abuses in the occupied Crimea are reported by the Office of the United Nations High Commissioner for Human Rights. For example, the “Report on the situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol, Ukraine”, for the period from 13 September 2017 to 30 June 2018, submitted pursuant to United Nations General Assembly resolution 72/190, documented 81 cases involving credible allegations of human rights violations and abuses, which affected 167 victims.⁷⁸

Deterioration in human rights situation in the occupied Crimea is also noted in the UNESCO report of 13 September 2019. Report notes the “persistent and growing disrespect of human rights and fundamental freedoms manifested by Russia since the outset of the occupation of the peninsula”, including the false accusations based on the Russian legislation on ‘extremism and terrorism’; severe discrimination and political persecution of the ethnic Ukrainians and Crimean Tatars who identify themselves with Ukrainian state; decrease in number of classes with Ukrainian language of instruction in educational institutions by over 98%; persecution of independent media; persecution of religious traditions; illicit archaeological researches and transfer of cultural property, and etc.⁷⁹

Bureau of Democracy, Human Rights, and Labor of the U.S. Department of State in the “2018 Country Reports on Human Rights Practices: Ukraine” dedicated special section to situation in the Russian-occupied Crimea, noting the following violations of human rights: arbitrary deprivation of life and other unlawful or politically motivated killings; abductions and disappearances by occupation authorities; torture and other cruel, inhuman, or degrading treatment or punishment; harsh and life threatening prison and detention centre conditions; arbitrary arrest and detention; denial of fair public trial; arbitrary or unlawful interference with privacy, family, home, or correspondence; violates of freedom of speech and press, academic freedom, freedom of peaceful assembly, freedom of association, freedom of religion, freedom of movement, freedom to participate in the political process, discrimination, societal abuses, and trafficking in persons; acts of violence, discrimination, and other abuses based on sexual orientation and gender identity.⁸⁰

Facts of violation of the religious freedom in the Russian-occupied Crimea are presented in the “Crimea” section of “Ukraine 2018 International Religious Freedom Report” by the Bureau of Democracy, Human Rights, and Labor of the U.S. Department of State.⁸¹

Critical deterioration in the human rights situation after the occupation and illegal annexation of the Crimean Peninsula by Russia is also documented and reported by the non-governmental human rights organizations. In particular, director of Amnesty International in Ukraine Oksana Pokalchuk notes that the premises of the Crimean Tatar activists are often unreasonably searched by Russian law enforcement officers with aim of intimidation. Presence in houses of the religious literature, which is allowed in Ukraine but is considered ‘extremist’

⁷⁷ <https://undocs.org/A/74/276> ; <https://undocs.org/ru/A/74/276>

⁷⁸ https://www.ohchr.org/Documents/Countries/UA/CrimeaThematicReport10Sept2018_EN.pdf ;
https://www.ohchr.org/Documents/Countries/UA/CrimeaThematicReport10Sept2018_UKR.pdf

⁷⁹ <https://unesdoc.unesco.org/ark:/48223/pf0000370522/PDF/370522eng.pdf.multi>

⁸⁰ <https://www.state.gov/wp-content/uploads/2019/03/UKRAINE-2018-HUMAN-RIGHTS-REPORT.pdf> ;

<https://www.state.gov/reports/2018-country-reports-on-human-rights-practices/ukraine/ukraine-crimea/>

⁸¹ <https://www.state.gov/wp-content/uploads/2019/05/UKRAINE-2018-INTERNATIONAL-RELIGIOUS-FREEDOM-REPORT.pdf>

in Russia is often used as a pretext for criminal persecutions as well as suspicion of affiliation with Hizb ut-Tahrir Muslim group that is prohibited in Russia.⁸²

The Civic Solidarity Platform that brings together human rights defenders from around the world also reports on numerous human rights violations in the occupied Crimea. In particular, in March 2019, 45 human rights organizations from different countries signed a statement condemning the Russian Federal Security Service (FSB) raids against the Crimean Tatar activists that took place on 27 March 2019. FSB officers searched 27 Crimean Tatar houses and arrested 20 people, including activists of the Crimean Solidarity human rights movement.⁸³

On 19 September 2019, in his statement addressing the OSCE Human Dimension Implementation Meeting in Warsaw, the representative of the Crimean Human Rights Group (CHRG) Oleksandr Sedov informed that during the period of occupation, the CHRG has registered 374 facts of criminal or administrative prosecution for participation in peaceful assemblies.⁸⁴ The CHRG regularly publishes on its website the monitoring reports on the human rights violations in the occupied Crimea.⁸⁵ In particular, on 3 May 2019, it reported that 86 people were illegally deprived of their liberty as part of politically motivated or religious persecution in the annexed Crimea.⁸⁶ The activists of the CHRG also noted more than 300 facts of pressure against the journalists and media in the Crimea, including the tortures, arbitrary detentions, seizures of property, searches, threats, mental pressure and etc.⁸⁷

NGO Crimea SOS in partnership with the Crimean Human Rights Group, All-Ukrainian Charitable Foundation “Right to Protection” and Centre for Civil Liberties, created the interactive map systemizing the facts of human right violations in the occupied Crimea. As of September 2019, the map shows information about 422 such cases.⁸⁸

⁸² <https://www.ukrinform.ua/rubric-crimea/2669879-prava-ludini-u-krimu-amnesty-zaavlae-pro-kriticnu-situaciu.html>

⁸³ <http://www.civicsolidarity.org/article/1588/russian-authorities-crack-down-human-rights-activists-and-other-individuals-occupied>

⁸⁴ <https://www.ukrinform.net/rubric-society/2783637-almost-400-cases-of-violation-of-right-to-assembly-in-crimea-recorded-during-occupation.html>

⁸⁵ https://crimeahrg.org/wp-content/uploads/2019/09/crimean-human-rights-group_aug_2019_ua.pdf

⁸⁶ <https://qha.com.ua/en/po-polochkam-en/86-persons-deprived-of-their-liberty-in-occupied-crimea-on-political-and-religious-grounds-entire-list/> ; <https://qha.com.ua/po-polochkam/86-chelovek-lisshenyi-svobody-v-krymu-po-politicheskim-i-religioznym-priznakam-ves-spisok/>

⁸⁷ <https://crimeahrg.org/uk/znishhennya-svobody-slova-u-krimu-ta-informacijna-agresiya-ri/>

⁸⁸ <http://crimeamap.krymsos.com/eng/map.html>

Conclusions

The issue of foreign military presence in the context of respect for human rights will remain one of the important issues on the agenda for all East European countries, including Ukraine. The case of legislative regulation of staying in Ukraine of the Black Sea Fleet of the Russian Federation demonstrates clearly the Russian strategic approach for using all available hybrid mechanisms to strengthen its influence on neighbouring states, including the use of law as a kind of hybrid warfare triggering abuses of human rights and threatening human security as such. Among principal objectives to achieve by the Russian Federation were the future occupation and annexation of the Crimean Peninsula and the city of Sevastopol, as well as executing political and military pressure on the Ukrainian Government.

The insufficient detailing and the low level of practical implementation of basic laws, regulating the presence of the Russian military base (the Black Sea Fleet) on the territory of Ukraine as well as the lack of unified strategic approach, reinforced by incomplete use of the potential of international organizations in the field of human rights protection, led to a low indicator of the practical use of the legal framework to monitor the situation on the ground and conduct investigations of the revealed violations of human rights and freedoms.

After the military occupation and illegal annexation of the Crimea by Russian Federation, based on the tragical lessons learnt, rather comprehensive legal framework for monitoring/investigating human rights violations by foreign troops has been established in Ukraine, applying to all units of the foreign armed forces temporarily stationed in the country. But the practical implementation of this legal framework is now virtually impossible in the Russian-occupied Crimea.

Therefore, it is important to document all human rights violations in the Crimea, to be able to investigate them and bring those responsible to justice when it becomes possible. Simultaneously, Ukraine together with the international community should continue work on searching ways to make the Russian Federation to uphold its obligations under international human rights law in the Crimea and to respect obligations that apply to it pursuant to international humanitarian law.

These issues should be properly considered with view to the perspective of future regaining control over the illegally annexed Crimea and the occupied territories of the Donbas, especially when discussing the possibility of foreign peacekeeping forces deployment on the territory of Ukraine. The creeping annexation of the Sea of Azov should be also mentioned as it significantly increases parameters of human rights violations becoming a kind of full-fledged blockade.

Having all this in mind, there is an obvious need to elaborate comprehensive legal mechanisms relating to any foreign military presence. This issue should also be incorporated in transitional justice agenda as a key driver of law enforcement and human rights protection under the general concept of human security.

From that point of view, the experience of other countries is important, including Armenia and Moldova. Many options for addressing challenging issues with the Russian military presence are often interrelated and may be repeated in one way or another. Therefore, timely exchange of experience could help to avoid basic mistakes and to respond properly to human rights violations while countering hybrid law influence.

Annex A

Control/Oversight Mechanisms to Prevent Human Rights Violations by Foreign Troops Deployed in Ukraine

N	Title of Documents and References	Control/Oversight Mechanisms	Monitoring Body	Jurisdiction and Investigation
1	Agreement on urgent measures for the formation of the Naval Forces of Ukraine and the Naval Fleet of the Russian Federation on the basis of the Black Sea Fleet, June 17, 1993 (Art. 4)	In order to solve the practical issues of the Black Sea Fleet distribution and to develop conditions for stationing the Naval Forces of Ukraine and the Naval Fleet of the Russian Federation based on the principles and documents mentioned in this Agreement, the Interstate Commission of the Parties shall be created with equal number of their representatives and experts. The personal composition of the Ukrainian and Russian parts of the Commission and its Regulations shall be approved respectively by the President of Ukraine and the President of the Russian Federation , who are in charge of its work.	<i>Interstate Commission of the Parties under the direction of the President of Ukraine and the President of the Russian Federation</i>	<i>Not clearly defined</i>
2	Agreement between Ukraine and the Russian Federation on the Black Sea Fleet, June 9, 1995 (Art. 11)	The Russian-Ukrainian Joint Commission consisting of the State delegations of the Russian Federation and Ukraine at the talks on the Black Sea Fleet shall be created to monitor the fulfilment of the accords on the Black Sea Fleet.	<i>The Russian-Ukrainian Joint Commission</i>	<i>Not clearly defined</i>
3	Agreement on the status and conditions of presence of the Russian Federation Black Sea Fleet on the territory of Ukraine, May 28, 1997 (Art. 6, 8, 15, 18, 19, 24)	Military units shall carry out their activities in places of deployment in accordance with the legislation of the Russian Federation , while respecting sovereignty of Ukraine and adhering to its legislation without any interference in the internal affairs of Ukraine. Military units at their places of deployment and during redeployment can take protective and security measures in accordance with the procedure established in the Armed Forces of the Russian Federation , in co-operation with the competent authorities of Ukraine .	<i>The Russian-Ukrainian Joint Commission</i> <i>Competent authorities of Ukraine</i>	<i>Legislation of the Russian Federation and Ukraine</i> <i>Relevant agreements of the Parties</i> <i>Procedure established in the Armed Forces of the</i>

		<p>Relations between military personnel and members of their families with legal entities and individuals of Ukraine outside the places of deployment shall be subject to relevant agreements of the Parties as well as legislation of Ukraine.</p> <p>Movements related to the activities of military formations outside the places of their deployment shall be carried out with consent of the competent authorities of Ukraine.</p> <p>The Russian Party shall compensate for damage that may be caused to citizens or legal entities of Ukraine, citizens or legal entities of third states located on the territory of Ukraine, by actions or inactions of military formations or persons from these formations while performing their official duties in the amounts established on the basis of claims submitted in accordance with the legislation of Ukraine.</p> <p>The Ukrainian Party shall reimburse the damage that may be caused to the military formation on the territory of Ukraine by actions or inactions of citizens or legal entities of Ukraine in the amounts established on the basis of claims submitted in accordance with the legislation of Ukraine.</p> <p>Issues of jurisdiction related to the presence of military formations on the territory of Ukraine shall be regulated as follows:</p> <ol style="list-style-type: none"> 1. In cases of crimes committed by persons from military formations or members of their families on the territory of Ukraine, the laws of Ukraine shall be applied and the courts, the prosecutor's office and other competent authorities of Ukraine shall operate. 2. Paragraph 1 of this Article shall not apply: a) in the case of crimes committed against the Russian Federation by persons from military formations or members of their families, who are citizens of the Russian Federation, as well as crimes committed against persons from military formations or members of their families, 	<p><i>Russian Federation</i></p> <p><i>Courts, prosecutor's office and other competent authorities of Ukraine and Russian Federation</i></p> <p><i>Transfer or acceptance of jurisdiction</i></p> <p><i>Diplomatic channels (through MFAs)</i></p>
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		<p>who are citizens of the Russian Federation; b) in the case of committing crimes by persons from military formations being on official duties at places of deployment of military formations. In cases that are subject to this paragraph, <i>the laws of the Russian Federation shall be applied and the courts, the prosecutor's office and other competent bodies of the Russian Federation</i> shall operate.</p> <p>3. <i>The competent authorities of the Parties</i> may apply to each other with a request for the <i>transfer or acceptance of jurisdiction</i> over individual cases provided for in this Article. Such appeals shall be considered promptly and benevolently.</p> <p>The <i>Joint Commission</i> shall be created to resolve disputes concerning the interpretation and application of this Agreement. The Joint Commission shall act on the basis of its procedure. If the Joint Commission is unable to resolve submitted dispute, it shall be resolved through <i>diplomatic channels</i> as soon as possible.</p>		
4	Treaty of Friendship, Cooperation, and Partnership between Ukraine and the Russian Federation, May 31, 1997 (Art. 10)	Each of the High Contracting Parties shall guarantee citizens of the other Party the rights and freedoms on the same grounds and in the same amount as their own nationals, except in cases established by the national legislation of the Parties or their international treaties. Each Party shall, in accordance with the established procedure, protect the rights of its citizens residing on the territory of the other Party <i>in accordance with the obligations of the documents of the Organization for Security and Cooperation in Europe and other generally recognized principles and norms of international law, agreements within the Commonwealth of Independent States</i> , they are the Parties to.	<i>Organization for Security and Cooperation in Europe, Commonwealth of Independent States</i>	<i>Legislation of the Russian Federation and Ukraine</i> <i>OSCE ODIHR/HCNM,</i> <i>OSCE Mission to Ukraine (1994-1999)</i> <i>CIS Institutions</i>
5	Law of Ukraine on the	Control over the activities of units of the armed forces of other States on the	<i>Cabinet of Ministers of</i>	<i>Law enforcement</i>

	<p>Procedure for Admission and Conditions of Stay of Units of Armed Forces of other States on the Territory of Ukraine, February 22, 2000 (Art. 22, 23, 24, 26)</p>	<p>territory of Ukraine within the framework of their authority shall be exercised by <i>the Cabinet of Ministers of Ukraine, the Council of Ministers of the Autonomous Republic of Crimea, the Ministry of Defence of Ukraine, other central and local executive authorities and local self-government bodies in accordance with the Constitution of Ukraine, laws and international agreements of Ukraine.</i></p> <p>In case of a person of military or civilian personnel of a unit of the armed forces of another State is suspected of committing a crime on the territory of Ukraine, <i>the command of the unit shall assist the law enforcement agencies of Ukraine in fulfilling their duties regarding carrying out operational-search activities and investigative actions in accordance with the laws of Ukraine.</i></p> <p>Disputes arising from the temporary stay of units of the armed forces of other States on the territory of Ukraine shall be resolved through <i>negotiations between Ukraine and other States in accordance with the procedure and conditions stipulated by the relevant international treaties.</i> In the absence of such agreements, other mutually acceptable dispute settlement procedures shall be applied.</p> <p><i>The Ministry of Defence of Ukraine</i> shall annually submit to the President of Ukraine and the Verkhovna Rada of Ukraine information on the presence of units of armed forces of other States on the territory of Ukraine.</p>	<p><i>Ukraine, the Council of Ministers of the Autonomous Republic of Crimea, the Ministry of Defence of Ukraine, other central and local executive authorities and local self-government bodies</i></p>	<p><i>agencies of Ukraine carry out operational-search activities and investigative actions in accordance with the laws of Ukraine</i></p> <p><i>Negotiations between Ukraine and other states in accordance with the procedure and conditions stipulated by the relevant international treaties</i></p>
6	<p>Resolution of the Cabinet of Ministers of Ukraine on Approval of the Regulation on the Ministry of Defence of Ukraine,</p>	<p><i>The Ministry of Defence of Ukraine</i> shall prepare and submit to <i>the Ministry of Foreign Affairs of Ukraine</i> proposals for the participation of military units, individual servicemen and employees of the Ukrainian Armed Forces in international peacekeeping operations, provision of military assistance to foreign states, sending units of the Armed Forces to other</p>	<p><i>Ministry of Defence of Ukraine, Ministry of Foreign Affairs of Ukraine</i></p>	<p><i>Not applicable</i></p>

	November 26, 2014, # 671	states, admission and conditions of stay of units of armed forces of other States on the territory of Ukraine.		
7	Resolution of the Cabinet of Ministers of Ukraine on Approval of the Regulation on the Ministry of Foreign Affairs of Ukraine, March 30, 2016, # 281	The Ministry of Foreign Affairs of Ukraine shall exercise general supervision over the implementation of international treaties of Ukraine, including by other Parties, ensuring the implementation of rights arising from such treaties for Ukraine, make proposals to the President of Ukraine or the Cabinet of Ministers of Ukraine to take the necessary measures to ensure the implementation of international treaties of Ukraine.	<i>Ministry of Foreign Affairs of Ukraine</i>	<i>Not applicable</i>
8	Law of Ukraine on Ensuring Civil Rights and Freedoms, and the Legal Regime on the Temporarily Occupied Territory of Ukraine, April 27, 2014 (Art. 5)	... Responsibility for violations of human and citizen rights and freedoms provided for by the Constitution and the laws of Ukraine, which occur on the temporarily occupied territory, shall be placed on the Russian Federation as the occupying power in accordance with the norms and principles of international law. The Cabinet of Ministers of Ukraine shall institute permanent monitoring of compliance with human and citizen rights and freedoms on the temporarily occupied territory and shall, on the basis of results of the above-mentioned monitoring, publicize and provide relevant information to international organizations in the area of protection of human and citizen rights and freedoms and take necessary measures. The Human Rights Commissioner of the Verkhovna Rada of Ukraine [Ombudsman] shall carry out parliamentary control over adherence to constitutional human and citizen rights and freedoms on the temporarily occupied territory ...	<i>Cabinet of Ministers of Ukraine</i> <i>Human Rights Commissioner of the Verkhovna Rada of Ukraine</i>	<i>International organizations in the area of protection of human and citizen rights and freedoms</i>

9	Law of Ukraine on the peculiarities of State policy on ensuring Ukraine's State sovereignty over temporarily occupied territories in Donetsk and Luhansk regions, January 18, 2018 (Art. 6)	<p>The Cabinet of Ministers of Ukraine shall take all measures envisaged by the legislation of Ukraine to protect human rights and freedoms, in particular, carry out permanent monitoring of compliance with human and citizen rights and freedoms, publicize and provide relevant information to international organizations in the area of protection of human and citizen rights and freedoms, and takes the necessary steps to form an interdepartmental coordinating body to generalize the legal position of the state on the issue of countering and deterrence of the armed aggression of the Russian Federation and the preparation of a consolidated claim of Ukraine to the Russian Federation on the implementation of its international legal responsibility for armed aggression against Ukraine.</p> <p>The Human Rights Commissioner of the Verkhovna Rada of Ukraine [Ombudsman] shall exercise parliamentary control over observance of constitutional human and citizen rights and freedoms on temporarily occupied territories in Donetsk and Luhansk regions and, if necessary, present to the Verkhovna Rada of Ukraine a special report on the state of observance of human and civil rights and freedoms on these territories.</p> <p>Ukraine shall not be responsible for the illegal actions of the Russian Federation or its occupational administrations on the temporarily occupied territories in Donetsk and Luhansk regions or illegal decisions taken by them.</p>	<p><i>The Cabinet of Ministers of Ukraine</i></p> <p><i>Human Rights Commissioner of the Verkhovna Rada of Ukraine</i></p>	<p><i>Interdepartmental Coordinating Body</i></p> <p><i>International organizations in the area of protection of human and citizen rights and freedoms</i></p>
10	Regulation on Civil-Military Cooperation (CIMIC) of the Armed Forces of Ukraine, Approved by the Oder of the General Staff of the Armed Forces of	<p>The main tasks of the of CIMIC of the Armed Forces of Ukraine, among others, are the following:</p> <p>... analysis of the socio-political situation in the areas of deployment (application) of the Armed Forces units of Ukraine, conducting of exercises (international exercises), location of units of the armed forces of other states, concentration and</p>	<p><i>CIMIC Department of the Armed Forces of Ukraine</i></p>	<p><i>Not applicable</i></p>

	Ukraine, December 20, 2017, No. 446 (para 2.1.)	use of forces and summarizing of this information; ...		
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