International Law and Defining Russia’s Involvement in Crimea and Donbas

13 February 2022
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<td>AFV</td>
<td>Armoured Fighting Vehicle</td>
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<tr>
<td>AP I</td>
<td>Additional Protocol I</td>
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<td>AP II</td>
<td>Additional Protocol II</td>
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<tr>
<td>ARSIWA</td>
<td>Articles on Responsibility of States for Internationally Wrongful Acts</td>
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<tr>
<td>ATO</td>
<td>Anti-Terrorist Operation</td>
</tr>
<tr>
<td>BSF</td>
<td>Black Sea Fleet</td>
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<td>BSF Agreement</td>
<td>Status and Conditions of Stay of the Black Sea Fleet of the Russian Federation in the Territory of Ukraine</td>
</tr>
<tr>
<td>CA 3</td>
<td>Common Article 3 to the Geneva Conventions</td>
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<td>CAR</td>
<td>Central African Republic</td>
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<tr>
<td>CAT</td>
<td>Convention Against Torture</td>
</tr>
<tr>
<td>CEDAW</td>
<td>Convention on the Elimination of All Forms of Discrimination against Women</td>
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<tr>
<td>CEPA</td>
<td>Center for European Policy Analysis</td>
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<tr>
<td>CERD</td>
<td>International Convention on the Elimination of All Forms of Racial Discrimination</td>
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<tr>
<td>CIA</td>
<td>Central Intelligence Agency</td>
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<tr>
<td>CoE</td>
<td>Council of Europe</td>
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<tr>
<td>CRC</td>
<td>Convention on the Rights of the Child</td>
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<tr>
<td>Crimea</td>
<td>Autonomous Republic of Crimea</td>
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<tr>
<td>Crimean ASSR</td>
<td>Crimean Autonomous Soviet Socialist Republic</td>
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<tr>
<td>CSD</td>
<td>Crimean Self-Defense</td>
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<tr>
<td>CSO</td>
<td>Civil Society Organisation</td>
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<tr>
<td>CTT</td>
<td>Centre for Territorial Troops</td>
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<tr>
<td>DRC</td>
<td>Democratic Republic of the Congo</td>
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<tr>
<td>D/LPR</td>
<td>Donetsk People’s Republic and Luhansk People’s Republic, collectively</td>
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<tr>
<td>DPR</td>
<td>Donetsk People’s Republic</td>
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<tr>
<td>ECHR</td>
<td>European Convention on Human Rights</td>
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<td>ECHR</td>
<td>European Court of Human Rights</td>
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<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
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<tbody>
<tr>
<td>EECP</td>
<td>Entry-Exit Checkpoint</td>
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<tr>
<td>EU</td>
<td>European Union</td>
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<tr>
<td>FSB</td>
<td>Federal Security Service</td>
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<td>GoU</td>
<td>Government of Ukraine</td>
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<tr>
<td>GRC</td>
<td>Global Rights Compliance</td>
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<tr>
<td>GRU</td>
<td>Main Intelligence Directorate of the RFAF</td>
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<td>HRC</td>
<td>Human Rights Council</td>
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<td>HRMMU</td>
<td>Human Rights Monitoring Mission in Ukraine</td>
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<tr>
<td>IAC</td>
<td>International Armed Conflict</td>
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<td>IBS</td>
<td>International Bank of Settlements</td>
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<td>ICC</td>
<td>International Criminal Court</td>
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<tr>
<td>ICCPR</td>
<td>International Convention on Civil and Political Rights</td>
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<tr>
<td>ICESCR</td>
<td>International Convention on Economic, Social and Cultural Rights</td>
</tr>
<tr>
<td>ICJ</td>
<td>International Court of Justice</td>
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<tr>
<td>ICL</td>
<td>International Criminal Law</td>
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<tr>
<td>ICRC</td>
<td>International Committee of the Red Cross</td>
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<td>ICTY</td>
<td>International Criminal Tribunal for the former Yugoslavia</td>
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<td>IHL</td>
<td>International Humanitarian Law</td>
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<td>IHRL</td>
<td>International Human Rights Law</td>
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<tr>
<td>IPHR</td>
<td>International Partnership for Human Rights</td>
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<tr>
<td>JIT</td>
<td>Joint Investigative Team</td>
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<tr>
<td>KHRPG</td>
<td>Kharkiv Human Rights Protection Group</td>
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<tr>
<td>LPR</td>
<td>Luhansk People’s Republic</td>
</tr>
<tr>
<td>MFA</td>
<td>Ministry of Foreign Affairs</td>
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<tr>
<td>MIA</td>
<td>Ministry of Internal Affairs</td>
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<tr>
<td>MGB</td>
<td>Ministry of State Security</td>
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<tr>
<td>MLRS</td>
<td>Multiple Launch Rocket System</td>
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<td>MoJ</td>
<td>Ministry of Justice</td>
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<tr>
<td>NAF</td>
<td>United Armed Forces of Novorossiya</td>
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## Table of Abbreviations

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Full Form</th>
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<tbody>
<tr>
<td>NATO</td>
<td>North Atlantic Treaty Organisation</td>
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<tr>
<td>NGU</td>
<td>National Guard of Ukraine</td>
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<tr>
<td>NIAC</td>
<td>Non-International Armed Conflict</td>
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<tr>
<td>OHCHR</td>
<td>Office of the High Commissioner for Human Rights</td>
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<tr>
<td>OPG</td>
<td>Office of the Prosecutor General (Ukraine)</td>
</tr>
<tr>
<td>OSCE</td>
<td>Organisation for Security and Co-operation in Europe</td>
</tr>
<tr>
<td>OTP</td>
<td>Office of the Prosecutor (of the ICC)</td>
</tr>
<tr>
<td>PACE</td>
<td>Parliamentary Assembly of the Council of Europe</td>
</tr>
<tr>
<td>PGO</td>
<td>Prosecutor General’s Office (D/LPR)</td>
</tr>
<tr>
<td>POW</td>
<td>Prisoner of War</td>
</tr>
<tr>
<td>R2P</td>
<td>Responsibility to Protect</td>
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<tr>
<td>RC</td>
<td>Reserve Command</td>
</tr>
<tr>
<td>RFAF</td>
<td>Russian Federation Armed Forces</td>
</tr>
<tr>
<td>SAM</td>
<td>Surface-to-Air Missiles</td>
</tr>
<tr>
<td>SIPRI</td>
<td>Stockholm International Peace Research Institute</td>
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<tr>
<td>SMM</td>
<td>OSCE Special Monitoring Mission to Ukraine</td>
</tr>
<tr>
<td>SNB</td>
<td>Southern Naval Base</td>
</tr>
<tr>
<td>SSU</td>
<td>State Security Service of Ukraine</td>
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<tr>
<td>TCG</td>
<td>Trilateral Contact Group</td>
</tr>
<tr>
<td>TPP</td>
<td>Thermal Power Plant</td>
</tr>
<tr>
<td>UAF</td>
<td>Ukrainian Armed Forces</td>
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<tr>
<td>UHHRU</td>
<td>Ukrainian Helsinki Human Rights Union</td>
</tr>
<tr>
<td>UK</td>
<td>United Kingdom</td>
</tr>
<tr>
<td>UN</td>
<td>United Nations</td>
</tr>
<tr>
<td>UNGA</td>
<td>United Nations General Assembly</td>
</tr>
<tr>
<td>UNSC</td>
<td>United Nations Security Council</td>
</tr>
<tr>
<td>US</td>
<td>United States</td>
</tr>
<tr>
<td>VDV</td>
<td>Russian Paratrooper</td>
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Table of Renamed Ukrainian Localities

In 2015, the Parliament of Ukraine adopted the law condemning communist and national-socialist totalitarian regimes and banning associated symbols.1 The Law provided for renaming the residential areas, including cities, towns, villages, settlements and districts, previously named after communist political leaders and otherwise connected with communism and national-socialism.2 Accordingly, the Parliament adopted decisions renaming residential areas, including in the Donetsk and Luhansk regions and in the Autonomous Republic of Crimea.3 In this Legal Opinion, all residential areas are referred to pursuant to these new names, even when the events described in the relevant section had occurred prior to the renaming. The table of old and new names is provided below.

Name as of 2014 | Renamed
--- | ---
Donetsk region
Artemivsk | Bakhmut
Chervonopartyzansk | Voznesenivka
Dzerzhynsk | Toretsk
Kirovske | Krestivka
Komsomolske | Kalmiuske
Krasnoarmiysk | Pokrovsk
Krasnyy Lyman | Lyman
Torez | Chystyakove
Yunokomunarivsk | Bunhe

Luhansk region
Artemivsk | Kypuche
Chervonopartyzansk | Voznesenivka
Kirovsk | Holubivka
Krasnodon | Sorokyne
Krasnyy Luch | Khrustalnyy
Pervomaisk | Travneve
Sverdlovsk | Dovzhansk
Stakhanov | Kadiivka

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1 Law of Ukraine No. 317-VIII 'On condemnation of communist and national-socialist (Nazi) totalitarian regimes and banning the propaganda of their symbols' (9 April 2015).
2 Law of Ukraine No. 317-VIII 'On condemnation of communist and national-socialist (Nazi) totalitarian regimes and banning the propaganda of their symbols' (9 April 2015), transitional provisions.
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Executive Summary
EXECUTIVE SUMMARY

NOTE TO READER:

The following legal opinion (‘Legal Opinion’) concerns the time period of December 2013 through 13 February 2022, the date upon which the opinion was completed. It does not cover Russia’s 24 February 2022 invasion into Ukraine and the events that have since ensued. As a result, the legal classification of Russia’s involvement in specific cities and towns of Ukraine as described in this Legal Opinion may have since changed. Nevertheless, the present Legal Opinion is the first to reveal the truth about the armed conflict and occupation in Crimea and Donbas during the period under examination. This is made possible through the aggregation of available information and robust analysis of the facts against the relevant international legal frameworks. The Legal Opinion is also eminently relevant to more recent events insofar as it serves to establish that Russia’s 24 February 2022 invasion into, and subsequent actions in, Ukraine have occurred in the context of an ongoing international armed conflict between Russia and Ukraine that began in 2014.

1. INTRODUCTION

1.1 TRUTH MATTERS

Ukraine’s best hope for protecting its sovereignty and territory rests on identifying the truth of Russia’s involvement in Ukraine. This is the golden thread that will inform and fortify (geo)political resistance inside and outside of Ukraine, including those concerned with transitional justice and peacebuilding processes that must, ultimately, ensure justice is done and seen to be done. Still, Ukraine continues to be hamstrung domestically and internationally by misinformation, disinformation and a deficit in understanding the most relevant and applicable international law to the situations in Crimea and Donbas.

1.2 WHAT IS THE TRUTH?

Information needed to establish the precise nature of Russia’s involvement in Ukraine, based on a careful assessment of the facts against the law, has been lacking since Russia’s Revolution of Dignity in 2014. Accordingly, vastly different versions of the events occurring in Ukraine since 2014 have emerged. In relation to Crimea, Russia is clearly recognised internationally as the Occupying Power. However, the details of how and when this occupation came to be, the legality of the use of force to effect it, and whether this occupation may have ended in accordance with recognised principles of international law, merit a more fulsome legal enquiry. As regards Donbas, the Government of Ukraine has asserted that Russia occupies this area through its control over separatist forces. However, internationally, only the Parliamentary Assembly of the Council of Europe has expressed this view. Others have referred to Donbas only as ‘areas not controlled by the Government’ and ‘territory controlled by armed groups’. Neither of these views has been scrutinised through a careful assessment of the facts as applied to the relevant international legal frameworks.

1.3 ESTABLISHING THE TRUTH

The present Legal Opinion is designed to reveal the truth about Russia’s role in Crimea and Donbas by collating and thoroughly analysing the available information, in order to classify the conflicts and the contours of the principles of international law, particularly IHL and international human rights law (‘IHRL’), applicable to them. Specifically, it aims to establish to a clear and convincing standard 1) whether and when an international armed conflict began in Crimea; 2) whether and when the Russian Federation occupied Crimea; 3) whether Russia’s intervention in Crimea breached the prohibition against the use of force; 4) whether Russia has validly asserted its sovereignty.

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For the full version, including underlying sources, please refer to corresponding sections in the full text Legal Opinion.
over Crimea; 5) the classification of the armed conflict in Donbas as either international, non-international, or both; 6) whether the Russian Federation occupies areas of Donbas, either directly or indirectly; and 7) the international law applicable to the situations in Crimea and Donbas.

The answers to these questions will enable Ukraine and the international community at large to guide their national policies towards Crimea and Donbas according to the most vital precepts of international law. In turn, this will enable enhanced protection for civilians, more robust political approaches to resolution of the conflict, improved opportunities for justice, stronger accountability mechanisms and responses and greater safeguarding against denial and recurrence.

2. METHODOLOGY

2.1 THE PROJECT

The present Legal Opinion is the product of the Global Rights Compliance (‘GRC’) project, “International Law and Defining Russia’s Involvement in Crimea and Donbas”, supported by the Swedish Ministry of Foreign Affairs, which lasted from May 2020 to 13 February 2022. Bringing together the best local and international expertise, the project was designed to provide an authoritative international legal opinion concerning Russia’s alleged involvement in Crimea and Donbas.

In order to ensure that the Legal Opinion was objective and comprehensive, GRC sought to review and analyse the broadest possible scope of facts available. Accordingly, GRC appealed for information from a variety of domestic and international governmental and non-governmental institutions and organisations.

2.2 ANALYSIS OF INFORMATION

GRC did not conduct an independent investigation into each fact relied upon. Instead, it relied on the investigations conducted by the institutions and organisations from which it collected information and employed the ‘clear and convincing’ evidence standard according to which, evidence is clear and convincing when it is highly and substantially more likely to be true than untrue. To this end, every source of information was evaluated for its reliability and credibility.

2.3 WRITING PROCESS

The findings in this Legal Opinion are based on information collected by GRC primarily between June 2020 and May 2021, and analysed by GRC in May to December 2021. The Legal Opinion does not purport to provide a comprehensive account of all factors contributing to the situations in Crimea and Donbas, a full account of the human rights and/or IHL violations that occurred, nor a detailed description of the hostilities. The aim of the Legal Opinion is specifically to examine the facts that allow for an assessment of the classification of conflict in Crimea and Donbas since 2014, and to provide an overview of the international law applicable to the situations in Crimea and Donbas.

2.4 TERMINOLOGY

In the Legal Opinion, legal terms are employed within the meaning of the relevant legal instruments cited in footnotes. Factual terms are used colloquially in most cases and are explained in footnotes. Generally, the terms ‘Donbas’, ‘parts of Donbas’ and ‘D/LPR’ are used interchangeably in reference to the parts of the Donetsk and Luhansk regions not

GRC has been working in Ukraine since 2015 and has produced numerous studies and reports relating to the investigation, prosecution and adjudication of conflict-related crimes, and Ukraine’s transitional justice processes more generally.
controlled by the Government of Ukraine. References to the ‘D/LPR’, their organs, policies, legislation and decisions, as well as references to the de facto authorities of Crimea, their policies, legislation and decisions are not indicative of any degree of recognition of these entities. Instead, throughout the Legal Opinion, these references serve to describe the legal and factual developments in Crimea and Donbas in a meaningful and comprehensive manner.

Similarly, the terms which describe the events in Crimea and Donbas since early 2014, such as ‘referendum’, ‘elections’, ‘appointment’ and others, even if used without quotation marks, are used merely to provide a clear accounting of events. The usage of these terms does not imply recognition of legal validity.

3. THE SITUATION IN CRIMEA

The most recent crisis in Ukraine began in November 2013 when then Ukrainian President, Victor Yanukovych, announced the suspension of trade and association talks with the EU and opted to revive economic ties with Russia instead. This triggered months of mass rallies in Kyiv in February 2014, culminating in the death of at least 130 persons, allegedly killed by Ukrainian security forces. Following this, Yanukovych fled to Russia, and Ukraine’s parliament voted to remove Yanukovych as president.

Shortly thereafter, Russian forces invaded the Autonomous Republic of Crimea (‘Crimea’), sealed it off from mainland Ukraine, blockaded the Ukrainian military units stationed inside and stormed and seized Crimean governmental institutions, military objectives and strategic civilian infrastructure. In a referendum on 16 March 2014, the people of Crimea purportedly voted in favour of Crimea’s secession from Ukraine. On 18 March 2014, Russia solidified its claim of sovereignty over Crimea with the “Treaty on Accession of the Republic of Crimea to the Russian Federation” (‘Treaty on Accession’). Ukraine and the international community, with the exception of a handful of States, reject Russia’s claim over the Peninsula, instead considering that Russia has unlawfully occupied and annexed Ukrainian territory.

The following sections summarise the analysis of the events leading up to and including Russia’s take-over of Crimea, from the perspective of IHL. They begin by determining the start of the IAC in Crimea, before moving on to analyse whether and when the situation in Crimea amounted to an occupation. The section also assesses the legal validity of Russia’s justifications for its use of force in, and claim of sovereignty over, Crimea.

3.1 INTERNATIONAL ARMED CONFLICT

3.1.1 OVERVIEW OF THE LAW AND ASSESSMENT OF THE FACTS

An IAC exists wherever there is a “resort to armed force between States”. The reason for the use of armed force is irrelevant, and an IAC may exist even if one of the Parties to the conflict denies its existence or does not or cannot respond militarily. Armed conflict presumes the involvement of the armed forces, but can also involve non-military State agencies, such as paramilitary forces or border guards where they are engaged in armed violence displaying the same characteristics as that involving State armed forces. An IAC does not require that the use of armed force between the States reach a certain level of intensity or duration. However, the use of armed force must create a belligerent relationship. Where a State consents to or requests the use of force on its territory by another State, an IAC will not exist as long as the intervention stays within the limits delineated by the consenting State and the consent is not withdrawn.

Russian forces were physically present in Crimea with the consent of the Government of Ukraine (‘GoU’) from the year 1997, pursuant to the bilateral agreement on the Status and Conditions of Stay of the Black Sea Fleet of the Russian

Prosecutor v Duško Tadić, IT-94-1-AR72, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction (Interlocutory Appeal), 2 October 1995 (‘Tadić Interlocutory Appeal’), para. 70.
Federation in the Territory of Ukraine (‘BSF Agreement’) of 28 May 1997. This Agreement allowed for Russian forces to be physically present in Crimea with the consent of the GoU, while obliging Russia to notify Ukraine of the number of personnel and weapons it will deploy in Crimea by 1 January of each year. Movements of the Russian Black Sea Fleet (‘BSF’) outside their places of deployment was only permitted with the permission of the competent authorities of Ukraine.

Pursuant to the BSF Agreement, Russia notified Ukraine on 30 December 2013 of its intended deployment of personnel to Crimea in 2014. Ukraine authorised this deployment of personnel. However, according to Ukrainian intelligence, Russia began bolstering its deployment in Crimea from late December 2013 into late January and early February 2014. Ukrainian intelligence appears to have considered at least some of this late January/early February contingency as unauthorised by the BSF Agreement. If indeed the presence of some Russian military personnel was unauthorised as of late January and early February 2014, and in the absence of any other information to suggest Ukraine consented to it, then this Russian military deployment into Ukrainian territory may have constituted a unilateral and hostile use of armed force by Russia against Ukraine, triggering an IAC. However, it was not possible to corroborate or disprove Ukraine’s position to a clear and convincing standard.

On the night of 22 to 23 February 2014, Russian President Vladimir Putin ordered the Russian forces to “start working on the return of the Crimea to [Russia]” and, on 23 February, a column of up to 400 men in Russian paratrooper uniforms left their bases and BSF vessels and moved into Sevastopol’s city square in armoured personnel carriers. Some have alleged that the Russian movement into the city square of Sevastopol—a civilian area—constituted a military formation outside the agreed places of Russian deployment under the BSF Agreement. However, the evidence does not clearly and convincingly exclude the possibility that this particular movement was undertaken by an emboldened unit acting ultra vires, nor does it suggest subsequent endorsement of the act by Russia. Furthermore, it was not possible to locate information that speaks to whether prior coordination by Russia with the then-competent Ukrainian authorities occurred in advance of the movement. As such, this incident was not considered further.

The situation changed on 27 February 2014, when Russia dramatically increased its military presence in Crimea and over 100 heavily armed men in military uniform (i.e., the ‘little green men’, later confirmed to be Russian Special Forces) stormed and seized the buildings of Crimea’s Parliament and Council of Ministers (i.e., Crimea’s executive branch) in a clear resort to force by Russia against Ukraine. Following the seizure of these buildings, Russian forces threatened those present in these buildings, took possession of their weapons and further established control “in order to ensure the adoption of favourable solutions for Russia.” Ukraine’s Foreign Ministry requested “all military units of the Russian Black Sea Fleet to refrain from moving beyond places on the Ukrainian territory where they are temporarily stationed”, indicating that the presence of Russia’s troops in Crimea had exceeded the terms of the BSF Agreement and lacked contemporaneous consent from the GoU at that point in time. Meanwhile, Russian forces, former Ukrainian Berkut officers, the CSD and Russian Cossacks, blocked major access points to the Crimean Peninsula, preventing the entry of Ukrainian Armed Forces (‘UAF’) from the mainland.

Russia’s military actions and deployment into Ukraine on 27 February 2014, in exceeding the scope agreed upon under the BSF Agreement, involved a clear and hostile use of armed force by Russian forces directed against Ukraine. It is of no consequence that Ukraine did not or could not mount an armed resistance to Russia’s actions, as the unilateral use of force by one State against another suffices to meet the conditions for an IAC, even if the latter does not or cannot respond by military means. As such, the situation in Crimea amounted to an IAC by at least this date. The

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4 Ukraine v. Russia (re Crimea), Application No. 20958/14, Decision of 16 December 2020, Grand Chamber, European Court of Human Rights (‘Ukraine v. Russia (re Crimea)’), paras 40–41.
5 Ukraine v. Russia (re Crimea), para. 44.
events that followed appear to have furthered Putin’s stated aim of overtaking and incorporating Crimea into the Russian Federation.

3.1.2 Continuation of the IAC in Crimea: Hostilities from 28 February until the general close on 26 March 2014

Russia’s unilateral resort to armed force against Ukraine continued and intensified in the period following 27 February 2014. Ukraine did not resist militarily, but its forces in Crimea did not surrender. Nevertheless, Russian forces successfully contained and isolated them.

On 28 February 2014, and in the weeks following, Russian forces, assisted by the CSD and/or Russian Cossacks, began to blockade and/or seize strategic Ukrainian military infrastructure, including airports, sea harbours and radio and TV stations as well as Ukrainian military bases, including by cutting their electricity and communication systems. On 1 March 2014, Russia’s Federation Council approved a request from President Putin to authorise further use of the Russian Federation Armed Forces (‘RFAF’) in Ukraine.

By 16 March 2014, Russia’s armed presence in Crimea had increased to 18,430 and had surrounded nearly all Ukrainian military objectives and civilian infrastructure on the Peninsula. As a result, the Ukrainian forces (long isolated and contained) were compelled to surrender and agree to a truce with Russia. Despite this, Russian forces continued their offensive against Ukrainian military and civilian positions.

By 26 March 2014, Russian forces, often along with members of the CSD and/or Russian Cossacks, had seized all Ukrainian military bases in Crimea, disarming Ukrainian military personnel in the process. This marked the conclusion of hostilities in Crimea. However, this did not bring an end to the application of the law of IAC on the Peninsula.

3.2 Belligerent Occupation: Is Crimea Occupied?

3.2.1 Overview of the Law and Assessment of the Facts

Territory is considered occupied when it is placed under the de facto authority of a hostile army. This requires the exercise of a high degree of control over territory, which jurisprudence has established to be ‘effective control’. Accordingly, territory becomes occupied when it comes under the effective control of hostile, foreign forces. This is the case even if the occupation meets no armed resistance.

Three cumulative conditions must be met to establish that a territory is under the effective control of a foreign State: 1) a State’s armed forces are physically present in a foreign territory without the consent of the effective local government; 2) the effective local government has been or can be rendered substantially or completely incapable of exerting its powers by virtue of this unconsented-to presence; and 3) the foreign forces are in a position to exercise authority over the territory concerned (or parts thereof) in lieu of the local government. In relation to Crimea, it appears that, by 27 February 2014, all three conditions had been met, rendering Russia the Occupying Power on the Peninsula.

3.2.1.1 Physical Presence of Russian Forces in Ukraine Without the Consent of the GoU

Foreign presence has been understood to mean that the intervening State must have ‘boots on the ground’. States do not need to field troops throughout the totality of the territory, but the intervening State must have the capacity to send troops within a reasonable time to make its authority felt.

In addition to physical presence, it must be established that the State on whose territory foreign forces have been deployed (‘the territorial State’) did not consent to this presence. A lack of military resistance does not equate to consent. Consent by the territorial State must be genuine (i.e., uncoerced), expressed (explicitly or tacitly) and must be valid, meaning the consent must have been granted by a legitimate authority authorised to act on behalf of the State, with legitimacy derived from external recognition. Acceptance by an intervening State of an illegitimate source
of authority will not legalise its military intervention in another State on the basis of consent. Even where consent is valid, any intervention must remain within the bounds of the consent.

With respect to the granting of consent in a manner that violates the domestic law of a State, the International Court of Justice (‘ICJ’) has determined that this will not, in and of itself, negate the expression of consent. However, an exception exists where the violation is “manifest and concerned a rule of [a State’s] internal law of fundamental importance.” A violation is considered manifest “if it would be objectively evident to any State conducting itself in the matter in accordance with normal practice and in good faith”. Rules governing the authority within a territorial State to conclude agreements with foreign powers are deemed provisions of internal law of fundamental importance.

### 3.2.1.1.1 Presence of Russian Forces in Crimea

Between 1997 and 2014, Russian troops were physically present on the Crimean Peninsula in a lawful manner with the consent of the GoU and within the agreed parameters of the BSF Agreement. Russia’s military presence in Crimea expanded in late January through late February 2014. By 18 March 2014, the number of Russian troops on the Peninsula had increased from 10,936 (i.e., the agreed number under the BSF Agreement) to 22,000 by 18 March 2014. The rapid growth of the Russian armed forces in Crimea continued into 2022. Indeed, Russia’s physical presence in Crimea remained consistent from at least January 2014 through to date. However, it must still be examined if and when the consent of the Ukrainian government to this presence in Crimea was exceeded or withdrawn.

### 3.2.1.1.2 Ukraine’s Lack of Consent to the Presence of Russian Forces in Crimea

As shown above in the context of conflict classification, Russia’s military presence in Crimea exceeded the bounds of Ukrainian consent by 27 February, when Ukraine’s Foreign Ministry requested “all military units of the Russian Black Sea Fleet to refrain from moving beyond places on the Ukrainian territory where they are temporarily stationed”, indicating that the presence of Russia’s troops in Crimea had exceeded the terms of the BSF Agreement and lacked contemporaneous consent from the GoU at this point in time.

However, Russia has sought to justify the presence of its armed forces in Crimea at least from 1 March 2014 and, thereby, to reject allegations of occupation, by asserting that Ukraine consented to its military presence. Russia’s argument is based on invitations issued by the ‘Prime Minister’ of Crimea, Sergey Aksyonov, and by Viktor Yanukovych, who had recently been removed from his position as President of Ukraine.

Turning first to Aksyonov’s invitation, the GOU considers that Aksyonov’s appointment as ‘Prime Minister’ of Crimea on 27 February 2014 was unconstitutional and therefore that he was not a legitimate leader of Crimea. Regardless of whether Aksyonov was the legitimate leader of the Ukrainian administrative territory of Crimea, he could not have validly consented to foreign military intervention on behalf of the State of Ukraine. As the leader of a sub-national government, he did not hold the legitimate authority to bind the State under the general principles of customary international law – an authority reserved for the highest available organ of the State. Therefore, Aksyonov’s invitation cannot be accepted as a valid expression of Ukraine’s consent to Russia’s military presence in Ukraine.

In relation to Yanukovych’s invitation, on 23 February 2014, the GoU argues that Yanukovych was no longer President at the time of the invitation. Indeed, the Ukrainian Parliament had removed Yanukovych from power and appointed Oleksandr Turchynov as interim President, following Yanukovych’s flight to Russia. The change of leadership was publicized, and Turchynov received international recognition as the President of Ukraine. Nevertheless, Russia has...
argued that Yanukovych was removed from power unconstitutionally and, thus, that he remained the legitimate president of Ukraine, able to bind the State, at the time of his invitation to Russia to intervene in Ukraine.

Grounds for removal of a Ukrainian President are limited by Ukraine’s Constitution to formal resignation, inability to function due to health, impeachment and death. Yanukovych did not die, formally resign, nor does any information suggest he was removed for health reasons that rendered him unable to perform his functions. Further, the Parliament did not follow the procedure for impeachment. Accordingly, the removal of Yanukovych was likely unconstitutional under the domestic laws of Ukraine.

Nevertheless, Yanukovych was – in fact and functionally – no longer in a position of legitimate authority over Ukraine by the time of his 1 March invitation to Russia, having been formally replaced as President by the Ukrainian Parliament. As noted above, Ukraine publicised the appointment of the new Ukrainian President and the removal of Yanukovych’s authority. This change of administration received international recognition, including by the United Nations. International law prescribes that it is this international recognition of the Turchynov government, and not Russia’s recognition of the Yanukovych government, that is determinative of representativeness. Thus, having been internationally recognised as deposed and replaced, Yanukovych lacked the legitimacy to represent and bind Ukraine. As such, his invitation cannot be considered a valid expression of Ukraine’s consent to Russia’s military presence in Crimea.

Even if it could be argued that Yanukovych remained the lawful President of Ukraine on 1 March 2014 by virtue of the (seeming) unconstitutionality of his removal, his consent would be invalidated as a manifest violation of a fundamentally important provision of Ukraine’s Constitution. Under the Ukrainian Constitution, the Ukrainian Parliament must approve a President’s invitation of foreign troops into Ukraine in order to give effect to it. As this provision governs the authority within the State to conclude agreements with foreign powers, international law dictates that it is a provision of fundamental importance. Moreover, Russia’s violation of this provision would be manifest because Ukraine publicised its removal of Yanukovych’s authority. Accordingly, the limitation on Yanukovych’s power to conclude an agreement to invite foreign armed forces into Ukrainian territory was ‘objectively evident’.

Finally, even if it were accepted that Yanukovych was authorised to give consent and did so effectively, Russia’s intervention did not remain within the limits of the consent given. Yanukovych’s invitation to intervene, which requested that Russia deploy its armed forces to “to protect the lives, freedom and health of the citizens of Ukraine” could in no way be interpreted as consenting to Russia’s seizure and assertion of sovereignty over Crimea.

Accordingly, both 1 March 2014 invitations to Russia fail as expressions of Ukrainian consent to the presence of the RFAF in Crimea. Ukraine’s lack of consent began on at least 27 February 2014 and remained consistent through to the present day. Based on the foregoing, it can be concluded that, from at least 27 February 2014 to the present, the RFAF have maintained a physical presence in Crimea without the consent of the GoU.

3.2.1.2 **Substantial or Complete Incapacity of the GoU to Exert its Powers in Crimea**

The second criterion of occupation requires that the local authorities who were governing the occupied territory at the time of the invasion have been or can be rendered substantially or completely incapable of exerting their powers due to the presence of the foreign forces. This also requires the forces of the territorial State to have surrendered, withdrawn, been defeated, or be “contained in isolated enclaves”.

The effective local government in Crimea at the time of the Russian invasion was Ukraine. Ukraine did not militarily resist Russia’s use of force against it in Crimea on 27 February 2014, but neither did its forces in Crimea surrender.

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11 President of Russia, ‘Vladimir Putin answered journalists’ questions on the situation in Ukraine’ (4 March 2014).
Nevertheless, Russian forces successfully contained and isolated forces loyal to Ukraine including by blockading them inside their military bases and by blocking access to the Peninsula by Ukrainian forces from the mainland. Meanwhile, Russian forces seized and blocked entry to the Crimean Parliament and Council of Ministers buildings, dismissed Ministers and replaced them with “pre-designated Russia loyalists”, disarmed local law enforcement agencies, and appointed Russian loyalist Sergey Aksyonov, as ‘Prime Minister’.

From the date of these events, the Ukrainian government’s capacity to exercise its power over Crimea was substantially or completely diminished. This may first be seen, for example, in Ukraine’s subsequent inability to carry out executive functions. For example, on 1 March 2014, the President of Ukraine issued a decree stating that Aksyonov’s appointment was unconstitutional and should be revoked. Ukraine was unable to implement this executive decision and Aksyonov remained ‘in power’ in Crimea. Shortly after, Ukraine’s loss of control over judicial functions in Crimea became evident. Ukraine’s loss of control over security functions in Crimea also became clear, with Ukrainian security services admitting on 4 March 2014 that they were unable to perform their duties in Crimea, leading them to appeal not to the Ukrainian government, but to the Russian Federation, to facilitate their activities. A week later, the Ukrainian government admitted that it was unable to guarantee the safety and security of flights to the Peninsula and closed the airspace over Crimea until further notice.

On 6 March 2014, it was clear that Ukraine had also lost the ability to exercise its authority over the Crimean legislature. On this day, deputies of the Russian-controlled Crimean Parliament held an extraordinary session, during which they adopted a resolution calling for Crimea to join the Russian Federation and to hold a referendum on the matter on 16 March 2014. On 15 March 2014, in response to the Crimean Parliament’s decision to hold a referendum on independence, Ukraine’s Parliament exercised its Constitutional power to dissolve the Crimean Parliament. However, the Ukrainian government was unable to enforce this resolution and the ‘referendum’ went ahead as planned.

The factual circumstances described above suggest that by 27 February 2014, the same day of the Russian invasion into Crimea, Ukraine had been rendered substantially, if not completely, incapable of exerting its sovereign powers over Crimea by virtue of the unconsented-to presence of Russian forces. Indeed, on 15 April 2014, Ukraine’s Parliament adopted a law that conceded the GOU could not exercise its powers over Crimea from late February.

3.2.1.3 The Position of Russia to Exercise Authority over Crimea

What distinguishes occupation from a mere invasion is the exercise of governmental authority over the foreign territory by the intervening State to the exclusion of the territorial State. It is not necessary that the intervening State “exercise full authority over the territory; instead, the mere capacity to exercise such authority would suffice.” As the following will demonstrate, Russia was in a position to exercise authority over Crimea from 27 February 2014 to the exclusion of Ukraine.

Firstly, in connection with its invasion into Crimea on 27 February, Russia took over key Ukrainian governmental positions and bodies, including Crimea’s Parliament and Council of Ministers, which placed it in a position to exercise authority over the Peninsula and to ensure the adoption of favourable solutions for Russia. Russia’s exercise of this authority is described above in respect of Ukraine’s loss of authority. The events that followed substantiated and furthered Russia’s de facto position of authority over Crimea.

In the days and weeks that followed the events of 27 February, the Russian military, supported by the CSD, Berkut and Russian Cossacks, exerted control over all Ukrainian military objectives and civilian infrastructure in Crimea. On 6

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13 V. Socor, ‘Russia Completes the Annexation of Crimea’ (Eurasia Daily Monitor, 19 March 2014).
March 2014, the Russian-controlled Crimean Parliament adopted a Russian-dictated decision to hold a referendum on the status of Crimea. Notwithstanding Ukraine’s objection, the referendum went ahead on 16 March 2014. The following day, the Russian-controlled Crimean Parliament declared Crimea’s independence from Ukraine and purported to accede to Russia. Russia’s de facto control over Crimea was formalised with the signing of the Treaty on Accession on 18 March. Following this, Russia granted Russian citizenship to all Crimean residents, extended compulsory military service to the Peninsula and undertook to integrate Crimea into its economic, financial, credit and legal systems by 1 January 2015. Accordingly, Russia established its own prosecutor’s office and court system in Crimea on 25 March and 11 June 2014, respectively; completely incorporated Crimea into its postal and social security systems by 31 March; extended the Russian penitentiary system to Crimea on 1 April; fully incorporated Crimea into its banking system by 21 April; replaced Ukraine’s criminal legislation with its own by early May 2014; and implemented the use of the Russian ruble as the sole currency by 1 June.

Taken together, these events and the ease with which they occurred, suggest that Russia was already in a position to exert its authority in Crimea by 27 February 2014, to the exclusion of Ukraine. From this date onwards, Russia continued to extend its authority by establishing governmental institutions and exercising governmental functions. Thus, the third criterion is met.

3.2.2 Conclusion on the Occupation of Crimea

Russia’s military presence in Crimea exceeded the bounds of Ukrainian consent by at least 27 February 2014. The number of Russian troops present in Crimea continued to expand after, and Ukraine’s withholding of consent to this presence remained firm. Therefore, the first criterion of effective control was satisfied. Additionally, by 27 February 2014, Ukraine had been rendered substantially, if not completely, incapable of exerting its powers over Crimea by virtue of the Russian forces’ unconsented-to presence on the Peninsula, in satisfaction of the second criterion of effective control. Furthermore, Russia was in a position to effectively exercise executive, legislative and judicial authority over Crimea by at least 27 February 2014, thus satisfying the third criterion of effective control. Consequently, having satisfied all indicia of effective control, Russia became the Occupying Power in Crimea by 27 February 2014 and continues to occupy Crimea to this day.

3.3 (IL)Legality of the Use of Force to Effect the Russian Occupation of Crimea

A state of occupation is determined solely on the basis of the facts on the ground, without regard to the purpose or the legality of the manner in which the occupation was established. This is because international law does not distinguish between lawful and unlawful occupants. Nevertheless, Russia has advanced various arguments in an attempt to justify its use of force to effect the occupation of Crimea. For the sake of comprehensiveness, this Legal Opinion will address these Russian justifications.

3.3.1 The Prohibition on the Use of Force

The threat or use of force by a State against the territorial integrity or political independence of another State is prohibited by Article 2(4) of the UN Charter and is considered part of customary international law, a jus cogens norm and an obligation erga omnes. An ‘armed attack’, which includes, inter alia, “action by regular armed forces across an international border”, will breach the prohibition on the use of force.15

As described above, from 27 February 2014, Russia’s armed forces crossed the international border between Russia and Ukraine and engaged in military operations on the Crimean Peninsula. This suggests that Russia’s intervention in Crimea violated the prohibition on the use of force. However, there are two established exceptions to the prohibition

– self-defence and UN Security Council authorisation. It must be examined whether Russia’s actions fall into these exceptions. Russia did not seek or receive Security Council authorisation for its actions in Crimea and, therefore, the second exception will not be considered.

Moreover, Russia has advanced additional arguments to justify its use of force in Crimea. These include classifying its intervention as a lawful exercise of self-defence, as lawfully protecting Russian nationals abroad, as lawfully exercising the responsibility to protect (the Russian-speaking population of Crimea), and as lawfully intervening for humanitarian purposes. Aside from self-defence, the acceptance of these arguments as justifications for the use of force under international law is dubious. Nevertheless, assessment of the validity of each in the Crimean context is discussed below.

3.3.1.1 **Self-defence**

Russia has argued that it was acting in self-defence when it intervened in Crimea. This argument is based on Russia’s claim of a threat to its military contingent in Ukraine.

The doctrine of self-defence permits States to use force in self-defence if faced with an ‘armed attack’. However, only the most grave forms of force will amount to such an attack. Also, States cannot use force “to protect perceived security interests”.16 Furthermore, a State’s response in self-defence must be ‘proportional’ to the armed attack and ‘necessary’ to respond to it, and the repulsion of the armed attack is the only permissible objective of self-defence (i.e., it cannot be punitive or retaliatory, or result in territorial acquisition).

There is no information to suggest that Russia was facing an ‘armed attack’, let alone one of sufficient gravity to justify a response in self-defence. Nevertheless, Russia might also be interpreted as arguing it was exercising ‘pre-emptive self-defence’.

Pre-emptive self-defence involves the anticipatory use of force by a State to avert an imminent armed attack (as compared to an ongoing armed attack, as formulated above). In other words, it must be necessary for the State to act before it is too late. This form of self-defence is highly controversial and State practice largely opposes it.

Even if pre-emptive action could be said to be permitted under international law, which is unlikely, there is no information to substantiate Russia’s claim of a threat to its forces, let alone an imminent threat. In fact, despite Russia’s arguments that it needed to protect Russian military forces and objects in Crimea in a case before the European Court of Human Rights, the Court found that “[Russia] 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.”17 In the absence of evidence of an armed attack against Russia, whether ongoing or imminent, no right of self-defence can have been triggered. Moreover, even if it could be argued that Russia faced an armed attack, self-defence is limited to the restoration of the *status quo ante* (i.e., the situation that existed before the armed attack). Territorial acquisition, as attempted by Russia in this context and discussed further below, would exceed the limits of permissibility. Thus, the principle of self-defence cannot be relied upon by Russia to legitimise its use of force in Crimea.

3.3.1.2 **Protection of Nationals Abroad**

Prior to publicly admitting its soldiers had been present in Crimea in February 2014, Russia sought to justify its intervention in Crimea in early March 2014 as a lawful means of protecting the Russian citizens living there. Russia’s

17 *Ukraine v. Russia (re Crimea)*, paras. 324 and 326.
reference to its need to protect Russian nationals in Crimea is indicative of the ‘protection of nationals abroad’ doctrine, which refers to military intervention in a third state to protect or rescue its threatened nationals.

The validity of Russia’s ‘protection of nationals’ justification for its involvement in Crimea is dubious. Even if it could be argued that this doctrine permits a State to lawfully use force on the territory of another State, the doctrine would not be applicable to the situation faced by Russian citizens in Crimea. None of the three accepted conditions for application of the doctrine were fulfilled in respect of the situation. First, despite Russia’s arguments to the contrary, there is no evidence that Russian nationals faced an ‘imminent threat of injury’. In fact, there is no evidence that Russian nationals in Crimea were under any threat of injury whatsoever. Second, there is no evidence of a failure or inability on the part of Ukraine to protect the Russian citizens of Crimea prior to Russia’s use of armed force on the Peninsula. Third, and finally, Russia’s actions were not strictly confined to rescue or protection. Thus, the intervention cannot be justified as a ‘protection of nationals’ operation in accordance with international law or on the facts.

3.3.1.3 Responsiblity to Protect

Russia also claimed the need to protect the Russian-speaking population of Crimea in justification of its use of force. Arguably, this line of reasoning could fall under the notion of responsibility to protect (‘R2P’). According to R2P, each State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity. However, despite Russia’s reference to the need to protect the Russian-speaking population of Crimea, the situation existing there in February and March 2014 did not meet the high threshold required for R2P to be triggered. This is because there is no information to suggest that Ukraine was manifestly failing to protect its Russian-speaking population in Crimea, or that genocide, war crimes, ethnic cleansing or crimes against humanity were being committed by Ukraine against the Russian-speaking population. Even if these necessary conditions had been met at the relevant time, Russia’s actions still would not have been permitted without the authorisation of the UN Security Council. Thus, Russia cannot rely on the R2P doctrine to legitimise its use of force in Crimea.

3.3.1.4 Humanitarian Intervention

Finally, Russia argued that its use of force in Crimea constituted a humanitarian intervention to prevent persecution of the Russian-speaking population or ethnic Russians in Crimea. While there is no universally accepted definition of humanitarian intervention, it has generally been defined, for example, as “a threat or use of armed force against another State that is motivated by humanitarian considerations.” This broad definition does not indicate that humanitarian intervention provides a legal justification for the use of force.

Even if a principle of humanitarian intervention could be considered to legitimise an otherwise unlawful use of force, the situation in Ukraine falls far short of the threshold required to justify its application. Russia’s use of force in Crimea did not meet any of the three cumulative conditions of humanitarian intervention: 1) there was no situation of extreme humanitarian distress on the Peninsula that required immediate and urgent relief; 2) had lives been at risk, there were practicable alternatives to the use of force, such as diplomatic negotiations, which Russia did not pursue; and 3) Russia’s use of force was not necessary and proportionate, or strictly limited in time and scope to its purported aim of humanitarian intervention.

3.3.2 Conclusion on the (Il)legality of the Use of Force

None of the arguments Russia has advanced in order to justify its use of force in Crimea have been established, either on the facts or in accordance with international law. Therefore, they cannot serve as any valid legal justification for Russia’s unlawful use of force in Crimea.

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18 C. Waldock, ‘The regulation of the use of force by individual states in international law’ (1951) 81 Recueil des Cours 451, p. 467.
3.4 **SOVEREIGNTY OVER CRIMEA**

As detailed above, having met the three criteria of effective control, Russia became the Occupying Power in Ukraine’s Crimean Peninsula on 27 February 2014. The basic premise of the law of belligerent occupation is that occupation is temporary in nature and does not confer sovereignty to the Occupying Power. Indeed, international law considers the assertion of sovereignty by an Occupying Power over occupied territory to constitute an unlawful annexation. Nevertheless, on 18 March 2014, Russia along with the ‘Republic of Crimea’ and the City of Sevastopol signed a Treaty on Accession, purporting to transfer sovereignty over Crimea from Ukraine to Russia.

Russia’s claim of sovereignty over the territory it occupies is at odds with the fundamental tenets of the law of belligerent occupation and the prohibition on annexation. However, Russia has rejected this qualification. It has sought to justify its intervention and its assertion of sovereignty over Crimea in ways alleged to align with the framework of international law, including most notably that it was supporting the ‘Crimean peoples’ right of self-determination, specifically their right to secede from Ukraine and accede to Russia, or that it accepted the accession of a purportedly ‘independent State’ that effected its ‘lawful secession’ through a declaration of independence. The following will discuss whether international law indeed supports these claims.

3.4.1 **THE PROHIBITION OF ANNEXATION IN LAW**

While occupation is a temporary, *de facto* situation, which does not deprive the occupied State of its sovereignty, annexation involves a State’s unilateral assertion of sovereignty over the territory of another State (*i.e.*, the forcible acquisition of territory). Annexation is prohibited under international law and this prohibition forms part of customary international law, is recognised as a *jus cogens* norm and is an obligation *erga omnes*. As such, any territorial acquisition effected through the use of force has no legal validity and is considered null and void.

As will be demonstrated, despite Russia’s arguments to the contrary, neither self-determination nor declarations of independence negate the finding that it unlawfully annexed Crimea.

3.4.2 **SELF-DETERMINATION**

Russia has sought to legitimise its assertion of sovereignty over Crimea by arguing that the Crimean population as a whole, or the Russian-speaking population of Crimea, lawfully exercised a right to self-determination by unilaterally seceding from Ukraine and then immediately acceding to the Russian Federation. Despite the fact that “international law disfavours the fragmentation of existing States and seeks to protect their boundaries from foreign aggression and intervention”, a general international law does not contain an explicit denial of a right to unilateral secession. However, only exceptional circumstances may give rise to the right of a people to unilaterally secede from a State in the exercise of the right to self-determination.

Self-determination is the right of all peoples to freely determine their political status and pursue their economic, social and cultural development. This right is granted only to ‘peoples’, the characteristics of whom, while not strictly defined under international law, include: a defined territory, common language, common culture and ethnic ties. The right is normally fulfilled through internal self-determination, which involves “a people’s pursuit of its political, economic, social and cultural development within the framework of an existing state.” Accordingly, all ‘peoples’ are entitled to, *inter alia*, meaningful political participation, minority rights or structures enabling autonomy.

Some peoples may also have a right to external self-determination, which can be exercised through unilateral secession. However, as this right threatens the territorial integrity of States, it “arises in only the most extreme of

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20 For the full version, including underlying sources, see Section 3.4 Sovereignty over Crimea.
cases and, even then, under carefully defined circumstances.”23 In all cases where a right to external self-determination arises, the situation must be such that “the ability of a people to exercise its right to self-determination internally is somehow being totally frustrated.”24 Circumstances in which a right to external self-determination is clearly recognised include those where a people is under colonial rule, or subject to alien subjugation, domination or exploitation outside the colonial context. Beyond these two circumstances, it has been asserted that a right of external self-determination may arise, as a last resort, when human rights are seriously and persistently violated and the oppression of a people is extreme. This third situation is known as ‘remedial secession’.

However, even where these exceptional circumstances exist, a right of remedial secession is not automatic, it is a right of ‘last resort’, which means that “[a]ll possible remedies for the realization of internal self-determination must [first] be exhausted”.25 In addition, some international scholars argue that there is no right to remedial secession, even when faced with mass human rights violations. This is reinforced by the fact that evidence of the acceptance of any right to remedial secession in jurisprudence is lacking. Further, the dearth of State practice precludes the theory that remedial secession could have crystallised into a norm of customary international law.

3.4.2.1 Assessment
In line with the above, the validity of Russia’s argument that the purported secession of Crimea from Ukraine was a lawful exercise of self-determination is dependent upon the satisfaction of three cumulative conditions: 1) that the relevant population of Crimea may be classified as ‘a people’; 2) that this people’s right to internal self-determination was completely frustrated; and 3) that a right of external self-determination, through which secession may occur, arose and was exercised. As what constitutes ‘a people’ under international law has not been defined in jurisprudence, and neither of the latter two necessary conditions are in any case met, the present Legal Opinion will not venture into whether the population of Crimea qualifies as a ‘people’, whether in whole or in part. Instead, solely for the purpose of illuminating the remaining deficits to any claim of a right of a Crimean ‘people’ to external self-determination through secession, the following analysis accepts Russia’s premise that the Crimean population as a whole and/or the Russian-speaking population of Crimea qualify as a ‘people’. As a ‘people’, the relevant population would be entitled to a right of internal self-determination and, arguably, under certain conditions, to a right of external self-determination through secession.

3.4.2.1.1 Frustration of Internal Self-Determination
In justification of Russia’s intervention in Crimea, President Putin appeared to suggest that the right of the Crimean and Russian-speaking ‘peoples’ to internal self-determination had been frustrated by Ukraine. Frustration of the right may be established if either people were unable to pursue their civil, political, economic, social and cultural development within the framework of Ukraine.

It has not been possible to ascertain any evidence to support the claim of frustration of internal self-determination. To the contrary, the evidence clearly shows that at the time of the Russian invasion into Crimea, the right of the Crimean and Russian-speaking ‘peoples’ to self-determination was not frustrated. The right of the whole Crimean ‘people’, including the Russian-speaking ‘people’, to pursue civil, political, economic, social and cultural development objectives, and thus to exercise their right to internal self-determination within the framework of Ukraine, was enshrined in Ukraine’s Constitution, as was Crimea’s autonomous status within Ukraine. Ukraine’s respect for the right of internal self-determination of these ‘peoples’ was borne out in policy and practice. Perhaps most illustrative is the high level of political participation enjoyed by the Crimean and Russian-speaking ‘peoples’.

23 Reference re Secession of Quebec, para. 126.
24 Reference re Secession of Quebec, para. 135.
25 Kosovo Advisory Opinion, Separate Opinion of Judge Yusuf, para. 16.
3.4.2.1.2 Trigger and Exercise of a Right to External Self-Determination

As the right of the Crimean people to the exercise of internal self-determination was not completely frustrated, any right to external self-determination, and unilateral secession there through, could not have arisen. This is compounded by the fact that the situation of the Crimean and Russian-speaking ‘peoples’ did not meet any of the other requirements for the triggering of a right to external self-determination, as described below.

A right to external self-determination could be triggered in the situation of a ‘colonial peoples’ or one subject to alien subjugation, domination or exploitation outside the colonial context where the right to internal self-determination has been completely frustrated and all avenues for realising the right have been exhausted. There is no indication that the Crimean or Russian-speaking ‘peoples’ could be classified as a ‘colonial people’ and, therefore, this avenue will not be addressed further. Russia does appear to have implied some form of alien subjugation, domination or exploitation by Ukraine over Crimea, and thus the Crimean ‘people’. However, this argument is easily refuted by clear and convincing evidence that Ukraine’s sovereignty over Crimea was universally accepted by the international community, including Russia. Finally, a right to external self-determination, arguably, could also be triggered by serious and persistent violations of human rights in the event that the right to internal self-determination has been completely frustrated and all avenues for realising the right have been exhausted (i.e., ‘remedial secession’). Russia appears to have invoked this latter argument, claiming that its intervention in Crimea was justified because Ukraine had been swept by severe human rights abuses with racist overtones, including a coup, backed by the authorities in Kiev.

It has not been possible to locate evidence in support of Russian claims of serious human rights violations against, among others, the Crimean or Russian-speaking ‘peoples’ of Crimea. Conversely, authoritative reporting by regional and international organisations immediately prior to, and during, Russia’s intervention in Crimea refuted the veracity of these claims, as did the ECtHR in Ukraine v. Russia (re Crimea). Accordingly, there is an absence of clear and convincing evidence to suggest that the Crimean and/or Russian-speaking ‘peoples’ of Crimea experienced human rights abuses rising to the requisite level of severity to justify the exercise of ‘remedial secession’ prior to the purported accession of Crimea to Russia on 18 March 2014. Moreover, even if there had been persistent gross human rights violations against one or both of these ‘peoples’, remedial secession, if available at all, is a right of last resort and all remedies, including negotiations with stakeholders, were not exhausted prior to Russia’s intervention.

In conclusion, even assuming that the Crimean population and Russian-speaking population of Crimea could be considered ‘peoples’ (distinct from the Ukrainian people), there is no information to suggest a complete frustration of their exercise of this right. Thus, neither people were entitled to any right of external self-determination, or to the exercise of such a right through unilateral secession. The lack of persistent and grave human rights violations further supports the nonexistence of a right of these ‘peoples’ to external self-determination. Furthermore, even if one or both of these ‘peoples’ had been entitled to such a right, they did not exhaust all remedies as a precondition to exercising it through secession. Accordingly, any claim of a right to secession on this basis is invalid. Thus, Russia’s attempt to justify its assertion of sovereignty over the Peninsula on the basis of supporting a (non-existent) right of the Crimean people to external self-determination, had no effect on the illegality of its action under international law.

3.4.3 Declaration of Independence

An additional argument made by Russia in support of the legality of its assertion of sovereignty over Crimea was that Crimea successfully attained independence from Ukraine through a lawful “voluntary and free” referendum,26 before taking a lawful, sovereign decision to join the Russian Federation. In line with this argument, Russia lawfully accepted into the Federation the accession of a wholly independent territory.

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The right to unilateral secession pursuant to a declaration of independence may be granted under the laws of the State from whom secession is sought. Thus, it must be determined whether Crimea lawfully seceded from Ukraine in accordance with Ukraine’s domestic law.

The Constitution of Ukraine provides for the indivisibility of the country and does not allow the holding of any local referendum on territorial changes, including secession from Ukraine. Accordingly, on 14 March 2014, the Constitutional Court of Ukraine determined that the decision to hold a referendum was unconstitutional. On this basis, the Ukrainian Parliament terminated the powers of the Crimean Parliament on 15 March, which had the effect of removing any purported authority of the Crimean Parliament to hold a local referendum. Nevertheless, in the absence of any authority to do so, the Crimean Parliament went forward with the referendum the following day.

The international community (e.g., the UNGA and the EU) regarded the Crimean referendum as unlawful and illegitimate on the basis that it breached Ukraine’s Constitution and international law, as well as regional and international election standards. For example, the referendum did not comport with the requirement of international and regional standards that voting be free, “without coercion or intimidation of the voters”\(^{27}\). The Venice Commission concluded, on the basis of, *inter alia*, the massive public presence of (para)military forces, concerns with respect to the freedom of expression and the short period of time between the decision to hold the referendum and the referendum itself, that “circumstances in Crimea did not allow for a referendum to be held in line with European democratic standards”.\(^{28}\) In addition, no independent international observers monitored the referendum, in defiance of international legal standards that require their presence during polling and tabulation of votes.

Crimea’s unilateral declaration of independence also failed as a matter of international law because it was directly facilitated by Russia’s unlawful use of force against Ukraine in Crimea in February and March 2014. According to the ICJ, the connection of a secession with an unlawful use of force may be sufficient to render declarations of independence unlawful. As shown above, Russia’s intervention in Ukraine amounted to an unlawful use of force and it is in connection with this unlawful use of force that the referendum and unilateral declaration of independence were effected.

In light of the above, the declaration could not form a legitimate basis for Crimea to unilaterally secede from Ukraine.

3.4.4 CONCLUSION ON SOVEREIGNTY OVER CRIMEA

As has been demonstrated, Russia’s arguments in support of a valid assertion of sovereignty over Crimea could not be established in law or on the facts. None of the alleged ‘peoples’ on the Peninsula had a right of self-determination that could be exercised through unilateral secession. Furthermore, Russia’s claim that it accepted the accession of an ‘independent State’ that seceded on the basis of a lawful declaration of independence is not satisfied due to the declaration’s breach of Ukrainian domestic law, regional and international standards and international law. Thus, neither argument can preclude the finding that Russia unlawfully annexed Crimea, or negate the fact that Crimea remains occupied.

3.5 APPLICABLE LAW IN CRIMEA

The primary international legal frameworks that regulate situations of occupation are IHL and IHRL. IHL regulates the obligations of warring parties during armed conflicts including situations of occupation, while IHRL regulates the responsibility of States towards persons under their jurisdiction in times of peace. It is accepted that IHL and IHRL

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\(^{27}\) Y. Beigbeder, ‘*Referendum*’ in *Max Planck Encyclopedia of International Law* (OUP 2011), para. 46.

apply concurrently during armed conflict and occupation. The following sections will provide an overview of the IHL and IHRL obligations that attach to Russia and Ukraine in relation to Russia’s occupation of Crimea.

### 3.5.1 OBLIGATIONS OF UKRAINE AND RUSSIA UNDER INTERNATIONAL HUMANITARIAN LAW

Russia occupied Crimea, alongside initiating an IAC between Russia and Ukraine, on 27 February 2014. Accordingly, the law of occupation is, and has been, applicable to the situation in Crimea since this date. The law of occupation is primarily enshrined in the Hague Regulations; the Fourth Geneva Convention; provisions of AP I; and customary IHL. These rules of IHL remain applicable until the end of occupation.

#### 3.5.1.1 INTERNATIONAL OBLIGATIONS OF RUSSIA UNDER IHL AS THE OCCUPYING POWER IN CRIMEA

The law of occupation generally defines the international obligations under IHL to which Russia must adhere in the context of its occupation of Crimea. However, since obligations contained in the Fourth Geneva Convention apply only in respect of ‘protected persons’, it is necessary to discuss the applicability of this status to persons in Crimea, particularly in light of a policy of Russian ‘naturalisation’ of the population of Crimea through ‘passportisation’.

‘Protected persons’ are, inter alia, civilians who find themselves in the hands of the Occupying Power or a Party to a conflict of which they are not a national. A belligerent State, or Occupying Power, must uphold certain standards of treatment towards protected persons.

After occupying Crimea, Russia directly or indirectly imposed Russian nationality on Ukrainian nationals in Crimea. Accordingly, all permanent residents of Crimea were recognised as Russian citizens unless they opted-out of the naturalisation process.

According to the Fourth Geneva Convention, protected persons may not renounce their rights under the Convention. This provision aims to ensure that State Parties cannot relieve themselves of their obligations towards protected persons. Any attempt to pressure or coerce protected persons to renounce their rights would be legally ineffectual. Furthermore, the Fourth Geneva Convention stipulates that protected persons in occupied territory shall not be deprived of the Convention’s benefits by any change to the occupied territory’s government, by any agreement between the authorities of the occupied territories and the Occupying Power, or by any annexation of the occupied territory. Lastly, the Hague Regulations protect inhabitants of an occupied territory from being compelled to swear allegiance to the hostile Power.

The procedure provided by Russia to opt-out of automatic naturalisation did not effectively ensure that Ukrainian nationals could freely retain their Ukrainian citizenship. Those who wished to opt-out of automatic Russian citizenship faced a complicated process, fraught with procedural constraints, during which they reportedly faced harassment and intimidation. Ukrainian citizens who did opt-out were also allegedly subject to harassment and intimidation and potentially deprived of employment, fundamental human rights access to social services, and/or exposed to the risk of deportation.

It is clear that the ‘naturalisation’ policy imposed on Crimeans by Russia contravened IHL (i.e., the prohibition against compelling protected persons to swear allegiance to the hostile power). Thus, the imposition of Russian citizenship on protected persons in Crimea has done nothing to alter their status as protected persons, or Russia’s obligations towards them under the law of occupation.

Some of the key obligations incumbent on an Occupying Power under the law of occupation include, inter alia:

- Taking measures to restore and ensure public order, while respecting the laws in force in the occupied territory.
- Ensuring the provision of food and medical care to, and sufficient standards of hygiene and public health for, the civilian population subject to its control, including by consenting to humanitarian relief operations if needed.
• Prohibition of forcible deportations of protected persons from occupied territory.
• Prohibition of enlisting the occupied civilian population of an occupied territory into the Occupying Power’s armed forces.
• Prohibition of confiscation of private property.
• Administration of immovable public property in accordance with the law of usufruct.

Russia, as the Occupying Power in Crimea, is bound to comply with these and other IHL rules in respect of its occupation of Crimea.

### 3.5.1.2 INTERNATIONAL OBLIGATIONS OF UKRAINE UNDER IHL

Russia’s status as an Occupying Power attracts responsibilities specific to Russia. However, this does not negate Ukraine’s general responsibilities under IHL. Ukraine, like Russia, remains obligated by IHL in the context of any hostilities during the occupation, by virtue of the law applicable to IAC. Generally speaking, this means that Ukraine must comply with norms that regulate the means and methods of warfare in these hostilities, such as the principle of distinction, the verification of military targets, control over the execution of attack and the humane treatment of protected persons. Ukraine must also comply with norms that ensure humanitarian relief, such as the obligation to allow and facilitate rapid and unimpeded passage of humanitarian relief for civilians in need, which is impartial in character and conducted without any adverse distinction, and to ensure the freedom of movement of authorised humanitarian relief personnel essential to the exercise of their functions.

### 3.5.2 OBLIGATIONS OF UKRAINE AND RUSSIA UNDER INTERNATIONAL HUMAN RIGHTS LAW

IHRL, which is also applicable in situations of occupation, protects individuals from abusive or arbitrary exercise of power by State authorities. States have three types of human rights obligations: 1) to respect the human rights of those within their jurisdiction; 2) to protect by preventing others from breaching IHRL; and 3) to fulfil by ensuring that each person within their jurisdiction can obtain their rights under IHRL. As IHRL obligations apply only where a State has jurisdiction, it must be established that these obligations apply extraterritorially for Russia to have IHRL obligations in Crimea, which is outside of Russia’s territory.

#### 3.5.2.1 RUSSIA’S OBLIGATIONS UNDER IHRL: EXTRATERRITORIAL APPLICATION

The ICJ has confirmed that IHRL instruments are applicable extraterritorially, particularly in occupied territories. Additionally, the ECtHR and international human rights treaty bodies have recognised the extraterritorial application of human rights based, inter alia, on the ‘effective control’ criterion, which means that a State’s IHRL obligations apply to “anyone within the power or effective control of that State Party, even if not situated within the territory of the State Party”, including occupied territory. As demonstrated above, Russia has exercised effective control over the territory of Crimea from 27 February 2014 to present day. Consequently, IHRL is extraterritorially applicable to Russia in respect of Crimea. Therefore, Russia is obligated to ensure that the human rights of those residing within the territories it occupies are respected, protected and fulfilled.

#### 3.5.2.1.1 THE SCOPE OF RUSSIA’S HUMAN RIGHTS OBLIGATIONS IN OCCUPIED CRIMEA

As the Occupying Power, Russia is bound by its IHRL obligations set out in conventional and customary international law, both of which apply extraterritorially in the occupied territories. Russia has not only ratified the major IHRL treaties, including, inter alia, the ECHR and the International Covenant on Civil and Political Rights (‘ICCPR’), but is also bound by obligations derived from customary international law, such as the right to life and the prohibition of torture, regardless of its conventional obligations.

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29 HRC, General Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, UN Doc CCPR/C/21/Rev.1/Add.13 (26 May 2004), para. 10
The IHRL obligations of the occupied State (i.e., Ukraine) are also relevant to defining the scope of the Occupying Power’s (i.e., Russia’s) obligations. According to the Hague Regulations, the Occupying Power must respect, unless absolutely prevented, the laws in force in the occupied territory. As IHRL forms part of the legislation in force in occupied territory, a dynamic interpretation of IHL implies that the Occupying Power is required to respect and ensure respect for the full spectrum of IHRL in its administration of occupied territory.

Accordingly, Russia, as the Occupying Power, is bound by the human rights obligations enshrined in: 1) the IHRL treaties it has ratified/acceded to, which apply extraterritorially in the areas under its effective control; and 2) IHRL treaties that Ukraine has ratified/acceded to pursuant to Russia’s IHL obligation to respect the laws in force in occupied territory; and 3) customary human rights laws.

3.5.2.1.2 Ukraine’s Continued Obligations Under IHRL
As with Russia, Ukraine has ratified most of the major IHRL treaties, including, inter alia, the ECHR and the ICCPR, and is also bound by customary international law. In addition, Ukraine has also ratified the Optional Protocol to, for example, the ICCPR; protocols which allow the respective monitoring bodies to examine communications received from victims of alleged human rights violations.

Ukraine is not fully relieved of its IHRL obligations in Crimea and Donbas due to its lack of effective control over the respective territories. As the ousted sovereign, Ukraine must still undertake all measures available to it to ensure that its population enjoys human rights to the maximum extent possible. Thus, Ukraine must undertake the measures in its power, including diplomatic, economic and judicial measures, to secure the human rights of the population of its temporarily occupied territory. An assessment of the sufficiency of these measures is approached on a case-by-case basis, as account must be taken of the prevailing circumstances at the time. An exception may arise in the case of valid derogation from human rights obligations, as will be explored below.

3.5.2.1.2.1 Derogations
Under special circumstances, States may be permitted to derogate from certain obligations contained in human rights treaties. In relation to Crimea, on 5 June 2015, Ukraine officially notified the UN Secretary-General and the Secretary General of the Council of Europe of its decision to derogate from all its obligations under the ICCPR and ECHR.

Both the ICCPR and ECHR allow for derogation in circumstances that “threaten the life of the nation”. However, certain rights are non-derogable. Ukraine’s attempt to derogate from the entire body of rights enshrined by the ICCPR and ECHR, including the non-derogable rights, therefore, cannot be considered valid. Furthermore, as explained above, even in relation to derogable rights, Ukraine must take all measures available to it to ensure that the population of Crimea enjoy human rights to the maximum extent possible.

3.5.3 Reported IHL and IHRL Violations in Crimea
A detailed assessment of the IHL and IHRL obligations alleged to have been violated by Russia and/or Ukraine in Crimea since 2014 is beyond the scope of the present Legal Opinion. Nevertheless, this section will endeavour to provide a broad overview of conduct in potential violation of Russia’s obligations under IHL and IHRL on the basis of authoritative reporting by organisations such as the UN Office of the High Commissioner for Human Rights (‘OHCHR’), OSCE, Human Rights Watch and the ICC.

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30 International Covenant on Civil and Political Rights (adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 entry into force 23 March 1976, in accordance with Article 49) 999 UNTS 171 (‘ICCPR’), Article 4; Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended), ETS No.005, Opened for signature 4 November 1950 entry into force 3 September 1953 (‘ECHR’), Article 15
Allegations of IHL and IHRL violations have been rife since the beginning of Russia’s occupation of Crimea in February 2014. For eight years, the occupying authorities are alleged to have been intimidating and harassing those who oppose Russia’s occupation and its associated regime in Crimea. Pro-Ukrainian activists, journalists and NGO workers are alleged to have become targets of Russian IHL and IHRL violations, such as ill-treatment, unlawful detention, enforced disappearances, violations of fair trial rights, and other discriminatory practices. Crimean Tatars, known for their opposition to the Russian occupation, have been specifically targeted with, inter alia, the abolishment of the Mejlis, their central self-governing institution, and restrictions on Crimean Tatar language and culture.

The Russian authorities are also accused of relying on vaguely worded and overly broad Russian anti-extremism laws to initiate politically motivated or otherwise fabricated criminal cases against those who opposed the occupation publicly. At least 109 Ukrainian citizens detained in Crimea or Russia are considered political prisoners who are often denied access to health care and kept under inhumane conditions. Furthermore, ill-treatment is alleged to have been used by Russian law enforcement as an instrument to obtain false confessions or to punish suspects in detention, and to pressure the population of Crimea into cooperation with the occupying authorities. Moreover, the Russian authorities have forced Russian citizenship upon the inhabitants of the occupied Crimea as a whole and intimidated or harassed those who wished to opt-out.

Russia has also purportedly implemented policies contrary to its IHL obligations as Occupying Power. For example, authoritative reporting indicates that Russia has engaged in illegal population transfers by deporting Crimean residents from the Peninsula and by facilitating the transfer of its own population into the Peninsula.

Authoritative reporting also suggests Ukraine may have breached its IHRL obligations with regard to those located in Crimea by, for example, imposing a strenuous and costly procedure on Crimean residents wishing to obtain valid Ukrainian death or birth certificates or passports.

If proven, these and other forms of conduct could potentially trigger the international responsibility of Russia and/or Ukraine for wrongful acts under the law of State responsibility. This determination would rest on the attributability of the relevant conduct to the State. In addition to the conduct of a State’s legislative, executive and judicial organs, among others, the acts or omissions of a State’s armed forces, including individual soldiers and officers, are considered acts of that State for the purposes of attribution.

4. THE SITUATION IN DONBAS

The ‘Euromaidan’ protests, which took place in Ukraine from November 2013 to February 2014, were initially provoked by the refusal of Ukraine’s then President Viktor Yanukovych to sign an Association Agreement with the EU. After deadly clashes took place between security forces and protesters from 18 to 20 February 2014, Yanukovych fled Ukraine for Russia and a new interim Ukrainian government was established.

Shortly after Euromaidan and the commencement of Russia’s occupation of Crimea, the situation in eastern Ukraine began to destabilise. In the Donetsk and Luhansk regions (part of Ukraine’s Donbas region), pro-Russian groups began to protest the so-called ‘coup’ in Kyiv and declared their desire for closer ties with Russia. In April 2014, hostilities broke out between newly formed armed groups (allegedly supported by Russia) and Ukrainian law enforcement agencies.

On 11 May 2014, the armed groups organised ‘referendums’ on the sovereignty of the Donetsk and Luhansk regions, which purportedly resulted in 89.07% and 96.20% of the population, respectively, voting “in favour” of independence.31 Despite these referendums’ breach of the Ukrainian Constitution and international law, the armed

31 M. Robinson and A. Prentice, ‘Rebels declare victory in East Ukraine vote on self-rule’ (Reuters, 11 May 2014).
groups declared that certain areas of Donetsk and Luhansk were to become the Donetsk People’s Republic (‘DPR’) and the Luhansk People’s Republic (‘LPR’), respectively (the ‘D/LPR’, collectively).

Throughout the spring and summer of 2014, hostilities between the D/LPR armed groups and the UAF continued and intensified. Large-scale hostilities erupted in late August 2014, and lasted until late February 2015, reportedly with the direct involvement of Russian regular troops on the side of the armed groups. Since then, hostilities have largely been confined to the contact line, which was established by the Minsk Agreements and divides the territory of Donbas between that under government-control and that under the control of the D/LPR.

The following sections will evaluate: 1) whether there existed a non-international armed conflict (‘NIAC’) during Euromaidan; 2) the classification of the armed conflict in eastern Ukraine, examining if, and when, a NIAC and/or an IAC came into existence; and 3) whether Russia is occupying parts of Donetsk and Luhansk through ‘occupation by proxy’.

4.1 CLASSIFICATION OF THE ARMED CONFLICT

The classification of the conflict in Ukraine is integral to a determination of the applicable law and the obligations of the parties to the conflict. A NIAC occurs where there is protracted armed conflict between governmental authorities and organised armed groups or between such groups within a State. On the other hand, an IAC exists whenever there is “resort to armed force between States”. This Section will consider whether a NIAC and/or an IAC exists in Donbas.

4.1.1 OVERVIEW OF THE LAW

The following sections will provide an overview of the law relevant to establishing the existence of a NIAC or an IAC.

4.1.1.1 NON-INTERNATIONAL ARMED CONFLICT (‘NIAC’)

NIACs are defined by the Rome Statute of the ICC as “armed conflicts that take place in the territory of a State where there is protracted armed conflict between governmental authorities and organised armed groups or between such groups.” Two elements must be satisfied in order to establish the existence of a NIAC: 1) the non-state armed group(s) involved in the conflict must be sufficiently organised; and 2) the hostilities must have reached a certain level of intensity.

The following indicia may assist in determining whether these groups qualify as organised armed groups: command structure; headquarters; military capacity (e.g., the ability to carry out operations and control territory); logistical capacity (e.g., supply chain for military equipment, ability to move troops around and recruit and train personnel); an internal disciplinary system and the ability to implement IHL; and the group’s ability to speak with one voice. While these criteria may not be fulfilled at the outset of an insurgency, it may develop over time.

In situations in which multiple non-state armed groups are fighting against the government, there may exist multiple NIACs occurring at once. In these situations, if certain criteria are met, the actions of all the non-state armed groups can be considered cumulatively when assessing whether the intensity requirement has been met.

The requirements of organisation and intensity distinguish NIACs from situations of internal disturbances and tensions which are not considered armed conflicts and are thus not subject to IHL. The determination of these criteria are factual matters to be decided on a case-by-case basis.
4.1.1.2 **INTERNATIONAL ARMED CONFLICT (‘IAC’)**

For a full description of IACs, see Section 3.1 International Armed Conflict, above.

4.1.1.2.1 **INTERNATIONALISING A NIAC**

A NIAC may become international if either: 1) another State intervenes in that conflict through its troops (*i.e.*, direct intervention); or 2) some of the participants in the internal armed conflict act on behalf of that other State (*i.e.*, indirect intervention).

4.1.1.2.1.1 **DIRECT INTERVENTION IN SUPPORT OF NON-STATE ARMED GROUPS**

Where a State intervenes using their armed forces on the territory of another State in support of one or more non-state armed groups against the local government, the nature of the armed confrontation between the intervening State and the territorial State is international. However, the original armed conflict between the non-state armed group and the State remains non-international in character. Accordingly, in such situations, an IAC exists in parallel to a NIAC.

4.1.1.2.1.2 **INDIRECT INTERVENTION: PARTICIPANTS IN THE INTERNAL ARMED CONFLICT ACT ON BEHALF OF THE STATE (‘OVERALL CONTROL’)**

When the non-state armed groups in a NIAC act on behalf of an intervening State, this will internationalise the armed conflict. In other words, there will not be parallel non-international and international armed conflicts, but only an IAC between the intervening State (acting through a non-state armed group) and the territorial State. The overall control test is the favoured test in international jurisprudence for examining whether a NIAC has become internationalised.

The overall control test helps prevent States from evading responsibility in relation to the acts of armed groups that are under their *de facto* control. It requires that the State wields control over the group not only through equipment and finance, but also by coordination and general planning of the group's military activity.

4.1.2 **ASSESSMENT**

The following sections will consider whether a NIAC and/or an IAC has occurred on the territory of Ukraine since November 2013 by assessing: 1) whether there was an armed conflict (either NIAC or IAC) during the Euromaidan protests between November 2013 and February 2014; 2) whether there is a NIAC between the non-state armed groups and Ukraine in eastern Ukraine and when it commenced; and 3) if, and when, the armed conflict in eastern Ukraine became international on account of either: a) Russia's direct intervention, or b) Russia's indirect intervention through its overall control over the non-state armed groups.

4.1.2.1 **EXISTENCE OF A NON-INTERNATIONAL OR INTERNATIONAL ARMED CONFLICT IN EUROMAIDAN**

The ICC OTP has concluded that there was no information to suggest an armed conflict existed in Ukraine during the period of 21 November to 22 February 2014. No information has surfaced to place this conclusion in doubt. In relation to whether there was a NIAC during this time period, there is insufficient indication that the requirements of organisation or intensity could be met. In relation to whether there was an IAC, claims that the Russian Special Forces were involved in the planning and coordination of the Euromaidan protests lack substantiation. Moreover, any involvement of the RFAF or its agents appears to have occurred with the consent of then President Yanukovych. Thus, the existence of a NIAC or IAC during the Euromaidan protests during this period will not be considered further.

4.1.2.2 **EXISTENCE OF A NON-INTERNATIONAL ARMED CONFLICT IN EASTERN UKRAINE**

The following Sections will consider: 1) if, and when, the non-state armed group(s) operating in Ukraine were sufficiently organised; and 2) if, and when, the hostilities reached the requisite level of intensity.
4.1.2.2.1 ORGANISATION
The process of the D/LPR protest groups formalising into organised armed groups took many months. Over the course of the protests and hostilities, the groups developed from unorganised protest groups, into armed groups with decentralized roles and responsibilities, and then into a formalised army with a clear command structure. Nonetheless, due to their designation as ‘terrorist groups’ by Ukraine and the inaccessibility of the territory to Ukraine and others, these groups were shrouded in secrecy, making their exact composition difficult to assess. Consequently, the armed groups’ military capacity, including their ability to conduct significant military activities and control territory from around mid-April in Donetsk and the end of April in Luhansk, is more instructive when assessing their organisation. Moreover, the ability of the armed groups to conduct significant military activities and control territory over time is underpinned by other indicators of organisation including developing command structures, the ability to recruit and train personnel, and the supply and use of increasingly sophisticated weaponry.

The following sections will address: 1) the creation and/or arrival of separate armed groups in the Donetsk and Luhansk regions between March and June 2014; and 2) the formalisation of a single command structure from July 2014 onwards.

4.1.2.2.1.1 THE CREATION OF ARMED GROUPS IN DONBAS: MARCH – JUNE 2014

4.1.2.2.1.1.1 DONETSK REGION
From early April 2014, the main groups operating in the Donetsk region were: Girkin’s group (between April and August 2014); Bezler’s group (between April and October 2014); the Vostok Battalion, previously known as the Patriotic Forces of Donbas (between March and July 2014); and the Oplot Battalion (between April 2014 and winter 2014 to 2015). These groups were collectively referred to as the D/LPR’s army or the ‘People’s Militia of Donbas’.

There were also other smaller and less organised groups that operated during this period, including the ‘People’s Militia of Donbas’, led by Pavlo Hubaryov; the Kalmius Brigade; and the Russian Orthodox Army. However, due to a lack of information pertaining to their organisation, these groups will not be considered further.

4.1.2.2.1.1.1 GIRKIN’S GROUP
Girkin’s group was created in early 2014 in Crimea by Igor Girkin (aka ‘Streklov’) (allegedly a retired Russian Federal Security Service (‘FSB’) officer). There is clear and convincing evidence that from 12 April 2014, Girkin’s group was sufficiently organised to conduct military operations and seize territory and also had sufficient structure to function over time. The group exhibited all of the indicators of organisation, including the existence of a command structure, headquarters, military capacity, logistical capacity, internal discipline and an ability to speak with one voice.

When Girkin left Donbas in August 2014, his fighters created separate armed groups including the ‘Sparta’ and ‘Somali’ Battalions, which were commanded by Oleksandr Zakharchenko (who also replaced Girkin as the DPR’s ‘Minister of Defence’). Subsequently, between September 2014 and February 2015, these Battalions were absorbed into the 1st Army Corps (Donetsk).

4.1.2.2.1.1.2 BEZLER’S GROUP
Bezler’s group was created on 14 April 2014 by Igor Bezler (allegedly a retired officer of the Main Intelligence Directorate of the RFAF (‘GRU’)) who came to Donetsk on the direction of Girkin. Clear and convincing evidence demonstrates that, by 14 April 2014, Bezler’s group was sufficiently organised to conduct military operations and takeover territory. From the end of October to the beginning of November 2014, Bezler’s group transformed into the Berkut Brigade which formed part of the 1st Army Corps.
The Patriotic Forces of Donbas were created by Oleksandr Khodakovskii, a former commander of the SSU’s ‘Alfa’ (or ‘Alpha’) unit in the Donetsk region, who participated in the dispersal of Euromaidan protesters in Kyiv. After Euromaidan, he returned to Donetsk where he united former members of the Ukrainian special police units ‘Berkut’ and ‘Alpha’, along with locals and some mercenaries, into the Patriotic Forces of Donbas. In May 2014, the Patriotic Forces transformed into the Vostok Battalion (later, Vostok Brigade) and remained under the leadership of Khodakovskii. According to clear and convincing evidence, by at least 9 May 2014, the Vostok Battalion exhibited numerous indicators of organisation and a sufficient structure to operate over time, including a command structure and significant logistical and military capacity. On 9 July 2014, the Battalion split and part of its members joined Girkin’s group. Later, the Battalion was transformed into the 11th Separate Motorised Rifle Regiment of the D/LPR 1st Army Corps.

Battalion ‘Oplot’

Prior to the events in Donbas, Aleksandr Zakharchenko ran the Donetsk unit of the ‘Oplot’ organisation (which was a fighting (non-military) group in Kharkiv). On 16 April 2014, the Oplot Battalion participated in the seizure of the Donetsk City Council building, during which they entered the building armed and faced no resistance. There is no information on any other activities conducted by the Oplot Battalion between 16 April and the end of May 2014. Despite this limited information, the evidence suggests that the Battalion was an armed group with a rudimentary command structure. Additionally, from 26 May 2014, the Oplot Battalion displayed significant military capacity and sufficient structure to operate over time. In September 2014, the Oplot Battalion incorporated into the 1st Army Corps.

Luhansk Region

The most active groups in the Luhansk region were: the ‘Army of the South-East’ (between March and October 2014); the ‘People’s Militia of Luhansk’, which later became known as the Prizrak Battalion (between April 2014 and March 2015); the Luhansk District of the ‘Great Don Army’ (between March 2014 and spring 2015); and Dryomov’s group (between May and September 2014). Each will be discussed in turn below.

There were many smaller armed groups also operating in the Luhansk region during this period, including, among others: the Luhansk Guard; the ‘Leshiy’ Special Purpose Battalion; the ‘Batman’ Rapid Response Group; Bryanka USSR Battalion. However, due to insufficient information about these groups, they will not be considered further.

Army of the South-East

The Army of the South-East was officially declared by the Russian-leaning protesters in Luhansk on 6 April 2014, with Valerii Bolotov as its ‘Commander’. However, there are indications that the Army existed from as early as 13 March 2014 and was formed and coordinated by the Russian FSB and GRU. The Army of the South-East began displaying indicia of organisation in early April 2014, including possession of significant weaponry, the ability to speak with one voice and the ability to train personnel. However, after their seizure of the Luhansk SSU building on 6 April 2014, it became clear that the group had insufficient personnel and capacity to effectively conduct hostilities. By 29 April 2014, the Army’s military and logistical capacity had increased, providing clear and convincing evidence that it satisfied the organisational requirement.

The Army of the South-East continued operating throughout the summer of 2014. On 14 August, Bolotov left Ukraine and was replaced by Ihor Plotnitskii as ‘Head’ of the LPR. On 7 October 2014, Plotnitskii transformed the Army into the 2nd Army Corps (Luhansk).

People’s Militia of Luhansk (later the Prizrak Battalion)

The ‘People’s Militia of Luhansk’ (later, the ‘Prizrak Battalion’) was formed after the seizure of the Luhansk SSU building on 6 April 2014 by Oleksandr Mozhovyi, who participated in the protest but not in the seizure of the building. During the initial protests at the beginning of April, Mozhovyi did not have weapons, and his group had no command structure.
or military capacity. However, from the end of April and throughout May 2014, the Battalion increased its military capacity, enabling it to carry out operations against the UAF and control territory. By at least 27 April 2014, the Prizrak Battalion had sufficient military, organisational and logistical capacity to take control of territory and operate over a period of time. In the winter of 2014, Mozhovii was asked to join the official ‘People’s Militia of the LPR’. In March 2015, the Prizrak Battalion was subsumed into the 2nd Army Corps.

4.1.2.2.1.2.3 Cossack Groups
There were multiple Cossack groups operating in Luhansk in the spring and summer of 2014. Most notably the Luhansk Cossack National Guard and Dryomov’s group.

4.1.2.2.1.2.3.1 The Luhansk Cossack National Guard
On 9 April 2014, Mykola Kozitsyn, ataman of the Russian International Union of Public Associations ‘Almighty Don Host’ (or the ‘Great Don Army’), issued an order for the creation of the Cossack National Guard. Accordingly, from the end of April to the beginning of May 2014, the Cossack National Guard was established, and, on 3 May, the Luhansk Cossack National Guard, under the command of Kozitsyn, arrived in Ukraine and took control of Antratsyt. There is clear and convincing evidence that the Luhansk Cossack National Guard exhibited numerous indicia of organisation from 3 May 2014, onwards, including a clear command structure, headquarters and significant military and logistical capacity.

By the end of 2014, the Cossack National Guard, the Prizrak Battalion and Dryomov’s group controlled 80% of the non-state armed group-controlled territory in the Luhansk region. However, the Cossack National Guard acted independently and refused to subordinate itself to the 1st and 2nd Army Corps. Consequently, they were gradually disarmed by the LPR by the end of 2015 and removed from Donbas along with the Prizrak Battalion and Dryomov’s group. The territory under their control subsequently came under the control of the LPR.

4.1.2.2.1.2.3.2 Dryomov’s Group
The Stakhanov Cossack Self-Defence (later, Dryomov’s group) was commanded by local Cossack, Pavlo Dryomov, who participated in the seizure of the Luhansk SSU building on 6 April 2014. After the proclamation of Bolotov as the LPR’s ‘People’s Governor’, Dryomov allied with the Prizrak Battalion. While there is a lack of information relating to the organisation of Dryomov’s group, there is evidence that, by at least 22 May 2014, they were able to conduct military operations and had sufficient structure to operate over a period of time. From around September 2014, Dryomov’s group became subordinate to the Luhansk Cossack National Guard.

4.1.2.2.1.2. Formalisation of the Groups into a Single Command: July 2014 – February 2015
By July 2014, the separate groups described above began to formalise into a single command structure under the D/LPR authorities. The number of forces present in the Donetsk and Luhansk oblasts had grown rapidly to around 15-20 thousand.

There is clear and convincing evidence that the groups operating during this period in Donbas were sufficiently organised armed groups displaying many of the indicia of organisation. In particular, in July 2014, the UN Human Rights Monitoring Mission in Ukraine (‘HRMMU’) reported that the armed groups’ leadership, many of whom were Russian nationals, trained and experienced in military conflicts, brought the different armed groups together under their centralised command. By this time, the armed groups from the Donetsk and Luhansk regions had joined forces in the self-proclaimed ‘People’s Republic of Novorossia’.

In July 2014, an unsuccessful attempt was made to create a Joint General Staff in Krasnodon, Luhansk under the leadership of Colonel Nikolai Fedorovich Tkachev (aka ‘Dolphin’). In early August 2014, the D/LPR leadership changed from Girkin and Bolotov to Aleksandr Zakharchenko and Ihor Plotnitskii, who managed to consolidate more control over the DPR and LPR forces, respectively, between August 2014 and the beginning of 2015.
Attempts to bring all armed groups under a joint command started to crystallise in September 2014 with the establishment of the ‘United Armed Forces of Novorossiya’ (‘NAF’), which was commanded by Russian officers. Between September 2014 and February 2015 this was fully realised with the establishment of the 1st Army Corps (Donetsk) and 2nd Army Corps (Luhansk). The 1st and 2nd Army Corps were established with the assistance of Russian officers from the RFAP’s Southern Military District, and the armed groups operating in Donetsk and Luhansk were subsumed into the formal military structure. Members of the NAF underwent military training at training grounds located in both Russia and Ukraine. Simultaneously, they also received an influx of weapons and military equipment from Russia.

4.1.2.2.1.3 CONCLUSION ON ORGANISATION

The process during which the groups operating in Donbas formalised into organised armed groups took place over several months beginning in March or April 2014. The non-state armed groups did not all display each criterion of organisation from the beginning of the hostilities. Rather, they developed the different criteria of organisation over the spring and summer of 2014, particularly as they increased their military capacity and ability to control territory and operate over a period time.

In Donetsk, the following formations operated during the hostilities as ‘organised armed groups’: Girkin’s group by at least 12 April 2014; Bezler’s group by at least 14 April 2014; the Patriotic Forces of Donbas (Vostok Battalion) by at least 9 May 2014; and the Oplot Battalion by at least 26 May 2014. In Luhansk, the following operated during the hostilities as organised armed groups: the People’s Militia of Luhansk (Prizrak Battalion) at least by 27 April 2014; the Army of the South-East at least by 29 April 2014; the Luhansk Cossack National Guard at least by 3 May 2014; and Dryomov’s group at least by 22 May 2014. Between July 2014 and February 2015, the armed groups transformed into the 1st and 2nd Army Corps, which exhibited organisation comparable to a traditional state army.

4.1.2.2 INTENSITY

As several different groups participated in the armed clashes against the Ukrainian forces, it will first be considered whether they acted in a coalition in order to enable a cumulative assessment of the intensity of the armed clashes. Subsequently, the section will consider when the armed clashes fulfilled the intensity requirement, thus triggering the commencement of the NIAC.

4.1.2.2.1 DID THE GROUPS ACT AS A COALITION?

A cumulative approach can be used when assessing the intensity requirement of a NIAC in situations involving multiple armed groups. When using such an approach, there must be evidence of “coordination and cooperation” between the groups, meaning that the distinct non-state groups acted in “coalition”. While the criteria to assess the level of coordination are not set in law, several elements have been considered including: centralised joint command; sharing of operational tasks; common rules of engagement; exchanges of tactical/strategic information; and conducting joint operations. It has been considered that shared ideology, similarities of political views or the existence of a common enemy, alone, is insufficient to establish a ‘coalition’.

The non-state armed groups operating in Donbas shared a common enemy (i.e., the GoU) and conducted coordinated and collaborative military operations against that common enemy towards a shared objective (i.e., integration of Donbas into Russia). Evidence shows that the groups participated in joint military action as early as April 2014 with operational, strategic and logistical cooperation. For example, on 6 April 2014, the Luhansk SSU building was stormed simultaneously by the ‘Army of the South-East’, groups of Cossacks and members of the future ‘Leshiy’ Special Purpose Battalion. The ‘Leshiy’ unit later became subordinated to Girkin who supplied it with weapons and ammunition. The

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Vostok Battalion engaged in joint operations against Ukrainian forces with Bezler’s group and Battalion ‘Oplot’ on 23 May (near Karlivka) and 26 May 2014 (fighting for Donetsk airport).

There is also clear and convincing evidence of the coordination of different groups during the downing of MH17, which occurred on 17 July 2014 in the Donetsk region. During the MH17 trial in the Netherlands, the Dutch Prosecution Service considered the various armed groups in the D/LPR to had gradually begun working together by at least the downing of MH17. The Prosecution also showed that Girkin had control over the various units by this date and was responsible for, inter alia, combat readiness, mobilisation and training, daily logistics, military and technical support and military action funded by the DPR government. The DPR’s intelligence service, led by Sergey Dubinsky (Girkin’s subordinate), was chiefly responsible for the procurement and guarding of the BUK missile launcher that shot down MH17, Bezler’s group was the first to spot and (mis)identify MH17 as a target, and the Vostok Battalion played a role in facilitating the transport of the missile launcher.

In addition, there is evidence that, from as early April 2014, while a clearly defined common command did not exist, the groups formed a loose coalition under the common leadership of Igor Girkin, who emerged as commander over several distinct armed groups, with some voluntarily subordinating to him. Furthermore, between April and May 2014, the D/LPR leadership began to form and establish rudimentary government structures with Alexander Borodai and Valerii Bolotov as the ‘Heads’ of the DPR and LPR, respectively. While some groups did not pledge allegiance to the D/LPR, they aligned themselves with the Republics in other ways.

Considered cumulatively, there is clear and convincing evidence that the level of coordination and cooperation between the various armed formations in Donetsk and Luhansk went far beyond a mere shared ideology and common enemy. From as early as April 2014, the groups, *inter alia*, conducted joint operations, exchanged tactical and strategic information and facilitated operations in areas under the control of other groups. The available information suggests the existence of an active coalition of groups, in regular communication with one another, gradually operating under a common command (ultimately formalised with the establishment of the NAF and the 1st and 2nd Army Corps). Accordingly, at least by the time the individual armed groups displayed indicia of organisation, they operated as part of a coalition. Hence, their actions may be considered cumulatively in assessing the intensity of the conflict in Donbas.

### 4.1.2.2.2 When was the Intensity Requirement in Eastern Ukraine Satisfied?

Several indicia may be considered when assessing whether the intensity requirement of a NIAC has been met, for example: seriousness and frequency of attacks; spread of clashes over territory and over a period of time; involvement of the government; quantity/type of military equipment and weapons used; ability to control territory; existence of ceasefire orders; whether those fighting considered themselves bound by IHL; effects of the violence on the civilian population; and whether the conflict has attracted the attention of international organisations. While it is not a requirement that the non-State armed groups are able to control territory over a period of time to establish the existence of a NIAC, in the absence of active hostilities, it may be a determinative factor in assessing whether the intensity threshold is fulfilled.

As the following will demonstrate, there is clear and convincing evidence that by 14 April 2014 in Donetsk and 30 April 2014 in Luhansk the clashes between the armed groups and the Ukrainian forces had reached a level of intensity sufficient to establish an armed conflict.

Starting from 12 April 2014, the armed groups acting in Donetsk (i.e., primarily Girkin’s and Bezler’s groups) launched attacks and took control of cities and towns in Donetsk. The first serious armed clash occurred on 12 April 2014, when Girkin’s group consisting of approximately 52 armed men under Girkin’s command seized control over Sloviansk. On the same day, Girkin’s group, supported by local pro-Russian individuals, launched attacks and seized administrative buildings in Druzhkivka, Bakhmut, and Kramatorsk.
The clashes spread over the territory of Donetsk and continued over a period of time. The attacks against the Ukrainian forces and takeover of cities and towns that occurred during this period involved Girkin’s group from 12 April 2014 and Bezler’s Group from 14 April 2014 in the Donetsk oblast. As established above, the groups acted in coalition from the time that they became organised and started operating in the region. In addition, from 12 April 2014 in Donetsk, the armed groups began to take over the control of cities and towns. There is also reliable evidence that, by mid-April 2014, the armed groups had a large quantity of weaponry, including heavy weaponry, such as submachine guns, armoured vehicles (seized from the UAF), man-portable air-defence systems, automatic rifles, and cannon-launched guided projectile installations.

In response to the increase in armed clashes, on the night of 12-13 April, the Ukrainian government issued a decision to initiate an anti-terrorist operation in Eastern Ukraine with the involvement of the Ukrainian Armed Forces and law enforcement agencies, including the National Guard of Ukraine ('NGU'), to re-establish its control over the territory lost to the armed group. By 13 April, Ukrainian forces were operating to counter the activities of the armed groups in Donbas, including units of the SSU and the UAF in Sloviansk.

Ukraine launched an official "Anti-Terrorist Operation" ('ATO') on 14 April 2014, strengthening its deployment of units of the UAF and volunteer battalions. The official initiation of the ATO on 14 April was reflective of the increasing seriousness of attacks and also demonstrated an increase in the type and number of governmental armed forces deployed. The violence had begun to impact significantly on the civilian population, causing a wave of refugees to flee the area. On the same day, Bezler’s group joined the hostilities and seized control over Horlivka police station.

The situation attracted particular international attention by 14 April 2014, when the OSCE issued its first report on the situation in eastern Ukraine, observing that there were around 100 people building barricades with tires and sandbags at the office of the Ministry of the Interior, which was topped with a ‘Donetsk republic’ flag. Ukrainian senior officers attempted to repulse the attackers, resulting in the injury of two officers. The following day, the HRMMU published its first report on the situation.

In contrast to Donetsk, there were very few incidents of violent armed clashes in the month of April 2014 in the Luhansk oblast. Nevertheless, from 28 April 2014, the LPR armed groups – including the Prizrak Battalion and Army of the South-East – began to take over cities and towns in the Luhansk oblast. By 30 April 2014, Ukraine’s then acting President announced that the Kyiv government had effectively lost control over the situation in both the Luhansk and Donetsk oblasts. Recalling that, in the absence of hostilities, the ability of the armed groups to control territory over time may be determinative of intensity, this ability of the LPR (shown to have continued throughout the subsequent months), in addition to the Ukrainian government’s admission of its loss of control over the situation in the region on 30 April, was critical to the assessment of the NIAC in Luhansk.

**4.1.2.2.3 NIAC CONCLUSION**

From 14 April 2014 in Donetsk, it is clear that what were previously sporadic and isolated acts of violence that occurred during protests had transformed into protracted violence between organised armed groups and Ukrainian forces, which had been deployed to the area and also reinforced. There was a significant increase in the seriousness and frequency of attacks and armed clashes, and the groups had taken control over key cities and towns. From this time, the armed groups had access to and utilised a significant quantity of weaponry, including heavy weaponry. The violence had also begun to impact significantly on the civilian population, causing a wave of refugees to flee the area. Moreover, the hostilities had attracted the attention of the UN Security Council and other international organisations, including the OSCE, which issued its first report on the situation on 14 April 2014, and the HRMMU.

In Luhansk, there were no active hostilities during April. However, the organised armed groups were able to take and maintain control over territory from 28 April. The severity of the circumstances was confirmed on 30 April 2014, when the Ukrainian government conceded it had lost control over the situation in the area. These factors were determinative in assessing that the intensity threshold was fulfilled in Luhansk by at least 30 April 2014. From these
dates, other indicators of intensity were also present. These included the involvement in serious armed clashes of heavily armed (and organised) groups, in significant numbers; the involvement of Ukraine’s armed forces; the increasingly negative impact on the local population, including significant civilian casualties; and the attention received from international organisations, including the UNSC.

Thus, the evidence establishes that, by 14 April 2014 in Donetsk and 30 April 2014 in Luhansk, both criteria required to establish the existence of a NIAC had been satisfied, namely: the non-state armed group(s) involved in the hostilities were sufficiently organised, and these hostilities reached the requisite level of intensity. Thereafter, the conflict in Donbas intensified. Hostilities, though confined to a contact line, continued into mid-February 2022.

4.1.2.3  **Existence of an International Armed Conflict in Eastern Ukraine**

The following sections will assess whether an IAC between Russia and Ukraine exists either: 1) in parallel to the NIAC as a result of any direct intervention by Russia in support of the non-state armed groups; or 2) in place of the NIAC, in the case that the non-state armed groups acted under Russia’s overall control, thereby internationalising the conflict.

4.1.2.3.1  **Direct Intervention in Support of Non-State Armed Groups**

Direct involvement of the armed forces of a State in a conflict alongside and in support of an armed group on the territory of another State may both: 1) establish an IAC between the intervening and the territorial States; and 2) be one of the indicators that the armed group in question was under the overall control of the intervening State.

Russia has repeatedly denied the involvement of the RFAF in the territory of Ukraine. Nevertheless, there is clear and convincing evidence that Russian forces have repeatedly intervened on Ukrainian territory in support of the D/LPR armed groups. Russia’s direct intervention in Ukraine occurred between 11 July 2014 and 18 February 2015 and provided critical military support to the D/LPR armed groups in consolidating their control over the relevant territories. From September 2014, Russia also engaged in the deployment of RFAF servicemen into commanding and staff officer positions in the D/LPR armed forces (discussed further below).

The evidence demonstrates that an IAC between Russia and Ukraine, on the territory of Ukraine, existed from at least 11 July 2014, in parallel to the NIAC between Ukraine and the D/LPR armed forces. However, as will be evaluated in the following section, it is more appropriate to consider Russia’s direct intervention as an indicator of overall control. Accordingly, this would mean that the IAC between Russia (through the D/LPR armed forces) and Ukraine displaced the NIAC.

4.1.2.3.1.1  **Early Mobilisation of Russian Armed Forces and Shelling Along the Border with Ukraine: April – May 2014**

Starting in April 2014, up to 40,000 members of the RFAF began amassing on the territory of Russia in strategic locations along the border with Ukraine. This prompted the UAF to divert their operations away from the conflict zones in Donetsk and Luhansk and toward the border areas to defend cities such as Kharkiv. There are also allegations that members of the FSB participated in the seizure of the Regional State Administration buildings in Donetsk and Kharkiv and the SSU buildings in Donetsk and Luhansk on 6 and 7 April 2014. However, there is only corroborating evidence for the claims relating to the involvement of FSB and GRU officers in the seizure of the SSU building in Luhansk, and there is insufficient evidence that these individuals were directed to the area as agents of the Russian Federation (or that the Russian Federation was aware of their presence).

4.1.2.3.1.2  **Intervention of RFAF Units on the Territory of Ukraine: June 2014 – February 2015**

Between May and July 2014, fierce fighting between the UAF and the D/LPR armed groups occurred when the UAF commenced a campaign to regain territory from the D/LPR. As a result, Ukrainian forces gained control over a large portion of D/LPR held territory, which prompted Russia to increase its support to the armed groups in the form of direct intervention.
There are some indications that RFAF units begin this intervention in Donbas as early as June 2014. However, it has not been possible to corroborate this information.

There is ample evidence to establish that cross-border shelling was directed at Ukraine from Russia on a regular basis from July 2014 onwards. Information collected by the GoU and media reports suggest that between 1 July and September 2014, cross-border shelling was recorded on an almost daily basis. However, it is not until 11 July that a single incident of shelling (when Russian forces shelled Ukrainian positions in Zelenopillya, Luhansk) is sufficiently corroborated to meet the clear and convincing standard. This intervention was launched in support of the D/LPR armed groups who had lost a large portion of the territory previously under their control as a result of Ukrainian advances throughout May to July. This is sufficient to establish the existence of an IAC between Russia and Ukraine.

In addition, there is evidence that the RFAF was present on the territory of Ukraine from mid-July onwards. From July 2014, armoured vehicles, artillery and rifles belonging to military units of the RFAF were recovered on the territory of Ukraine. In July and August 2014, a number of reconnaissance and intelligence operations were reportedly launched from Russian territory, including through drones and helicopters.

Russia’s large-scale operations in Ukraine began on 6 August 2014 when Russian troops participated in the combat operations taking place around Ilovaisk and continued through 18 February 2015. NATO satellite imagery from August 2014 shows instances of Russian activity inside Ukraine, substantial activity inside Russia in areas along the border with Ukraine, and Russia’s reinforcement and resupplying of the D/LPR forces. Between August 2014 and February 2015, Russia launched a series of large-scale military operations in Donbas in response to the D/LPR’s continued loss of territory to the advancing Ukrainian forces. In Donetsk, the D/LPR armed forces had lost over 50% of the territory that had been under its control in June, while in Luhansk it had lost roughly a quarter of its territory. Russia reportedly sent dozens of artillery units, airborne troops, navy and special units of the GRU, as well up to 20 tanks and up to 90 combat vehicles to participate in the hostilities.

4.1.2.3.1.2.1 INTERVENTION OF RUSSIAN REGULAR TROOPS IN ILOVAISK (AUGUST 2014)

Prior to Russia’s intervention, the Ukrainian forces had launched an operation to regain control of Ilovaisk in early August, and had partially taken control of the town after fighting from 18 to 24 August 2014. Between 8 and 23 August 2014, the RFAF continuously shelled Ukrainian positions from Russian territory and reinforced their troops on the border of Ukraine. Russian troops then entered Ukraine on the evening of 23 to 24 August 2014. By the end of the month, the number of Russian troops had reached 6,000-6,500. The Ilovaisk hostilities concluded following negotiations between UAF and RFAF General Staff on 27 August. A humanitarian corridor was established for the peaceful withdrawal of the UAF from Ilovaisk; however, they were subsequently shot at on their retreat by RFAF forces.

4.1.2.3.1.2.2 BATTLE FOR DONETSK AIRPORT (SEPTEMBER 2014 – JANUARY 2015)

Donetsk airport and its surrounding areas had been the site of ongoing hostilities between the DPR and the Ukrainian forces since 26 May 2014. Between 28 September 2014 and 21 January 2015, Russian forces were present and active at battles for Donetsk airport. During these battles, Russia assisted the DPR in various ways by, for example, leading attacks on the airport, providing support for assaults with artillery strikes and snipers and supporting offensives launched by the DPR. In particular, on 19 January 2015, Russia dispatched 600 additional soldiers which brought about Ukraine’s withdrawal from the airport on 21 January 2015. In addition to direct participation in combat, Russian officers and generals were also involved in the command and coordination of the DPR militants’ actions.

4.1.2.3.1.2.3 THE ATTACK ON MARIUPOL (24 JANUARY 2015)

The Russian military, including high-ranking officers, were involved directly in the 24 January 2015 attack on Mariupol. The Russian Ministry of Defence reportedly ordered the preparation and initiation of the attack and transferred two batteries armed with 12 multiple launch rocket systems (‘MLRS’) across the Russia-Ukraine border on 23 to 24 January 2015 for use in the attack. The evidence shows that a Russian major coordinated the participating divisions’ actions,
a Russian colonel directly commanded the shelling operation, and the overall operation was coordinated from Russian territory by a Russian major-general.

4.1.2.3.1.2.4  **DEBALTESEVE OPERATION (14 JANUARY – 18 FEBRUARY 2015)**

Between January and February 2015, Russia was directly involved in the large-scale military offensive aimed at taking the strategic railway hub of Debaltseve in support of the D/LPR armed groups operating there. During the fight for control over Debaltseve, up to 8 RFAF battalion tactical groups were present in the area and shelled Ukrainian positions while a number of Russian generals “directly carried out commanding and coordination of hostilities against [ATO] forces during this period”.

The Debaltseve offensive led to the signing of the 12 February 2015 Minsk-II Agreement and the withdrawal of Ukrainian troops from the area on 18 February 2015.

4.1.2.3.1.3  **RUSSIAN INTERVENTION AFTER THE MINSK-II AGREEMENTS (POST-FEBRUARY 2015)**

In March 2015, the US military estimated that there were around 12,000 RFAF soldiers, comprised of military advisers, weapons operators and combat troops, supporting the D/LPR armed formations in eastern Ukraine. Nevertheless, there have been no overt incidents of direct intervention by the RFaf, acting as such, in Donbas, since the signing of the Minsk-II Agreement on 12 February and the conclusion of the Debaltseve operation on 18 February 2015.

After the Minsk-II Agreement was signed, the hostilities in Donbas decreased, localised to the contact line, and the area under the control of the D/LPR forces stabilised. Need for direct Russian intervention therefore decreased. Yet, Russia continued to maintain a significant number of troops along the Russia-Ukraine border in the Donbas oblast, signalling a clear ability to conduct combat activities in support of the D/LPR at short notice. However, available evidence does not establish that these forces resorted to the use of armed force against Ukraine through mid-February 2022.

4.1.2.3.1.4  **CONCLUSION ON DIRECT INTERVENTION**

In conclusion, there is clear and convincing evidence that Russia directly intervened in Ukraine from at least 11 July 2014 through 18 February 2015 through cross-border artillery strikes. Thus, an IAC between Russia and Ukraine could be said to have existed in parallel to the NIAC between Ukraine and the D/LPR armed groups from 11 July 2014. Further evidence is required to support allegations of direct Russian intervention prior to 11 July 2014. While there is clear and convincing evidence that Russia continued its build-up of forces along the Russian-Ukraine border after 18 February 2015, including as recently as mid-February 2022, without further investigation there is insufficient evidence to establish that these troops have resorted to the use of armed force against Ukraine. However, as will be seen further below, there is clear and convincing evidence that Russia deployed active service RFaf officers and servicemen to the D/LPR armed forces operating in Donbas, with the knowledge and instruction of their commanders, from September 2014 onwards. These deployments constitute direct intervention, further extending the IAC to the present.

4.1.2.3.2  **OVERALL CONTROL: PARTICIPANTS IN THE INTERNAL ARMED CONFLICT ACT ON BEHALF OF THE STATE**

A NIAC may be ‘internationalised’ where the participants in the internal armed conflict act on behalf of the controlling State. To assess whether the D/LPR organised armed groups were acting on behalf of Russia in the Donbas region, it must be determined whether Russia has ‘overall control’ over the D/LPR.

4.1.2.3.2.1  **DIRECT INTERVENTION**

Russia’s direct intervention in Ukraine may be an indicator (amongst others) that the D/LPR were under the overall control of Russia. As established above, Russia directly intervened on behalf of the D/LPR against the Ukrainian forces

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36 Information published by the Office of the Prosecutor General of Ukraine.
from at least 11 July 2014 until 18 February 2015 and, from September 2014 onwards, actively deployed active service
RFAF officers and servicemen to the D/LPR armed forces operating in Donbas.

4.1.2.3.2.2  **Shared Goals between Russia and the D/LPR**

Shared goals, including a commitment to shared military objectives, may indicate that a controlling State is more easily
able, and motivated, to control the decisions of the armed group. Similarly, armed groups that aim to fight on the side
of the controlling State, to annex territory to the controlling State, and/or who view the controlling State’s leadership
as their own, are more likely to be able, and motivated, to be controlled. Additionally, if the controlling State harbours
territorial ambitions in relation to the area that is controlled by the armed group, that may be indicative of the exercise
of overall control.

Beginning in 2013, Russia actively implemented activities aimed at the federalisation of Ukraine and deeper
integration between Ukrainian regions and the Russian Federation. It conducted a targeted propaganda campaign
aimed at “exploiting economic discontent and driving social fissures among Ukrainians”.

In early 2014, it actively encouraged the pro-Russian protest movements in eastern Ukraine and supported their separatist ambitions. At this
time, Russia’s official position signified territorial ambitions over territory in southeast Ukraine by, for example,
publicly supporting the Novorossiya (‘New Russia’) project – i.e., the view that the southeast of Ukraine historically
belonged to Russia and that the population there is Russian.

By May 2014, it became clear that, except for some areas of the Donetsk and Luhansk regions, the Novorossiya project
had failed and the rest of the predominantly Russian-speaking regions of Ukraine intended to remain within Ukraine.
Moscow appears to have assessed that its goal to gain formal sovereignty over Donetsk and Luhansk was unlikely to
be successful or spread to other regions of Ukraine without the direct intervention of Russian forces. Consequently,
in the summer of 2014, the Kremlin began to shift its official position from the Novorossiya movement.

Following the signing of the Minsk Agreements in September 2014 and February 2015, Russia’s official policy claimed
that it had no sovereign ambition in the D/LPR controlled areas. However, its increased provision of military, financial
and practical support to the D/LPR (as will be discussed further below) lead to an inference that Russia, at the very
least, has intended to maintain the D/LPR’s control over the territories to the exclusion of Ukraine. This territorial aim
has benefited Russian interests by allowing for the continued destabilisation of Ukraine and, thus, the obstruction
of Ukraine’s ability to join alliances. In particular, Russia has made clear its desire that Ukraine remain outside of NATO.
Between 2014 and early 2022, NATO member countries signalled that Ukraine could not join the alliance while Donbas
continued to be affected by conflict.

While Russia’s goal remained limited in mid-February 2022, at least officially, to the control of territory in Donbas
through control of the D/LPR forces, the D/LPR had regularly expressed the additional aim of incorporation of the
territory into Russia. Despite these seemingly divergent views on annexation, the D/LPR leadership has maintained
unwavering support for Russia, viewing the Russian leadership as its own and regarding itself as culturally and
economically part of Russia. Critically, where the goals and ambitions of the D/LPR and Russia have differed, Russia
has exercised sufficient control over the D/LPR leadership to ensure it pursued Russia’s policies by removing members
of the D/LPR leadership unaligned with Russia’s interests and instating leadership willing to act in accordance with
these interests.

In sum, during the first half of 2014, through its promotion of the Novorossiya project, Russia harboured sovereign
ambitions over territory in eastern Ukraine. As these ambitions became increasingly unrealistic, Russia (at least
outwardly) abandoned this objective, yet sought to maintain the D/LPR’s dependency and ever-closer ties (politically,

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The facts and circumstances point to the inevitable conclusion that, ultimately, Russia has intended to control this territory through the D/LPR armed groups and, by extension, to keep the territory outside of Ukraine’s control. To this end, it can be inferred that the D/LPR and Russia share the same overlapping territorial and military objective of ensuring that the D/LPR-controlled regions in Donbas remain under their control and outside the de facto control of Ukraine.

4.1.2.3.2.3 TRANSFER OF INTELLIGENCE AND MILITARY OFFICERS AND PERSONNEL FROM RUSSIA

The transfer of the controlling State’s own officers and personnel into the military and political structures of the armed group is another factor indicative of overall control. Doing so allows the controlling State to exert influence over the decision-making process of the armed group and to ensure compliance with its instructions.

From March to April 2014, former members of the FSB and GRU as well as RFAF servicemen went to Donbas to assist the D/LPR armed forces with many taking up command positions and participating in the takeovers of administrative buildings in eastern Ukrainian cities. While this may be indicative of overall control, the evidence currently available lacks sufficient corroboration to establish that these individuals remained part of the Russian military or security services, or that their activities in Donbas were commanded or coordinated by the relevant Russian organs.

Nevertheless, after the establishment of the D/LPR’s law enforcement agencies around July 2014, there is evidence that FSB officials (who were at the time engaged by the FSB) were transferred into these D/LPR agencies. From this point on, the evidence is sufficiently corroborated and, considered alongside the totality of Russia’s assistance to the D/LPR, mitigates against a finding that the FSB officials could have been operating ultra vires.

Subsequently, from September 2014 onwards, alongside the creation of the 1st and 2nd Army Corps, Russia formalised the sending of RFAF officers and servicemen to Donbas through the 12th Reserve Command (‘RC’), later known as the 8th Combined Arms Army, of the Southern Military District. Officers and personnel from the RFAF remained incorporated into the D/LPR armed forces through mid-February 2022. In addition, there is also evidence that Russian volunteers and mercenaries joined the D/LPR armed groups and that Russia was involved in their recruitment and deployment.

In May 2021, Lieutenant General Serhii Naieiv of the Joint Forces of the UAF stated that around 2,100 military advisors and instructors from RFAF were present in the D/LPR. This transfer of personnel has allowed Russia to provide the D/LPR with crucial operational support and assistance and to play a major role in the general planning and coordination of the D/LPR’s military activities in Donbas from at least July 2014.

4.1.2.3.2.4 THE RUSSIAN FEDERATION’S DIRECTION AND SUPERVISION OF THE D/LPR

To establish overall control, it must be demonstrated that the controlling State was involved in “organising, coordinating or planning the military actions of the military group”. Overall control does not require the issuing of specific orders or the direction of each individual operation.

4.1.2.3.2.4.1 ORGANISATION, SUPERVISION AND DIRECTION OF MILITARY ACTIVITIES AND THE SPECIAL SERVICES

In relation to the command structure of the armed groups, the fact that the controlling State could appoint officers to command positions of the armed group is indicative of the supervisory role exercised by the controlling State that consequently plays a role in their direction and command. Similarities between the military ranks and structures of the controlling State and the armed group may also be indicative of overall control by evidencing an interconnectedness that shows the armies cannot be considered separate in a genuine sense. Further, in relation to military activities, evidence that the controlling State directed and supervised the activities and operations of the

38 Prosecutor v. Tadić, Appeal Judgement, Case No IT-94-1, 15 July 1999 (‘Tadić Appeal Judgement’), para. 137
Networks of FSB agents, RFAF officers and Russian ‘curators’ organised, supervised and directed the D/LPR’s military, security services and political leadership. While there is some indication that this began as early as April 2014, evidence rising to the clear and convincing standard that this amounted to overall control is only available starting in July 2014.

From July 2014, Russia increased its direction and supervision over the D/LPR forces through key military supervisors such as ‘Vladimir Ivanovich’ (aka FSB Colonel General Andrey Burlaka), Nikolai Fedorovich Tkachev (a RFAF Colonel General), Igor Anatolyevich Egorov (an FSB Colonel) and Oleg Vladimirovich Ivanovko (a GRU Colonel), who all had commanding roles within the armed groups in summer 2014. Crucially, between August 2014 and February 2015, the RFAF coordinated, planned and, on occasion, instructed/ordered the D/LPR armed groups during joint operations, including in Ilovaisk, Donetsk airport, Mariupol and Debaltseve. Further, from around September 2015, Russia was able to control the organisation, planning and coordination of the military activities of the 1st and 2nd Army Corps through the RFAF’s 12th RC/8th Army.

Additionally, while there is some evidence which demonstrates that FSB officers were deployed to the D/LPR’s security and law enforcement agencies and these officers exercised some influence over them, further investigation is needed to establish that they played a role in directing and supervising the law enforcement agencies in order to contribute to a finding of overall control.

4.1.2.3.2.4.2 RUSSIA’S INFLUENCE OVER KEY MILITARY PERSONNEL IN 2014

Russia also exercised influence over key military personnel in Donbas and used these individuals to ensure it maintained control and direction over the D/LPR’s military operations. While there are indications that this began in spring 2014, considering the evidence as a whole, it is only from July 2014 that there is clear and convincing evidence that militates against a finding that these officials could have been operating ultra vires.

In Donetsk, Russia was able to supervise and direct the DPR’s military activities through its influence over the D/LPR’s key military leadership, namely: Alexander Borodai (the then ‘Prime Minister’ of the DPR), Igor Girkin (then the ‘Supreme Commander’ and ‘Minister of Defence’ of the DPR, and likely a retired FSB colonel), Sergey Dubinsky (then ‘Deputy Commander’ of the DPR armed forces and a retired high-ranking GRU officer) and Igor Bezler (then a DPR commander and a former GRU officer).

In Luhansk, Russia was able to supervise and direct the LPR’s military activities through its influence over key military personnel including: Valerii Bolotov (the first ‘Head’ of the LPR and Commander of the Army of the South-East, which was allegedly created and directed by the FSB and GRU) and Ihor Plotnitskii (the LPR’s ‘Minister of Defence’ and, subsequently, the Head of the LPR).

The military influence and control of Russia over the armed groups in Donbas was furthered after the formalisation of the DPR and LPR forces into the 1st and 2nd Army Corps and the signing of the Minsk-II Agreement in February 2015. While the GoU suggests that, from 2015 until the present, the 1st and 2nd Army Corps have been “subordinated” to the 12th RC/8th Army of the Southern Military District, there is insufficient information available to support this conclusion. Nevertheless, there is clear and convincing evidence that, from September 2014 onwards, the 12th RC/8th Army of the Southern Military District has served as the base for the transfer of Russian military personnel into commanding positions in the 1st and 2nd Army Corps. With the incorporation of Russian commanding officers into the leadership of the 1st and 2nd Army, Russia has been able to control the organisation, planning and coordination of
military activities of the 1st and 2nd Army Corps through the 12th RC/8th Army of the Southern Military District since at least February 2015.

4.1.2.3.2.4.3 Influence Over the Political Leadership

Overall control can also be wielded by the controlling State through the control and influence the State exercises over the political aspects of the armed group’s activities. Indicators of political control include: the controlling State’s ability to “decisively influence” the political decision-making of the armed group and appoint its senior officials;³⁹ the State’s ability forcibly remove individuals from the armed group that oppose its policies and replace them with those more compliant; and the fact that the controlling State acted, and was regarded, as the representative of the armed group in the international arena.

Starting from the beginning of the conflict in April 2014, there is evidence that Russia exerted influence over the political leadership in Donbas, including Girkin, Bolotov and Borodai. While there is clear and convincing evidence of this influence, it has not been possible to determine whether this amounted to “decisive influence” and, therefore, ‘overall control’ until July 2014. However, in July 2014, in addition to Russia’s increasing influence over the D/LPR’s political leadership, Russia also appointed Vladislav Surkov as a ‘curator’ in Donbas. There is clear and convincing evidence that Surkov decisively influenced and controlled the D/LPR’s political processes. The evidence also establishes that, to ensure that its instructions were followed, Russia forcibly removed those who opposed its policies and replaced them with those willing to follow its instructions and work towards the same objectives. Finally, the evidence shows that Russia was able to influence the D/LPR during international negotiations, most notably, the Minsk Agreements.

4.1.2.3.2.4.4 Russian Curators/Advisors: 2014 – Present

The main way in which Russia has exerted political control and influence in Donbas is through its network of ‘curators’ who have held positions as advisors in Moscow and in the government institutions in Donetsk and Luhansk, thereby establishing a direct connection between Russia and the D/LPR leadership. Russia’s access to the D/LPR leadership through its network of curators has allowed Moscow to punish, reward or neutralise this leadership and is, thus, arguably the most important means of control that the former has over the latter.

The main curators overseeing the political sphere in the D/LPR have been Sergey Glazyev between March and July 2014, Vladislav Surkov between July 2014 and 2020 and Dmitry Kozak from 2020 onwards (prior to which he oversaw the economy). While Sergey Glazyev influenced some of the decisions of the lead organisers in Donbas as early as April 2014, the available evidence is insufficient to conclude that he decisively influenced these organisers, or that it amounted to Russia’s overall control over the D/LPR leadership. However, taken as a whole, there is clear and convincing evidence that, by July 2014, when Surkov became Russia’s curator in Donbas, Surkov was able to decisively influence and control the D/LPR’s political processes, including by influencing and approving the appointment of senior officials, defining internal politics and approving legislative acts. Since Surkov’s replacement in Winter 2020, politics in the D/LPR has been defined by Kozak, who has been responsible for “implementing the strategic course” of the D/LPR.⁴₀

4.1.2.3.2.4.5 Russia’s Ability to Instate and Remove the Political Leadership

Further evidence of Russia’s control is derived from clear and convincing evidence that the Kremlin has orchestrated purges of disloyal or independent D/LPR leaders and consolidated power around Kremlin approved leaders. For example, in the DPR, Igor Girkin stated that the Kremlin ordered him to pass power to Aleksandr Zakharchenko, who had been chosen for the role by Surkov, and threatened to cut off key supplies if he did not comply. Subsequently,

⁴₀ UkrInform, ‘How Russia rules the occupied Donbas’ (1 February 2021).
Zakharchenko’s relationship with Russia reportedly grew increasingly tense and he was killed in a bombing in Donetsk in August 2018. Thereafter, Denis Pushilin, a politician known for unquestioning loyalty to Moscow, was elected in the virtually uncontested 2018 elections.

Similarly, in the LPR, Girkin claimed that Valerii Bolotov (the first ‘Head’ of the LPR) “surrendered power in the republic” on Surkov’s orders and Surkov replaced Bolotov with Ihor Plotnitskii in August 2014. However, in 2017, Plotnitskii was replaced by Leonid Pasechnik in what was reported to have been a “Russian security services-backed coup”. In the November 2018 elections, the Kremlin continued to support Pasechnik who won with 60.8% of the vote.

4.1.2.3.2.4.6 **RUSSIA’S ROLE AS THE D/LPR’S REPRESENTATIVE IN THE INTERNATIONAL ARENA**

The conflict in Donbas has been discussed in a number of international fora, including the Trilateral Contact Group (‘TCG’) and the Normandy Format. The Normandy States (i.e., Russia, Ukraine, France and Germany) and the TCG negotiated the Minsk I and II Agreements, as well as several ceasefire agreements. Additionally, between 2016 and 2018, Russia engaged in bilateral meetings with US representatives regarding the peaceful resolution of the situation in Donbas. While the evidence is inconclusive as to whether Russia has represented the D/LPR during meetings of these international fora, it is telling that no representatives from the D/LPR have been present (aside from the inclusion of two D/LPR representatives in TCG meetings, who are not recognised as parties to the negotiations by Ukraine). Moreover, Russia has been regularly represented by the Donbas ‘curators’ during international meetings.

4.1.2.3.2.5 **TRAINING OF THE D/LPR FORCES BY THE RUSSIAN FEDERATION**

The provision of training and capacity building by the controlling State to the armed group’s military and police forces is another indicator of overall control. As early as April 2014, Russia began training the D/LPR armed groups and other volunteers who joined them, which has continued until the present, primarily by Russian instructors on the territory of the D/LPR.

Russia has established a vast network of training camps and military instructors to train the D/LPR’s forces. Evidence suggests that this training took place primarily in 2014 and 2015 on Russian territory and was supervised and delivered by Russian military and special service officers. Satellite images show the rapid establishment of training camps along the Russia-Ukraine border soon after the occupation of Crimea and at the onset of the conflict in Donbas. From these camps, hundreds of Russian troops, along with military equipment, travelled in large convoys into eastern Ukraine. Some of the camps also served as staging points for Russia’s cross-border artillery attacks against the Ukrainian forces in the summer of 2014.

4.1.2.3.2.6 **FINANCIAL ASSISTANCE AND ECONOMIC DEPENDENCY ON THE RUSSIA FEDERATION**

The armed group’s dependency on the various forms of financial assistance provided by the controlling State for the pursuit of its activities is another key indicator of the existence of overall control. This assistance can include, inter alia, payment of salaries (even if partially) of the armed group members, as well as direct transfer of funds to the armed group.

In 2014 and 2015, due to the destruction of much of its industrial infrastructure and the cessation of trade between the D/LPR controlled areas and Ukraine, Donbas experienced economic collapse and its economy shrunk by two-thirds. Further, the D/LPR’s banking system collapsed after it was cut off from the international financial transaction system. In the winter of 2014, Ukraine also ceased paying salaries and pensions in the D/LPR controlled areas. Under these conditions, it became increasingly essential for Russia to financially support the D/LPR authorities to ensure

41 VK.com, Post by Igor Strelkov.
their survival and prevent economic collapse, which led some commentators to conclude that that D/LPR gradually became completely economically dependent on Russia.

Russia provided economic support from as early as spring 2014 to assist with the establishment of the D/LPR. However, Russia’s financial contributions and economic assistance to the D/LPR became increasingly systematised towards the end of 2014 and the beginning of 2015. Since April 2015, Russia has paid pensions, benefits and wages in both the DPR and LPR. Additionally, the level of financial aid provided by Russia far has far exceeded the money collected in taxes by the D/LPR.

In addition to this financial support, Russia has also ensured that the economies of the D/LPR continued to operate, including through the provision of raw materials essential to the Donetsk and Luhansk regions whose economy is predominantly industrial. Accordingly, the D/LPR’s financial and economic dependence on the Russian Federation has provided Russia significant leverage to ensure its instructions and policies are carried out by the D/LPR leadership.

4.1.2.3.2.7 Supply and Provision of Logistical Support by the Russian Federation

The provision of logistical support and the supply of military equipment or material (including arms, uniforms and vehicles) is another indicator of overall control. Logistical support may include intelligence sharing as well as the construction of roads and infrastructure. Cooperation in relation to the care of the wounded and sick could similarly be considered logistical support.

Multiple, credible reports indicate that Russia has been the primary, if not sole, supplier of weapons and military equipment to the D/LPR armed groups since around May/June 2014, which has continued until the present. This provision of supplies has become more systematic since the establishment of the 1st and 2nd Army Corps, demonstrating the D/LPR’s continued reliance on Russia. In addition to the provision of military supplies, since 2014, Russia has also sent at least 101 humanitarian convoys to the D/LPR to provide it with humanitarian aid, including foodstuffs, medicine and medical equipment. The scale of Russia’s provision of supplies to the D/LPR, and the absence of supply chains emanating from other sources, leads to a conclusion that it is highly likely that the D/LPR armed groups could not maintain their hostilities against the Ukrainian forces without Russia’s logistical support.

4.1.3 Conclusion on Classification of the Armed Conflict in Donbas

From 14 April 2014 in Donetsk and 30 April 2014 in Luhansk, a NIAC began between the Ukrainian armed forces and security forces (collectively, the Ukrainian forces) and the D/LPR armed groups. Having established the existence of a NIAC between the Ukrainian forces and the D/LPR armed groups, the section subsequently examined whether an IAC between Russia and Ukraine existed either: 1) in parallel to the NIAC as a result of any direct intervention by Russia in the conflict in support of the non-state armed groups; or 2) in place of the NIAC, in the case that the non-state armed groups acted under Russia’s overall control, thereby internationalising the conflict.

Evidence that Russia directly intervened in Ukraine from 11 July 2014 until 18 February 2015 through cross-border artillery strikes, and onwards through the deployment of Russian officers and servicemen into the D/LPR armed groups in Ukraine, is sufficient to establish the existence of an IAC between Russia and Ukraine from 11 July 2014, running parallel to the NIAC between Ukraine and the D/LPR armed forces. Nonetheless, due to clear and convincing evidence that Russia exercised overall control over the D/LPR armed groups starting from July 2014, it is more accurate to conclude that the NIAC became internationalised from July 2014 onwards.

By July 2014, evidence of Russia’s overall control over the D/LPR armed groups is clear and convincing. Taking the evidence as a whole, the nature and scale of Russia’s involvement, when combined with the correspondence of aims and objectives, militates against a finding that individuals from organs of the Russian State (including the FSB, GRU, RFAF and political leadership) were acting in a personal capacity or otherwise ultra vires from July 2014. Instead, the only reasonable conclusion is that the Russian State utilised its apparatus to ensure overall control over the D/LPR armed groups in furtherance of their shared territorial and military aims.
Thus, in sum, there is clear and convincing evidence to establish that from 14 April 2014 in Donetsk and 30 April 2014 in Luhansk, a NIAC existed between Ukraine and the D/LPR organised armed groups. From July 2014, the NIAC was transformed by the relationship of overall control into an IAC between Russia (through the D/LPR armed forces) and Ukraine.

The following section will consider whether Russia, through its overall control over the D/LPR armed groups, is occupying the territory under the control of the D/LPR.

4.2 **Occupation by Proxy: Is Donbas Occupied?**

4.2.1 **Introduction**

There is little or no available evidence to suggest that the Russian Federation directly exercises effective control over the Donetsk and Luhansk regions. However, Russia may still occupy these regions indirectly through ‘occupation by proxy’, which describes a situation where a foreign State controls territory through an organisation/group that exercises effective control over that territory.

4.2.2 **The Law**

As discussed in relation to Crimea, territory is considered occupied when it is placed under the authority of the hostile army. The degree of authority and control required to establish an occupation is ‘effective control’. ‘Effective control’ will be established if: 1) a State’s armed forces are physically present in a foreign territory without the consent of the effective local government; 2) the effective local government has been or can be rendered substantially or completely incapable of exerting its powers by virtue of this unconsented-to presence; and 3) the foreign forces are in a position to exercise authority over the territory in lieu of the local government.

4.2.2.1 **Occupation by Proxy**

Like classic belligerent occupation, establishing occupation by proxy requires a demonstration of the fact that the Occupying Power exercises ‘effective control’ over the territory in question. However, the effective control is exercised indirectly through surrogate (or proxy) armed forces. In this situation, the foreign State would be considered an Occupying Power if it exercises a certain level of control over the de facto local authorities or other local organised groups that are themselves in effective control of all or part of the territory. ‘Overall control’ appears to be the preferred threshold of control under IHL and international criminal law for the determination of the existence of an occupation by proxy.

4.2.3 **Assessment**

To determine whether Russia is occupying parts of Donbas through the D/LPR, i.e., whether Russia is occupying Donbas by proxy, the following must be evaluated: 1) whether the Russian Federation exercises overall control over the D/LPR; and 2) whether the D/LPR exercise effective control over the territory of Donbas. Where both conditions are satisfied, Russia may be said to be the Occupying Power in the relevant territory.

As discussed above, by July 2014 there is clear and convincing evidence that Russia had established overall control over the D/LPR armed groups. As such, the first requirement necessary to establish occupation by proxy is fulfilled.

To assess whether the situation in Donbas is one of occupation by proxy, it must be determined whether the D/LPR, who are under the overall control of Russia, also fulfil the three cumulative conditions of effective control as outlined above.

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43 For the full version, including underlying sources, see Section 6.1 The Law.
4.2.3.1 **Physical Presence of the Armed Forces in a Foreign Territory**

To establish effective control, the occupying forces (i.e., the D/LPR under the overall control of Russia) must be physically present in a foreign territory without the consent of the effective local government. This does not necessitate the occupying forces to be present in the totality of the territory. They need only be positioned in strategic locations within the occupied territory, provided that the Occupying Power can make its authority felt. However, a mere invasion will not be considered an occupation. Additionally, it must be established that the occupied State did not consent to the presence of the occupying forces on its territory.

4.2.3.1.1 **Presence of the D/LPR Armed Groups in Donetsk and Luhansk**

The presence of armed groups in parts of the Donetsk and Luhansk oblasts began around March to April 2014, following the protests of early March 2014 in Donbas. By 9 April 2014, members of the armed and unarmed pro-Russian separatist groups in Donbas exceeded 2,500. There is clear and convincing evidence that, since this time, the D/LPR armed groups have maintained a physical presence across the territory of Donetsk and Luhansk. Further, as explained above, the D/LPR’s continued authority over the territory has been safeguarded by the RFAF’s presence close to the Ukraine-Russia border, and the implied threat of a full-scale Russian offensive should the Ukrainian forces advance.

4.2.3.1.2 **Ukraine’s Lack of Consent**

Ukraine is the lawful sovereign over the Donetsk and Luhansk regions and has never consented to the presence of the D/LPR armed forces on this territory. Ukraine has consistently made its lack of consent clear, emphasising its continued position that the areas of Donbas under the D/LPR’s control remain part of Ukraine. It can therefore be concluded that the D/LPR armed forces have been physically present in the Donetsk and Luhansk regions from April 2014 without the consent of Ukraine. Thus, satisfying the first criterion of effective control.

4.2.3.2 **Substantial or Complete Incapacity of the Effective Local Government**

It must also be established that “the effective local government in place at the time of the invasion has been or can be rendered substantially or completely incapable of exerting its powers by virtue of the foreign forces’ unconsented-to presence.” While this criterion does not require that the entire territory of the occupied State (i.e., Ukraine) be occupied, the forces of the occupied State must have surrendered, been defeated or have withdrawn in the relevant areas. Thus, battle zones may not be considered occupied territory. However, the status of occupied territory remains unchallenged by sporadic local resistance, however successful, provided the Occupying Power continues to maintain control over the territory.

In order to establish whether this criterion of effective control has been met, the following sections will discuss: 1) the withdrawal of the Ukrainian forces from territory in the Donetsk and Luhansk regions and the cessation of hostilities; and 2) the incapacity of Ukraine to exercise its authority as demonstrated by its inability to operate its executive and judicial functions.

4.2.3.2.1 **Withdrawal of the Ukrainian Forces**

4.2.3.2.1.1 **Armed Hostilities: April – September 2014**

Between April and September 2014, the D/LPR armed forces took over a number of cities and towns in the Donetsk and Luhansk regions, which have remained in the hands of the D/LPR armed forces ever since. Nevertheless, between April and 5 September 2014, the available evidence does not allow for conclusive determinations regarding when hostilities ceased in, and the Ukrainian forces were defeated and withdrew from, each individual city and town.

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Consequently, there is insufficient evidence to distinguish between locations where Ukrainian forces had been defeated or withdrew, and locations where the battle for control remained ongoing in this period. Therefore, between April and 5 September 2014, the evidence is insufficient to establish that Ukraine had been rendered substantially or completely incapable of exerting its powers. This does not preclude the likelihood that further examination would be able to delineate, with greater precision, when the occupation started in individual cities and towns.

4.2.3.2.1.2 **Signing of the Minsk-I Agreement and the Withdrawal of the Ukrainian Forces (September 2014)**

On 5 September 2014, following Russia’s intervention in July to August in support of the D/LPR armed groups, the Minsk-I Agreement was signed. It called for, inter alia, an OSCE-monitored ceasefire, and, on Russia’s insistence, the adoption of a “law on special status” that would temporarily decentralise power to certain areas of the Donetsk and Luhansk regions.45

After the Minsk-I Agreement, there is clear and convincing evidence that Ukrainian forces withdrew to the contact line and hostilities largely ceased in the areas held by the D/LPR armed forces. A 30 km buffer zone between the two sides was established, requiring that heavy weaponry be pulled 15 km back from each side of the contact line. Consequently, by 5 September 2014, in the areas defined by the Minsk-I Agreement, Ukraine had withdrawn. Hostilities, except for sporadic fighting, had also ceased.

4.2.3.2.1.3 **Donetsk Airport and Debaltseve (September 2014 – February 2015)**

In areas outside the territory defined by the Minsk-I Agreement, heavy fighting occurred between the UAF and the D/LPR armed groups (with Russia’s support) in the following locations, among others: Donetsk airport and surrounding areas from 28 September 2014 to 21 January 2015; Schastia city in Luhansk oblast between September 2014 and February 2015; Mariupol on 24 January 2015; and Debaltseve between 14 January and 18 February 2015. In these areas, the second criterion of effective control was not satisfied while the hostilities continued.

Following the withdrawal of the UAF from Donetsk airport on 21 January 2015, the area came under the control of the D/LPR armed groups. Subsequently, the Debaltseve area also came under the control of the D/LPR following an offensive led by Russia and the D/LPR in the area, which led to the signing of the Minsk-II Agreement on 12 February 2015 and the conclusion of hostilities on 18 February 2015 after the UAF withdrew from the area. The Minsk-II Agreement provided for, inter alia, an immediate ceasefire, outlined the plan for a political settlement of the conflict and created a 50-140 km security zone along the contact line. Since 18 February 2015, and the Ukrainian forces’ withdrawal to the government-controlled side of the contact line, skirmishes have largely been confined to areas along the contact line.

4.2.3.2.1.4 **Sporadic Fighting Along the Contact Line (February 2015 – Present)**

Between February 2015 and mid-February 2022, there has been sporadic escalation of hostilities along the contact line. However, these hostilities have not risen above intermittent resistance or sporadic fighting. The areas outside of the control of the Ukrainian Government (and under the control of the D/LPR armed groups) have remained largely stable and the skirmishes have not significantly altered the territory from which Ukraine had withdrawn and over which Ukraine was therefore unable to exercise its powers. Consequently, it can be concluded that from 18 February 2015 in the territory controlled by the D/LPR, the UAF had withdrawn or had been defeated, and the hostilities (except for sporadic fighting) had ceased.

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4.2.3.2 INCAPACITY OF LOCAL GOVERNMENT

As the UAF withdrew from territory in Donbas, the GoU lost control and was rendered unable to exercise governmental power in those areas. While this process began as early as April 2014, by at least 5 September 2014 there is clear and convincing evidence that the Ukrainian government had been rendered substantially incapable of operating its executive and judicial functions in parts of Donetsk and Luhansk because of the presence of the D/LPR armed groups. Statements made on behalf of the GoU make it clear that Kyiv considered it had lost control of areas of Donbas from as early as April 2014, which indicates that Ukraine considered itself incapable of exercising its authority in certain areas.

Between April and September 2014, in the areas taken over by the D/LPR armed forces, the local Ukrainian administrations were rendered incapable of exercising their functions. At this point, the Ukrainian government either relocated the administrative centres from these areas to government-controlled territory, or members of the local Ukrainian self-government bodies resigned when their territories came under the control of the D/LPR armed groups. The police came under the control of the D/LPR and criminal proceedings initiated by Ukraine’s OPG were largely unable to proceed. In addition, the GoU took a number of actions itself, including: changing the territorial jurisdiction of cases originating in the ATO to courts in government-controlled areas; ceasing the provision of services and funding to the D/LPR controlled territories; and declaring the activities of D/LPR educators illegal.

Thus, by at least 5 September 2014 when hostilities in the areas defined by the Minsk-I Agreement had ceased and Ukraine had been defeated and withdrawn, Ukraine was substantially incapable of exercising its authority in these areas due to the presence of the D/LPR armed groups (acting under the overall control of Russia). There is no information to suggest that, to date, Ukraine has regained any capacity to exercise its powers over these areas. To the contrary, as of April 2020, it was reported that about 16,800 km$^2$ of the Donetsk and Luhansk oblasts, and more than 400 km of the Ukrainian State border, remained temporarily out of the control of the GoU. Ukraine itself has considered Donbas to be occupied, and international organisations have continued to refer to the territory as, for example, “non-government-controlled”. Consequently, between 5 September 2014 (and 18 February 2015 in Debaltseve) and the present, the second criterion for establishing effective control has been satisfied.

4.2.3.3 EXERCISE OF AUTHORITY IN LIEU OF LOCAL GOVERNMENT

The final criterion of effective control requires that foreign forces be in a position to exercise authority over the relevant territory in lieu of the local government. In this case, ‘authority’ refers to ‘governmental functions’, as occupation “cannot be enforced by anything short of governmental control.”\(^{46}\)

4.2.3.3.1 ESTABLISHMENT OF GOVERNMENTAL STRUCTURES

In April and May 2014, the D/LPR’s establishment of governmental control over territory in Donbas, in lieu of the withdrawn GoU, commenced with a number of events, including: the so-called ‘Republics’ declarations of independence; the establishment of the D/LPR’s governmental structures (i.e., the formation of executive, legislative and judicial branches); the staging of ‘referendums’ on ‘self-rule’; and the adoption of ‘constitutions’ and formation of ‘governments’. While the establishment of the D/LPR’s governmental structures occurred between April and May 2014, further investigation is required to understand the extent to which these structures were able to function during this period.

Between May and August 2014, the D/LPR also took steps to formalise their leadership. In the DPR, Igor Girkin declared himself the ‘Supreme Commander’, and Alexander Borodai was nominated ‘Prime Minister’. In the LPR, Vasily Nikitin was appointed ‘Prime Minister’, and Valerii Bolotov was named the first ‘Head’ of the Republic. As discussed

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above, there is evidence that from spring 2014, Russia exercised influence (which developed into overall control by July 2014) over key political personnel including Girkin, Borodai and Bolotov.

The D/LPR also held their own elections for their ‘Heads’ of government and ‘People’s Council’, the first of which was held on 2 November 2014 and the most recent were held on 11 November 2018. Only Russia recognises these ‘elections’. Russia exerted influence over the 2018 elections by forcing the exclusion of other popular leaders whose policies did not suit Russian interests.

4.2.3.3.2  **THE FORMATION OF GOVERNMENT MINISTRIES**

Shortly after the D/LPR’s adoption of their ‘constitutions’ and the establishment of their foundational governmental institutions, the Heads of the D/LPR’s parliamentary bodies began to establish Ministries and appoint Ministers to run them. These ministerial positions were filled by those recommended by Russian curator Vladislav Surkov. As of 2021, there were 21 Ministries functioning in the DPR and 18 in the LPR.

4.2.3.3.3  **ADOPTION AND ENFORCEMENT OF THE LAW**

Beginning in May 2014, the D/LPR, under Russia’s overall control, began to enact and enforce its own laws on the territories under its control (subject to the approval of Surkov). These laws included two ‘constitutions’; Ukrainian legislation consistent with these ‘constitutions’; legislation borrowed from Russian legislation; and independently developed D/LPR legislation.

Throughout 2014, the D/LPR also established, and has since maintained, its own law enforcement and judicial structures. The DPR and LPR adopted their own legal frameworks for law enforcement, including a Criminal Code based on Russian legislation. Additionally, they established their own police services and Prosecutorial offices.

Initially, *ad hoc* ‘military tribunals’ or ‘people’s courts’ were held. Subsequently, the DPR and LPR established local civilian courts based on the Ukrainian judiciary’s structure, which operated until November 2014, and, thereafter, the DPR and LPR took steps to establish a three-tier ‘court’ system. Ukrainian prisons were also gradually brought under the authority of the D/LPR. Finally, there is clear and convincing evidence that the FSB integrated officers into the D/LPR’s Ministries of State Security.

4.2.3.3.4  **CONTROL OVER: BORDERS, SERVICES AND SOCIAL WELFARE, BANKS AND TAXES**

The D/LPR maintains control over the borders separating the territory under their control and Ukrainian government-controlled territory (i.e., the contact line). Both Republics issue their own passports (as of December 2020, the DPR and LPR had issued around 600,000 and 583,143 passports, respectively), and have controlled the transport of goods into the territories under their control since around January 2015. Also, since January 2015, the D/LPR authorities have maintained control over hospitals and other social care institutions. From 1 September 2014, the DPR’s ‘Ministry of Education and Science’ ordered the subordination to the DPR authorities of all the educational and science facilities in the DPR, and educational institutions were opened on 1 October 2014. Additionally, both the DPR and LPR have implemented a ‘Russian’ curriculum, including by changing the main language of education to Russian.

In response to the GoU’s November 2014 decision to suspend disbursements to non-government-controlled territories, the D/LPR authorities took control over the provision of these services. Both the DPR and LPR also established their own banks (the ‘Central Republican Bank’ on 7 October 2014 and ‘The State Bank of the Lugansk People’s Republic’ on 25 December 2014). Both ‘Republics’ also began paying social welfare payments and, from April 2015, both began paying pensions (in Russian rubles). Both the LPR and DPR have also introduced a system of taxes on their respective territories. Nonetheless, the level of financial aid provided by Russia far exceeds the money collected in taxes by the D/LPR.
4.2.3.3.5 REGULATION OF ENTERPRISES AND PROPERTY

Both Republics also adopted laws effecting their takeover of Ukrainian State property situated in their respective territories. In addition, the D/LPR authorities have also adopted legislative measures aimed at regulating private enterprises and property.

4.2.4 CONCLUSION ON OCCUPATION BY PROXY

Since March to April 2014, the D/LPR armed groups have been physically present in the Donetsk and Luhansk oblasts without the consent of Ukraine, thus satisfying the first criterion of effective control required to establish occupation by proxy. From April 2014, the D/LPR armed groups began to take over towns and cities in the Donetsk and Luhansk oblasts. 47

Clear and convincing evidence that hostilities had ceased, and Ukraine had been defeated or withdrawn from a clearly defined territory is only available after 5 September 2014 and the signing of the Minsk-I Agreement. After this point, Ukraine withdrew to the contact line that was established pursuant to Minsk-I. In late February 2015, after the signing of the Minsk-II Agreement on 12 February and the withdrawal of the Ukrainian forces from Debaltseve on 18 February, the area outside the control of Ukraine expanded to include Debaltseve. This area has remained the same until the present (with only minor changes to the regions where certain towns are situated).

By the time hostilities in the areas defined above ceased and Ukraine had fully withdrawn, Ukraine was incapable of exercising its authority as demonstrated by its consequent withdrawal of government services, authorities and funding from the area. Consequently, from 5 September 2014 in the territories defined by the Minsk-I Agreement and 18 February 2015 in the territories defined by the Minsk-II Agreement, the second criterion of effective control (i.e., that the effective local government in place at the time of the invasion has been or can be rendered substantially or completely incapable of exerting its powers by virtue of the foreign forces’ unconsented-to presence) was satisfied.

By 5 September 2014, the D/LPR unequivocally exercised authority in lieu of the Ukrainian government in the territory under its control, in satisfaction of the third criterion of effective control. In particular, the D/LPR had begun to: establish parallel governmental structures from as early as April and May 2014; enact and enforce their own laws from May 2014; formalise their police forces from around September 2014 in Donetsk, and November 2014 in Luhansk; and establish military, and later civilian courts. Further evidence of the D/LPR’s effective control over the territory is derived from their authority over: entry and exit checkpoints from the territory under their control for both people and goods; services in their respective territories, including hospitals, banks and educational institutions; the collection of taxes; and the paying of salaries (for government workers) and social payments such as pensions. Taken as a whole, this established clear and convincing evidence to satisfy the third criterion of effective control (i.e., that the foreign forces are in a position to exercise authority over the territory concerned (or parts thereof) in lieu of the local government) by 5 September 2014.

Consequently, it has been established that from 5 September 2014 in the territories defined by the Minsk-I Agreement (and 18 February 2015 in the territories defined by the Minsk-II Agreement) through to the present, Russia has occupied parts of Donetsk and Luhansk by proxy, through its overall control of the D/LPR armed groups. In particular, the following findings are pertinent: 1) since July 2014, Russia has exercised overall control over the D/LPR armed groups; and 2) since 5 September 2014, the D/LPR armed groups have exercised effective control over the territories defined by the Minsk-I Agreement (and 18 February 2015 in the territories defined by the Minsk-II Agreement).

47 In the Donetsk region: Donetsk, Horlivka, Yenakiieve, Makiivka, Khartsyzk, Snizhne. In the Luhansk region: Luhansk, Kadiivka, Dovzhansk, Khrustalnyi, Sorokyne. For more information, see Section 4.1.2.2.2.2 When was the Intensity Requirement in Eastern Ukraine Satisfied?
4.3 **Applicable Law in Donbas**

As noted above, IHL and IHRL apply concurrently and are the primary international legal frameworks that regulate situations of armed conflict, including situations of occupation. The following sections will provide a broad overview of the IHL and IHRL obligations incumbent upon Ukraine, Russia and the D/LPR by virtue of the NIAC and subsequent IAC in Donbas. Having already outlined the obligations of Russia as an Occupying Power in the context of the situation in Crimea, these obligations will not be revisited and are accepted similarly to apply in Donbas.

4.3.1 **The Application of IHL and IHRL to the Situation in Donbas**

The following section provides a broad overview of the obligations incumbent on Ukraine and the D/LPR during the NIAC, and Ukraine and Russia during the IAC, in Donbas. The IHL rules applicable to IACs continue to regulate any hostilities which may occur, including during a situation of occupation.

4.3.1.1 **Obligations of the D/LPR in Respect of IHL and IHRL**

The D/LPR armed groups bear IHL obligations in respect of NIACs as the IHL rules applicable to such conflicts apply to the State on whose territory the conflict is being waged as well as to the organised non-state armed group(s) engaged in hostilities with the State. In respect of the NIAC in Donbas, the D/LPR represents the non-state armed groups engaged in hostilities with Ukraine, the territorial State. Therefore, they are bound by the IHL obligations set out under the law applicable to NIACs. In contrast, the IHL obligations applicable to IACs are normally binding only upon States, and the question of the applicability of these obligations to a non-state armed group in the context of an occupation by proxy, or an internationalised IAC, is unsettled. Nevertheless, it appears clear that, at a minimum, these groups are bound by the IHL obligations incumbent upon them in the context of a NIAC.

In addition, customary IHL is applicable to all actors in international and non-international armed conflicts. As established above, by 14 April 2014 in Donetsk and 30 April 2014 in Luhansk, the D/LPR met the necessary requirement of organisation and the hostilities reached sufficient intensity to establish a NIAC. Thus, from these dates, the D/LPR armed groups were bound by the IHL obligations set forth under customary IHL.

With regard to IHRL, it is generally accepted that, non-state armed groups exercising either government-like functions or de facto control over territory and population must, at a minimum, respect and protect IHRL. The D/LPR have exercised de facto control over parts of Donbas since 5 September 2014 (and 18 February 2015 in Debaltseve). Accordingly, they have been required both to ensure that they do not violate the human rights of those located in the areas of Donbas under their control, and to prevent other individuals or groups from breaching IHRL in that territory.

4.3.1.2 **Obligations of Ukraine, Russia and the D/LPR in Relation to the Conflicts in Donbas**

On 14 April 2014 in Donetsk and 30 April 2014 in Luhansk, a NIAC between Ukraine and the D/LPR commenced. In this context, both Ukraine and the D/LPR armed groups, as parties to the NIAC, assumed IHL obligations pertaining to the conduct of hostilities and the protection of persons who do not, or no longer, take part in hostilities. These obligations are derived from CA 3 to the Geneva Conventions, Additional Protocol II (‘AP II’) and customary IHL.

From July 2014, Russia’s overall control over the D/LPR internationalised the NIAC. The NIAC was thus extinguished and an IAC between Ukraine and Russia continued until the general close of hostilities on 18 February 2015 in Debaltseve. As parties to the IAC, Russia and Ukraine were (and continue to be in respect of remaining hostilities) bound by the IHL obligations that regulate the conduct of hostilities, as well as the protection of the civilian population.

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48 For the full version, including underlying sources, see Section 7 Applicable Law in Donbas.
and persons hors de combat. These obligations are enshrined in the four Geneva Conventions, AP I and customary IHL. At a minimum, the D/LPR remains bound by the IHL obligations pertaining to NIACs.

One of the core objectives of IHL is to protect persons who do not, or no longer, take part in hostilities. Such persons include the wounded, sick and shipwrecked, prisoners of war (‘POWs’) and civilians. The treatment of POWs, for example, is governed by the Third Geneva Convention, which applies only in IACs. However, as detention can also occur in the context of a NIAC, detained persons are provided some, albeit more limited, protection under the treaty law applicable to NIACs. Additionally, combatant status, and the ensuing standards of treatment (i.e., as a POW), also applies only in the context of IACs. Thus, while combatants in IACs are immune from prosecution for participation in hostilities, fighters in NIACs do not enjoy such immunity.

Civilians are immune from attack in both types of armed conflict, provided that they do not take a direct part in hostilities. Several other provisions, which have attained customary IHL status, also afford civilians protection from the effects of hostilities. Beyond the conduct of hostilities, the Fourth Geneva Convention, applicable only in IACs, regulates the treatment of civilians. In comparison, the conventional IHL rules governing the protection of the civilian population during NIACs are less developed. In addition, the Rome Statute of the ICC sets out a much more extensive list of war crimes which are applicable in an IAC as compared to the more limited list of war crimes applicable in a NIAC.

Thus, the classification of an armed conflict as either an IAC or a NIAC remains integral to a determination of the scope of the applicable law with respect to treaty obligations. Customary IHL, however, appears to be bridging the gap in treaty regulation. Indeed, the ICRC considers that the large majority of the customary IHL rules applicable to IACs are also applicable in NIACs.

On the basis of customary IHL, Ukraine, Russia and the D/LPR armed groups are bound to adhere to the following non-exhaustive IHL obligations in respect of the conflicts to which they are party, irrespective of the conflict classification. In the conduct of hostilities, to abide by, inter alia: the principles of distinction, proportionality and precautions in attack; and the prohibition against the use of certain means and methods of warfare. In the protection of the civilian population and persons hors de combat, to, inter alia: protect the wounded, sick and shipwrecked; protect against the displacement of civilians; abide by the prohibition against the recruitment of children under 15 into the armed forces; abide by the prohibition against rape and sexual violence; allow the undertaking of humanitarian relief activities; and respect family rights.

The concurrent application of IHL and IHRL during armed conflict, including occupation, has been addressed in the context of Crimea and remains relevant in the case of Donbas. However, there is some debate regarding the exact relationship between IHL and IHRL, particularly where the rules of IHL and IHRL diverge or set different standards. While debate remains, the prevailing view in jurisprudence is that IHL and IHRL act as complimentary branches of law during armed conflict (and occupation). Accordingly, both apply concurrently and each can be used as an interpretive tool for the other.

4.3.1.3 OBLIGATIONS OF RUSSIA IN RESPECT OF ITS PROXY OCCUPATION OF DONBAS

The content of the IHL obligations placed upon an Occupying Power under the law of occupation are primarily enshrined in the Hague Regulations, the four Geneva Conventions and customary IHL. In addition, the IHL rules applicable to IACs continue to regulate any hostilities which may occur during the situation of occupation. Moreover, the provisions of IHRL apply concurrent to IHL.

Russia has occupied by proxy the areas of the Donetsk and Luhansk oblasts since 5 September 2014 (and 18 February 2015 in Debaltseve). Thus the obligations of an Occupying Power under the law of occupation attach to Russia in respect of this territory.
Additionally, Russia bears extraterritorial IHRL obligations in Donetsk and Luhansk due to its occupation by proxy. Accordingly, it is bound by the human rights obligations enshrined in: 1) the IHRL treaties that it has ratified/acceded to; and 2) based on a dynamic interpretation, the IHRL treaties that have been ratified/acceded to by Ukraine.

In addition, notwithstanding its lack of effective control over parts of Donbas, Ukraine must undertake all measures available to it, including through legal and diplomatic means, to guarantee that its population enjoys its human rights to the maximum extent possible.

The following section will examine the protections of the Fourth Geneva Convention in light of Russia’s policy of naturalisation through ‘passportisation’ in Donbas, and the effect this policy may have on the classification of individuals in Donbas as ‘protected persons’.

### 4.3.1.3.1 **Protected Persons Under the Fourth Geneva Convention**

Pursuant to Article 4 of the Fourth Geneva Convention, ‘protected persons’ are defined, inter alia, as civilians who find themselves, in a situation of conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which they are not a national. The ICTY has framed the concept of nationality as a function of allegiance such that ‘nationality’ is not only determined based on formal national characterisations, but also on the basis of an individual’s substantial relations and their bonds with the foreign intervening State. Additionally, simply being present in occupied territory, or territory in which an armed conflict is taking place, is sufficient to be considered ‘in the hands’ of the belligerent Party.

Ukrainian nationals in occupied Donbas are generally considered ‘protected persons’ because: 1) they are nationals of Ukraine, i.e., the belligerent of Russia; and 2) they have found themselves in the hands of Russia. However, the effect of Russia’s ‘passportisation’ policy on the status of ‘protected persons’ in Donbas must be assessed.

### 4.3.1.3.2 **The Effect of Russian Naturalisation on the Status of ‘Protected Persons’ in Donbas**

Since 24 April 2019, Russia has granted residents of occupied Donbas the opportunity to become Russian citizens through a simplified, accelerated citizenship procedure. Approximately 530,000 residents of the occupied territories in Donbas have been granted Russian passports as of May 2021.

Pursuant to Article 8 of the Fourth Geneva Convention, the rights of protected persons cannot be waived, meaning that the protected person cannot give up his or her rights or release the Occupying Power from its duty to respect his or her rights. Any attempt to pressure or coerce protected persons to renounce their rights would be legally ineffectual. Furthermore, Article 47 of the Fourth Geneva Convention states that protected persons in occupied territory shall not be deprived of the Convention’s benefits by any change to the occupied territory’s government, by any agreement between the authorities of the occupied territories and the Occupying Power, or by any annexation of the occupied territory. Lastly, the Hague Regulations protect inhabitants of an occupied territory from being compelled to swear allegiance to the hostile Power.

There is little information to suggest that the Ukrainian nationals who were granted Russian passports in Donbas were coerced into accepting Russian citizenship. In line with jurisprudence of the ICTY, this may suggest that these individuals’ allegiance is to the Russian Federation and, thus, cannot be considered ‘protected persons’. However, the ICTY’s jurisprudence emerged from the context of an inter-ethnic armed conflict wherein victims who possessed the same formal nationality as their captors were subjected to criminal acts on account of their different ethnic identities. The ICTY interpreted Article 4 expansively in order to expand the protection of civilians in occupied territory by ensuring that bonds of nationality cannot be used by the perpetrators to shield themselves from their IHL obligations.

This jurisprudence may be distinguished from the case of Donbas where no expanded interpretation of Article 4 is required. Ukrainian citizens in Donbas found themselves in the hands of an Occupying Power of which they were not nationals. As such, they qualify as protected persons under Article 4 of the Fourth Geneva Convention. In fact, to apply...
the ICTY approach would result in the exclusion of those Ukrainian nationals who expressed an allegiance to the Russian Federation, whose rights would otherwise have been protected by application of Article 8 of the Convention on waiver. Accordingly, the rights under the Fourth Geneva Convention of the former Ukrainian citizens residing in Donbas who received Russian passports or citizenship remain inviolable, notwithstanding that they voluntarily renounced their protected status. This means that the IHL obligations of the Russian Federation, as the Occupying Power, towards these individuals remain intact.

Accordingly, Russia is bound by IHRL and IHL, including the full body of the law of occupation, in respect of Donbas. As the content of Russia’s IHL and IHRL obligations, as the Occupying Power, have already been addressed above in relation to Crimea, this section will not revisit that discussion. The same applies to the discussion of the obligations which remain incumbent upon Ukraine in the territory over which it lacks effective control.

4.3.2 REPORTED IHL AND IHRL VIOLATIONS IN DONBAS

A detailed assessment of the IHL and IHRL obligations alleged to have been violated by Russia, the D/LPR and/or Ukraine in eastern Ukraine since 2014 is beyond the scope of the present Opinion. Nevertheless, this section will endeavour to provide a broad overview of conduct in potential violation of the parties’ obligations under IHL and IHRL on the basis of authoritative reporting by organisations such as OHCHR, OSCE, Human Rights Watch and the ICC.

Various IHL and IHRL violations are alleged to have been perpetrated by all sides in the conflict areas of Donbas. The RFAF, during battles in which it participated directly, have reportedly committed, inter alia, summary executions of civilians and persons hors de combat; ill-treatment and torture of detainees; and indiscriminate shelling of towns and villages. The D/LPR, both before and after they came under the ‘overall control’ of Russia, are also alleged to have engaged in the deliberate targeting of civilian objects; unlawful and arbitrary detentions; enforced disappearances; and ill-treatment and torture of detained civilians, among other violations of IHL and IHRL.

In addition, in the context of Russia’s occupation by proxy, the D/LPR have, for example, created their own laws and adopted certain Russian Federation legislation as their own, in a manner that appears contrary to Russia’s obligation to respect, unless absolutely prevented, the laws in force in Ukraine. Reported violations of the D/LPR’s obligations vis-à-vis the civilians residing under their control include the use of, inter alia, arbitrary detentions; enforced disappearances; and ill-treatment, to extract confessions or information, particularly from those who have allegedly supported the Ukrainian forces or who hold pro-Ukrainian views.

Reliable reporting also implicates the UAF, SSU, Ukrainian law enforcement authorities and the volunteer battalions, particularly during the early years of the conflict in respect of individuals suspected of armed activity against the State, in unlawful and arbitrary detention; enforced disappearance; ill-treatment; and sexual violence, among other violations of IHL and IHRL. Additionally, authoritative reporting indicates that Ukraine may have also breached a number of its IHL and IHRL obligations with regard to the individuals located in the temporarily occupied territories of Donbas. For example, in 2016, the Operational Headquarters of the Anti-Terrorist Operation issued a temporary order which severely restricted the delivery of food and medicine to the areas controlled by armed groups, which may amount to a violation of Ukraine’s obligation to allow and facilitate rapid and unimpeded passage of humanitarian relief.

4.3.3 (NON-)STATE RESPONSIBILITY OF THE D/LPR FOR VIOLATIONS OF IHL AND IHRL

Only States can incur responsibility for the breach of international obligations under the law of State responsibility. However, IHL is binding also upon individuals. Additionally, violations of both IHL and IHRL may constitute crimes under international criminal law for which individuals could be held liable. There is also broad acceptance that non-state armed groups exercising government-like functions or de facto control over territory assume the responsibility to respect and protect the human rights of individuals and groups in the territory.
The D/LPR armed groups are composed of individuals. To the extent that allegations of violations of IHL and IHRL amount to international crimes, these individuals may attract individual criminal responsibility for their conduct in these violations. Moreover, the D/LPR, acting under Russia’s overall control, have exercised effective control over territory in Donbas since 5 September 2014 (and 12 February 2015 in Debaltseve). Thus, to the extent that allegations of conduct contravening the obligation to respect and protect human rights can be established, the D/LPR likely can be held responsible in accordance with IHRL.

4.3.4 STATE RESPONSIBILITY OF RUSSIA AND UKRAINE FOR VIOLATIONS OF THEIR INTERNATIONAL OBLIGATIONS

Under the law of State responsibility, every breach of an international obligation entails the responsibility of the State concerned. In order to assess the potential responsibility of Russia and Ukraine for breaches of their international obligations in relation to the situation in Donbas, it is necessary to establish that either State committed an internationally wrongful act, which, according to Article 2 of the Articles on Responsibility of States for Internationally Wrongful Acts (‘ARSIWA’), is conduct consisting of an action or omission that is: 1) is attributable to the State under international law; and 2) constitutes a breach of an international obligation of the State. Having already outlined the international obligations that attach to Russia and Ukraine in Donbas, the following section will focus only on the subject of attribution to a State of acts or omissions in breach of these obligations, including acts performed by non-state entities.

4.3.4.1 ATTRIBUTION

A State can be held responsible for violations of its obligations under international law only if the conduct in breach of these obligations can be ‘attributed’ to it (i.e., the action or omission can be considered conduct of the State). According to the rules for attribution set out in ARSIWA, conduct is considered to be attributable to a State if, inter alia, it is committed by a State organ; it is committed by persons or entities who are empowered by law to exercise elements of governmental authority; it was directed or controlled by the State; or it was acknowledged and adopted by the State as its own.

4.3.4.1.1 ATTRIBUTION OF THE CONDUCT OF STATE ORGANS TO RUSSIA AND UKRAINE

According to ARSIWA Article 4, the conduct of any State organ is considered an act of that State under international law (i.e., it is directly attributable to the State). Article 4 applies to conduct of a State’s legislative, executive and judicial officials, as well as the acts or omissions of a State’s armed forces, including individual soldiers and officers. In addition, any argument that the offending personnel acted ultra vires (i.e., acted outside legal authority) or beyond the capacity of persons exercising governmental authority will not relieve a State of responsibility in the context of the law of State Responsibility.

Reliable, independent reporting alleges that a number of IHL and IHRL violations have been committed by the RFAF, UAF, various Russian government ministries, including the FSB and GRU, and Ukrainian government ministries within the context of the armed conflict in, and Russia’s occupation of, Donbas. As these entities are all de jure State organs of either Russia or Ukraine, their conduct is directly attributable to the relevant State in accordance with ARSIWA Article 4. Therefore, if established that the conduct of these organs has violated Russia or Ukraine’s international obligations, then the relevant State could be held responsible under the law of State responsibility for these violations perpetrated by their State organs.

4.3.4.1.2 ATTRIBUTION OF THE CONDUCT OF NON-STATE GROUPS TO RUSSIA AND UKRAINE

The attribution of conduct of a non-state group to a State rests upon a finding of control. The precise level of control required to attribute this conduct to a State is not fully resolved, with the ICTY and ICI taking different positions on the matter. This legal uncertainty bears particular significance in respect of the situation in Donbas, where the finding of Russia’s ‘overall control’ over the D/LPR armed groups has been sufficient for purposes of qualifying Russia as a party to an IAC and an Occupying Power under IHL; but may be insufficient, in and of itself, for the purpose of
attributing to Russia the conduct of these groups in violation of Russia’s international legal obligations under IHL, including the law of occupation.

According to the ICTY in Tadić, the appropriate level of control required to attribute the conduct of an organised armed group to a State is the same as that required to internationalise a conflict and establish the existence of an occupation by proxy – that is, ‘overall control’. The Court essentially equated the armed group in this situation to a de facto State organ, whose acts must therefore be attributable to the State.

However, the ICJ in its Bosnia Genocide judgment emphasised that “to equate persons or entities with State organs when they do not have that status under internal law must be exceptional” and requires “proof of a particularly great degree of State control over them”. It has found the ICTY’s ‘overall control’ test unsuitable for the purpose of attributing conduct of non-state organs to a State. Instead, the ICJ has put forth two separate tests for attribution (as opposed to classification of conflict), corresponding with ARSIWA Articles 4 and 8: the ‘complete dependence’ and ‘effective control’ tests.

4.3.4.1.2.1 ‘COMPLETE DEPENDENCE’ (STRICT CONTROL) TEST

The ICJ has held that the correct test to allow a blanket attribution of conduct of a non-state group to a State for the purposes of State responsibility is the test of ‘complete dependence’. This test requires the relationship between the State and the non-state group to be “so much one of dependence on the one side and control on the other” and the State to exercise “such a degree of control in all fields as to justify treating the [non-state group] as acting on [the State’s] behalf” (i.e., as a de facto State organ). However, it is generally recognised that adequate proof of ‘complete dependence’ will be “very difficult, if not impossible, to advance”.

Three requirements of the ‘complete dependence’ test can be extrapolated from the limited jurisprudence of the ICJ: (1) the non-state entity must be completely dependent on the outside State at the time the wrongful act is alleged to be perpetrated; (2) this complete dependence must extend to all fields of activity of the non-state entity; and (3) the outside State must have actually exercised the potential for control inherent in this dependence. All three requirements must be met to reach a finding of complete dependence and, therefore, to allow blanket attribution of the non-state entity’s conduct to the State.

Moreover, where a non-state group enjoys any margin of independence, this will preclude a finding of ‘complete dependence’. This is so even if the State provides “very important support […] without which [the non-state entity] could not have ‘conduct[ed] its crucial or most significant military and paramilitary activities’”.

Assessment of whether the D/LPR armed groups could be considered ‘completely dependent’ upon Russia at the specific time of each internationally wrongful act alleged to have been perpetrated by the group, pursuant to the ICJ’s ‘complete dependence’ test for attribution, is outside the scope of the present Legal Opinion. However, if it can be established that the D/LPR armed groups were ‘completely dependent’ on Russia in all fields of their activity at the time of their alleged commission of any wrongful act, and that Russia actually exercised the potential for control inherent in the D/LPR’s dependence upon it, then the D/LPR armed groups could be equated with a State organ (i.e., a ‘de facto State organ’) of Russia. Consequently, the entirety of the D/LPR’s conduct could be attributable to Russia under the law of State responsibility for so long as the relationship of complete dependence endured. In this scenario,

52 Bosnia Genocide Judgment, para. 394.
Russia would be considered directly responsible for every violation of its international obligations carried out by the D/LPR armed groups regardless of Russia’s direct involvement in a particular act of the D/LPR.

In the absence of a finding of ‘complete dependence’, certain wrongful acts of the D/LPR armed groups could still be attributable to Russia if these acts were supervised and instructed, or directed or controlled, by Russia. This attribution could be made by virtue of the ICJ’s secondary, ‘effective control’, test.

4.3.4.1.2.2 ATRIBUTION THROUGH SUPERVISION AND INSTRUCTION, OR DIRECTION OR CONTROL (‘EFFECTIVE CONTROL’)
The ICJ has established that there exists a secondary test to ‘complete dependence’, such that if the State is not found to exert the requisite level of strict control to establish ‘complete dependence’, the attribution to the State of specific conduct of the non-state group can still occur “where an organ of the State gave the instructions or provided the direction pursuant to which the perpetrators of the wrongful act acted or where it exercised effective control over the action during which the wrong was committed”. Pursuant to this form of attribution contained in ARSIWA Article 8, the ICJ has indicated that a determination that an individual or group was acting on a State’s instruction, or under its direction or control, would in no way equate the perpetrators with State organs. Instead, a finding of effective control would merely mean that the State would incur responsibility owing to the conduct of its own organs in giving the instructions or exercising the direction or control that resulted in the commission of acts in breach of its international obligations.

Thus, in the event that the conduct of the D/LPR cannot be attributed on the whole to Russia on account of a failure to find complete dependence at the relevant point in time, certain of its activities in violation of international law may still be attributable to Russia. This possibility exists in three disjunctive scenarios: 1) where it can be shown that Russia supervised and instructed the commission of the D/LPR’s acts which were contrary to international law; 2) where it can be shown that Russia directed the group’s conduct that violated international law; or 3) where it can be shown that Russia exercised effective control over the specific operation in which the D/LPR has committed a violation.

Assessment of whether Russia supervised and instructed, or exercised direction or control over, the D/LPR in relation to each operation in which the D/LPR is alleged to have committed unlawful acts is beyond the scope of this Legal Opinion. However, the January 2015 attack on Mariupol serves as an illustrative example of an operation for which there is clear and convincing evidence that the conduct of the D/LPR, in violation of Russia’s international obligations, may be attributed to Russia in accordance with this mode of attribution. Clear and convincing evidence show that Russia instructed the D/LPR to act in apparent violation of Russia’s international obligation not to engage in indiscriminate attacks during the 24 January 2014 military operation in Mariupol, and that the D/LPR acted in accordance with these instructions. As a result, this act of the D/LPR may be attributed to Russia under the law of State responsibility.

4.3.4.1.2.3 CONSIDERATIONS IN THE APPLICATION OF THE ICJ TESTS FOR ATTRIBUTION IN SITUATIONS OF OCCUPATION BY PROXY
A distinct disadvantage of the ICJ’s ‘strict’ and ‘effective control’ tests, as opposed to the ICTY’s ‘overall control’ test, for purposes of attribution under the law of State responsibility, is that a situation may arise in which acts that are regulated by the law of international armed conflict, and linked to a State, are not attributable to that State. This creates a protection gap wherein States may effectively evade responsibility for violations of their international obligations by acting through proxy forces. This is compounded by the fact that only States, as opposed to non-state armed groups, can incur responsibility under the law of State responsibility.

Nevertheless, as the ICJ is the principle judicial organ of the UN and is vested with jurisdiction over contentious cases between States, its pronouncements command considerable weight in matters of State responsibility. Thus, for the

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time being, it is against the tests of ‘complete dependence’ and ‘effective control’ that State responsibility for the acts of non-state entities must be assessed.

Nevertheless, as will be seen below, even in the case that the conduct of the D/LPR cannot be directly attributed to Russia, Russia may still be held directly responsible under the law of State responsibility for its own conduct in relation to the D/LPR, as a function of its overall control over the entity.

4.3.4.1.3 RESPONSIBILITY OF A STATE FOR ITS OWN CONDUCT IN RELATION TO NON-STATE ENTITIES

Obligations placed directly upon States by IHRL and IHL, including the law of occupation, may serve in part to narrow the protection gap created by the differing control tests. Of particular relevance to the situation in Donbas are the duty of vigilance and the principle of non-intervention, with which the State organs of Russia (and Ukraine) must abide. Each will be briefly discussed in turn below.

4.3.4.1.3.1 DUTY OF VIGILANCE

Even if the D/LPR’s conduct in violation of Russia’s international obligations cannot be attributed to Russia, Russia can still be held responsible for its own conduct in violating its ‘duty of vigilance’ over the territory it occupies by proxy in Donbas. The duty of vigilance requires States to “exert all good efforts in order to prevent” certain violations from taking place within their territory, or territory over which they exercise effective control. This ‘duty of vigilance’ stems from a State’s due diligence obligations.

In relation to the law of occupation, there are a number of positive IHL obligations incumbent upon an Occupying Power which must be assessed in light of the concept of due diligence. For example, the Occupying Power’s duty to restore and ensure public order and civil life in occupied territory entails an obligation to protect the population and property in occupied territory. Thus, the Occupying Power is obliged to exercise vigilance over the conduct of private actors to prevent any violation of IHL or IHRL. In relation to IHRL, States, including an Occupying Power, must respect, protect and fulfil IHRL in territory under their control. The obligation to ‘to protect’ requires States to, inter alia, prevent and punish human rights violations committed by non-state actors.

As the Occupying Power in Donbas, Russia is liable for any failure to exercise its duty of vigilance over the territory. Accordingly, it could be held responsible for failures to prevent or punish violations of IHL or IHRL committed by the D/LPR in occupied Donbas, without regard to whether the underlying conduct may be attributable to it.

4.3.4.1.3.2 NON-INTERVENTION

Russia could also be held responsible for its own conduct in violation of the IHL principle of non-intervention. This principle affords every State the right to conduct its internal and external affairs without outside interference from other States and prohibits a State from intervening, directly or indirectly, with or without armed force, in support of an internal opposition in another State.

For an intervention by one State in the affairs of another State to be wrongful, the intervening State must use methods of coercion in regard to choices on which a State is permitted to decide freely, the presence of which will be most obvious in cases where an intervention uses force either directly through military action, or indirectly through support for subversive or terrorist armed activities within another State. Crucially, the ICJ has held that, “if one State, with a view to the coercion of another State, supports and assists armed bands in that State whose purpose is to overthrow the government of that State, that amounts to an intervention by the one State in the internal affairs of the other.”

This is so regardless of whether the intervening State shares the political objective of the armed bands it supports.

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54 Armed Activities Judgment, Declaration of Judge Tomka, p. 352.
As established above, since at least July 2014, Russia has provided the D/LPR armed groups with similar support to that provided by the United States to the contra forces. In addition to its direct use of armed force against Ukraine in support of the D/LPR armed groups, Russia has trained, armed, equipped and financed the D/LPR forces, and planned and coordinated their operations. In so doing, it is clear that Russia has acted against Ukraine, in breach of its customary international law obligation not to intervene in the affairs of another State.

4.3.5 CONCLUSION ON APPLICABLE LAW IN DONBAS

As parties to the IAC, Russia and Ukraine were (and continue to be in respect of remaining hostilities) bound by the IHL obligations that regulate the conduct of hostilities, as well as the protection of the civilian population and persons hors de combat. At a minimum, the D/LPR remains bound in the context of the IAC by the IHL obligations that attach to it in the context of a NIAC. Moreover, for the duration of the occupation, Russia bears extraterritorial IHRL obligations, owing to its effective control over the territory by virtue of its occupation by proxy. In addition, notwithstanding its lack of effective control over the Russian-occupied parts of Donbas, Ukraine must undertake all measures available to it, including through legal and diplomatic means vis-à-vis foreign States and international organisations, to guarantee that its population enjoys its human rights to the maximum extent possible.

Attribution to Russia or Ukraine of violations committed by either State’s organs, such as government ministries or the armed forces, is straightforward under the law of State Responsibility, as the conduct of any State organ is considered an act of that State under international law. With regard to the violations committed by the Russian-controlled D/LPR armed groups, Russia’s responsibility for these violations will arise only if it can be established that the D/LPR are ‘completely dependent’ on Russia or that Russia exercised ‘effective control’ over the specific operation(s) in which any alleged violation(s) have taken place. At present, under the law of State responsibility, the ‘overall control’ Russia exercises over the D/LPR is not sufficient, in and of itself, to establish Russia’s State responsibility for every wrongful act of the D/LPR.

Nevertheless, even where the tests of attribution are not met, Russia could be held responsible for its own conduct as it relates to the D/LPR. On account of its effective control over Donbas, Russia bears a duty of vigilance in respect of the territory and may, therefore, be held liable for any failure to exert all good efforts to prevent and punish violations by the D/LPR. Moreover, there is clear and convincing evidence that Russia is liable, through its support of the D/LPR, for its violation of the principle of non-intervention in Ukraine.

Additionally, to the extent that allegations of violations of IHL and IHRL amount to international crimes, the individual perpetrators of these acts may attract individual criminal responsibility for their conduct regardless of whether the State may also be held liable.

5. FULL SUMMARY OF CONCLUSIONS

5.1 THE SITUATION IN CRIMEA

5.1.1 IAC IN CRIMEA

While Russia may have deployed its forces into Ukraine in excess of Ukraine’s consent under the BSF Agreement as early as late January 2014, in satisfaction of the conditions for qualification of the situation as an IAC, this information cannot presently be corroborated to a clear and convincing evidential standard. In contrast, the information surrounding the events of 27 February 2014 is clear and convincing. It indicates a hostile use of armed force, by Russian forces, against Ukraine sufficient to trigger an IAC. It is of no consequence that Ukraine did not or could not mount an armed resistance to Russia’s actions, as the unilateral use of force by one State against another suffices to meet the
conditions for an IAC, even if the latter does not or cannot respond by military means. Thus, the situation in Crimea amounted to an IAC at least as of 27 February. Accordingly, IHL and the relevant rights and obligations thereunder became applicable on the whole of the territories of Ukraine and Russia at least as of this time. (See Section 3.1 (Classification of the Armed Conflict).)

The IAC continued after this date and appears to have furthered Putin’s stated aim of overtaking and incorporating Crimea into the Russian Federation. Russia’s unilateral resort to armed force, including its takeover of key Ukrainian infrastructure in the Crimean Peninsula, continued and intensified in the period following 27 February 2014. While Ukraine did not resist militarily, neither did its forces surrender. Nevertheless, Russian forces had successfully contained and isolated them, having also blocked access to the Peninsula by forces from the Ukrainian mainland. By 26 March 2014, Russian forces had taken control over all Ukrainian military facilities in Crimea. This marked the conclusion of hostilities in Crimea. However, the conclusion of hostilities did not bring an end to the application of IHL on the Peninsula. Having met the three conditions of effective control, Russia became the Occupying Power in Crimea on 27 February 2014, the same day the IAC began. (See Section 3.1.2.7 (Continued hostilities in Crimea from 28 February until 26 March 2014).)

5.1.2 OCCUPATION OF CRIMEA

There is clear and convincing evidence that Russian armed forces were physically present in Ukrainian territory without the consent of Ukraine by at least 27 February 2014, in satisfaction of the first criteria of effective control. The number of Russian troops present in Crimea has continued to expand since, and Ukraine’s withholding of consent to this presence has remained firm. (See Section 3.2.2.1 (Physical Presence of Russian Forces in Ukraine Without the Consent of the GoU).)

By 27 February 2014, Ukraine also had been rendered substantially, if not completely, incapable of exerting its powers over Crimea by virtue of the Russian forces’ unconsented-to presence on the Peninsula, thus satisfying the second criteria of effective control. This is evidenced, inter alia, by Ukraine’s inability to carry out executive, legislative, security, and judicial functions on the Peninsula from this date. There is no information to suggest that Ukraine has since regained any capacity to exercise its powers over Crimea. (See Section 3.2.2.2 (Substantial or Complete Incapacity of the GoU to Exert its Powers in Crimea).)

At the same time, Russia clearly had assumed a position to effectively exercise executive, legislative, and security authority over Crimea by 27 February 2014, in lieu of Ukraine, and in satisfaction of the third criteria of effective control. This is evidenced by its control over the major land access points to the Peninsula, which blocked Ukrainian troops from the mainland, and secured Russia unfettered access to transfer weapons and personnel into Crimea. It is further evidenced by its seizure of Crimea’s Parliament and Council of Ministers, ensuring the adoption of favourable solutions for Russia, such as the decision to hold a referendum on Crimea’s accession to Russia. Moreover, Russia dismissed incumbent Ukrainian officials, including the Prime Minister of Crimea, and replaced them with Russian loyalists in clear exercise of its authority. Further exercise of authoritative capacity in Crimea is evident from Russia’s blockade and seizure of Ukraine’s airports, sea harbours, radio and TV stations, and military bases, as well as its signature and ratification of the ‘Treaty on Accession’, which formalised Russia’s de facto control over Crimea. Russia’s has continued to exercise this authority through adoption of a constitutional law, pursuant to which all of Crimea was integrated into Russia’s economic, financial, credit and legal systems and Crimean residents could receive Russian citizenship. Russia remains in a position to exercise this authority over Crimea until the present day, and continues exercise this authority in fact, to the exclusion of Ukraine. (See Section 3.2.2.3 (The Position of Russia to Exercise Authority over Crimea).)

5.1.3 PROHIBITED USE OF FORCE TO EFFECT THE OCCUPATION OF CRIMEA

International law does not distinguish between lawful and unlawful occupation; an Occupying Power bears the same legal obligations regardless of how the occupation was established. Nevertheless, as a means of denying its status as
Occupying Power, Russia has advanced a number of arguments to justify its use of force in Ukraine’s Crimean Peninsula, including self-defence, protection of Russian nationals abroad, responsibility to protect (the Russian-speaking population of Crimea) and humanitarian intervention. None of these arguments have been established, whether on the facts or in accordance with international law and, therefore, they cannot negate the finding that Russia occupies Crimea. (See Section 3.3 (Illegality of the Use of Force to Effect the Russian Occupation of Crimea.)

5.1.4 Annexation of Crimea

Occupation does not confer sovereignty to the Occupying Power. Nevertheless, Russia has claimed sovereignty over Crimea based on claims of self-determination of peoples and the accession of a lawfully ceded State, in apparent violation of the prohibition of annexation. Russia’s arguments in support of a valid assertion of sovereignty over Crimea have not been established in law or on the facts. None of the alleged ‘peoples’ on the Peninsula had a right of self-determination that could be exercised through unilateral secession. Russia’s claim that it accepted the accession of an ‘independent State’ that seceded on the basis of a lawful declaration of independence also fails. This is due to the declaration’s breach of Ukrainian domestic law, regional and international standards, and international law, and resultant invalidity. Thus, Russia’s arguments that its assertion of sovereignty is legitimate on the basis of either the exercise of the right of self-determination or a declaration of independence cannot preclude the finding that Russia unlawfully annexed Crimea, or negate that Crimea remains occupied. (See Section 3.4 (Sovereignty over Crimea).)

5.1.5 Applicable Law to the Situation in Crimea

As the Occupying Power in Crimea, Russia is bound to comply with a wide range of obligations that attach to it under the law of occupation. The law of occupation is primarily enshrined in the Hague Regulations; the Fourth Geneva Convention; provisions of AP I; and customary IHL. These rules of IHL remain applicable until the end of occupation. As such, it is these instruments and principles which primarily define the international obligations under IHL that attach to Russia in the context of its occupation of Crimea. (See Section 3.5.1.1.2 (International Obligations of Russia as the Occupying Power in Crimea).)

Additionally, as Russia has exercised effective control over the territory of Crimea from 27 February 2014 to present day, the whole body of IHRL applies extraterritorially to Russia in respect of Crimea. As such, Russia is obligated to ensure that the human rights of those residing within the territories it occupies are respected, protected and fulfilled. (See Section 3.5.1.2.1 (Russia’s Obligations Under IHRL: Extraterritorial Application).)

Meanwhile, Ukraine is not exonerated of its IHL or IHRL responsibilities, despite its lack of control over the territory of Crimea. Ukraine remains obligated by IHL by virtue of the law applicable to IAC in the context of any hostilities, which may occur. Furthermore, it must undertake all legal and diplomatic measures available to it to ensure that the population of Crimea enjoys human rights to the maximum extent possible. (See Sections 3.5.1.1.3 (International Obligations of Ukraine Under IHL), more generally and 3.5.1.2.3 (Ukraine’s Continued Obligations Under IHRL).)

5.1.6 State Responsibility for Violations of International Obligations in Crimea

Both Russia and Ukraine are alleged to have engaged in conduct in Crimea in violation of their obligations under IHL and/or IHRL. If these allegations can be established, then they could potentially trigger the international responsibility of Russia and/or Ukraine, in accordance with the law of State responsibility. Such a determination would rest on the attributability of the relevant conduct to the State. In addition to the conduct of a State’s legislative, executive and judicial organs, among others, the acts or omissions of a State’s armed forces, including individual soldiers and officers, are considered acts of that State for the purposes of attribution. (See Sections 3.5.1.3 (Reported IHL and IHRL Violations in Crimea) and 4.3.1.6 (State Responsibility of Russia and Ukraine for Violations of Their International Obligations).)
5.2 THE SITUATION IN DONBAS

5.2.1 NIAC IN DONBAS

Turning to Donbas, there is clear and convincing evidence that, by 14 April 2014 in Donetsk and 30 April 2014 in Luhansk, both criteria to establish the existence of a NIAC between Ukraine and D/LPR non-state armed groups operating in the region had been satisfied. Namely, the non-state armed group(s) involved were sufficiently organised, and the hostilities had reached a sufficient level of intensity. (See Section 4.1.2.2 (Existence of a Non-International Armed Conflict in Eastern Ukraine).)

The process of the D/LPR armed groups formalising into organised armed groups took place over several months beginning in March 2014, when various groups formed and participated in pro-Russian protests in Donbas. While not every indicium of organisation was present in each group from the beginning of hostilities, the groups developed significant military capacity and sufficient structure to operate over time, as exhibited by their ability to conduct military operations against the UAF and to control territory. By mid-April, the groups began to display sufficient indicia of organisation for purposes of establishing a NIAC. In Donetsk, the following operated during the hostilities as organised armed groups: Girkin’s group at least by 12 April 2014, Bezler’s group at least by 14 April 2014, the Patriotic Forces of Donbas (Vostok Battalion) at least by 9 May 2014, and the Oplot Battalion at least by 26 May 2014. In Luhansk, the following operated during the hostilities as organised armed groups: the People’s Militia of Luhansk (Prizrak Battalion) at least by 27 April 2014; the Army of the South-East at least by 29 April 2014; the Luhansk Cossack National Guard at least by 3 May 2014; and Dryomov’s group at least by 22 May 2014. Between July 2014 and February 2015, the armed groups transformed into the 1st and 2nd Army Corps, which exhibited organisation comparable to a traditional state army. (See Section 4.1.2.2.1 (Organisation).)

Where various non-State armed groups act in a coalition, their actions can be considered cumulatively for the purposes of assessing the intensity requirement necessary to establish the existence of a NIAC. There is clear and convincing evidence to suggest that armed groups operating in Donbas acted with a sufficient level of coordination and cooperation to fulfil many of the indicators of coalition.57 From as early as April 2014, the groups shared a common enemy (i.e., Ukraine) and conducted coordinated and collaborative military operations against that enemy towards a shared objective (integration of Donbas into Russia). The joint operations conducted by the armed groups demonstrated operational, strategic, and logistical cooperation. (See Section 4.1.2.2.2.1 (Did the Groups Act as a Coalition?).) Moreover, attempts to formalise the armed groups into a single command that began in July and culminated in the establishment of the 1st and 2nd Army Corps by at least February 2015, evidenced the progression from a loose coalition in April 2014 into a more formalised Army under a single command. (See Sections 4.1.2.2.1.2 (The Formalisation of Groups into a Single Command: July 2014 – February 2015) and 4.1.2.2.2.1 (Did the Groups Act as a Coalition?).)

Consequently, it has been established that – at least by the time each of the armed groups satisfied the organisational requirement58 – the armed groups operated as part of a coalition and their actions could be considered cumulatively for the purpose of the intensity assessment. Therefore, when assessing the intensity requirement, the actions of the individual groups were assessed cumulatively from the time they became sufficiently organised.

The hostilities in Donbas reached the required level of intensity by at least 14 April 2014 in Donetsk and 30 April 2014 in Luhansk. From this time in Donetsk, what were previously sporadic and isolated acts of violence that occurred during protests had clearly transformed into protracted violence between organised armed groups and Ukrainian forces, which had been deployed to the area and also reinforced. There was a significant increase in the seriousness

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57 See Section 4.1.2.2.2.1 Did the Groups Act as a Coalition?.
58 See Section 4.1.2.2.1 Organisation, above.
and frequency of attacks and armed clashes, and the groups had taken control over key cities and towns. From this time, the armed groups had access to and utilised a significant quantity of weaponry, including heavy weaponry. The violence had also begun to impact significantly on the civilian population, causing a wave of refugees to flee the area. Moreover, the hostilities had attracted the attention of the UN Security Council and other international organisations, including the OSCE, which issued its first report on the situation on 14 April 2014, and the HRMMU, which issued its first report on 15 April 2014. (See Section 4.1.2.2.2.2 (When was the Intensity Requirement in Eastern Ukraine Satisfied?).)

In Luhansk, there were no active hostilities during April. However, the organised armed groups were able to take and maintain control over territory from 28 April. The severity of the circumstances was confirmed on 30 April 2014, when the Ukrainian government conceded it had lost control over the situation in the area. These factors were determinative in assessing that the intensity threshold was fulfilled in Luhansk by at least 30 April 2014. From these dates, other indicators of intensity were also present. These included the involvement in serious armed clashes of heavily armed (and organised) groups, in significant numbers; the involvement of Ukraine’s armed forces; the increasingly negative impact on the local population, including significant civilian casualties; and the attention received from international organisations, including the UNSC. (See Section 4.1.2.2.2.2 (When was the Intensity Requirement in Eastern Ukraine Satisfied?).)

Thereafter, the conflict in Donbas intensified further throughout the spring and summer of 2014, with the Ukrainian forces launching several offensive operations to re-establish control over territory lost to the D/LPR armed groups. During this period, there was an increasing number of casualties and a serious effect on the civilian population. The use of heavy weaponry also increased through the spring and summer of 2014, particularly as the armed groups began receiving supplies of weaponry from Russia. (See Section 4.1.2.2.2.2 (When was the Intensity Requirement in Eastern Ukraine Satisfied?).) Clashes between Ukrainian forces and the organised armed groups have continued to date. (See Section 4.1.2.3.1.4 (Russian Intervention after the Minsk-II Agreements (post-February 2015)).)

5.2.2    IAC IN DONBAS

Having established the existence of a NIAC between the Ukrainian forces and the D/LPR armed groups, it was necessary to examine whether an IAC between Russia and Ukraine existed either: 1) in parallel to the NIAC as a result of any direct intervention by Russia in the conflict in support of the non-state armed groups; or 2) in place of the NIAC, in the case that the non-state armed groups acted under Russia’s overall control, thereby internationalising the conflict. (See Section 4.1.2.3 (Existence of an International Armed Conflict in Eastern Ukraine).)

In relation to Russia’s direct intervention, numerous reports and testimonies, predominately emanating from Ukrainian sources, allege that individual RFAF units and FSB and GRU agents intervened in the conflict from the beginning of April 2014, and that Ukrainian positions were shelled from Russian territory from the end of April (particularly towards the end of June and the beginning of July). While such evidence may establish the existence of an IAC between Russia and Ukraine, in the absence of independent and reliable corroborating evidence and/or any evidence to establish that these individuals were acting as agents of the Russian State (as opposed to acting in an individual capacity or ultra vires), it is not possible to determine that Russia directly intervened in the conflict and, therefore, that an IAC existed at that time. Nevertheless, a likelihood exists that further investigation may provide clear and convincing evidence of the existence of an IAC in this time period, particularly in view of Russia’s belligerent statements around the time. (See Sections 4.1.2.3.1.1 (Early Mobilisation of Russian Armed Forces and Shelling Along the Border with Ukraine: April – May 2014), 4.1.2.3.1.2 (Early Indications of the Physical Presence and Activity of
Russian Units: June – July 2014), 4.1.2.3.2.3.1.1 (Presence of FSB Officers: 2013 – April 2014) and 4.1.2.3.2.3.2.1 (Members of the Russian Armed Forces, including GRU Officers: Spring 2014.)

The first instance of Russia's direct intervention on the territory of Ukraine that is sufficiently corroborated to satisfy the clear and convincing standard occurred on 11 July 2014 when the RFAF shelled Ukrainian forces in Zelenopillya, Luhansk oblast, in support of the D/LPR armed groups. From August 2014 until 18 February 2015, there is clear and convincing evidence that Russia conducted several operations on Ukrainian territory to support the D/LPR armed groups, namely in Ilovaisk, Donetsk airport, Mariupol and Debaltseve. (See Section 4.1.2.3.1 (Direct Intervention in Support of Non-State Armed Groups).) There is also clear and convincing evidence of the deployment of RFAF officers into the D/LPR armed forces in Ukraine from around September 2014 onwards through the 12th Reserve Command ('RC'), later renamed the 8th Combined Arms Army, of the Southern Military District of the Russian Ministry of Defence. (See Section 4.1.2.3.2.3.2 (Officers and Servicemen of the Russian Armed Forces, including the GRU).)

Evidence that Russia directly intervened in Ukraine from 11 July 2014 until 18 February 2015 through cross-border artillery strikes, and onwards through the deployment of Russian officers and servicemen into the D/LPR armed groups in Ukraine, is sufficient to establish the existence of an IAC between Russia and Ukraine from 11 July 2014, running parallel to the NIAC between Ukraine and the D/LPR armed forces. Nonetheless, due to clear and convincing evidence that Russia exercised overall control over the D/LPR armed groups starting from July 2014, it is more accurate to conclude that the NIAC became internationalised from July 2014. (See Section 4.1.2.3.2 (Overall Control: Participants in the Internal Armed Conflict Act on Behalf of the State).)

To establish overall control, the circumstances need to be considered as a whole, on a case-by-case basis. Underpinning Russia's contributions to the D/LPR armed groups have been shared military and territorial goals – namely, the intention to ensure Ukrainian territory in Donetsk and Luhansk is under the effective control of the D/LPR, and outside the de facto control of Ukraine. Russia's consistent actions from 2014 until the present to support, influence and control the D/LPR armed groups in furtherance of their continued control over territory in Donbas, as well as measures to further incorporate the territory controlled by the armed groups into the orbit of Russia, support this conclusion. (See Section 4.1.2.3.2.2 (Shared Goals between Russia and the D/LPR).)

While there is some indication that Russia exercised influence over the D/LPR forces from as early as March/April 2014, further investigation is required to establish a relationship of overall control during this time period. Indeed, the totality of evidence indicating control between March and July 2014 is insufficient to clearly and convincingly show that, in addition to financing, training, and equipping the D/LPR armed forces, Russia also played a role in organising, coordinating, or planning their military actions. Instead, the evidence shows that Russia's exercise of overall control was an evolving process that began with influence in April 2014 and developed into the requisite level of control to constitute overall control in July 2014. (See Section 4.1.2.3.2 (Overall Control: Participants in the Internal Armed Conflict Act on Behalf of the State).)

By July 2014, evidence of Russia's overall control over the D/LPR armed groups is clear and convincing. Taking the evidence as a whole, the nature and scale of Russia's involvement, when combined with the correspondance of aims and objectives, militates against a finding that individuals from organs of the Russian State (including the FSB, GRU, RFAF and political leadership) were acting in a personal capacity or otherwise ultra vires from July 2014. Instead, the only reasonable conclusion is that the Russian State utilised its apparatus to ensure overall control over the D/LPR armed groups in furtherance of their shared territorial and military aims. (See Section 4.1.2.3.2 (Overall Control: Participants in the Internal Armed Conflict Act on Behalf of the State).)

To begin, from July 2014, there is clear and convincing evidence that Russia increased its direction and supervision over the D/LPR military forces through key military supervisors, such as Vladimir Ivanovich, Nikolai Fedorovich Tkachev, Igor Egorov and Oleg Vladimirovich Ivannikov, who had commanding roles within the D/LPR armed groups in the summer of 2014. Russia was also able to exert influence over, and control the activities of, key military personnel
in the D/LPR, including Alexander Borodai, Igor Girkin, Sergey Dubinsky, Igor Bezler, Valerii Bolotov and Ihor Plotnytskyi. Crucially, Russia’s direct intervention in the conflict in Ukraine began in July 2014, and the RFAF coordinated, planned and commanded joint operations with the D/LPR (e.g., in Ilovaisk, Donetsk airport, Mariupol and Debaltseve) between August 2014 and February 2015. Russia’s influence over the D/LPR’s political leadership was also aided by Russia’s appointment of Vladislav Surkov as curator in Donbas in July 2014 who, on Russia’s behalf, oversaw and controlled political developments in the D/LPR. (See Section 4.1.2.3.2.4.9.2 (Vladislav Surkov).) Control over the political leadership was maintained by forcibly removing those who opposed Russia’s policies and ensuring they were replaced with those willing to follow Russia’s instructions and work toward the same objectives. (See Section 4.1.2.3.2.4 (The Russian Federation’s Direction and Supervision of the D/LPR).)

After the promulgation of the Minsk-II Agreements in February 2015, and the subsequent stabilisation of areas under the control of the D/LPR armed groups, the need for Russia’s large-scale direct intervention and the immediacy of its military support decreased. However, Russia’s overall control over the D/LPR forces continued and actually increased. After the establishment of the 1st and 2nd Army Corps in the D/LPR, Russia’s control over the armed groups’ military formalised with a system of sending its own military officers and personnel to serve in Donbas through the 12th Reserve Command/8th Army of the Southern Military District of the RFAF. The incorporation of Russian commanding officers into the leadership of the 1st and 2nd Army Corps, and the similarities between the military ranks and structures of the State and the armed group, furthered Russia’s control over the organisation, planning and coordination of the D/LPR’s military activities. (See Section 4.1.2.3.2.3 (Transfer of Intelligence and Military Officers and Personnel from Russia).)

Russia’s ability to plan, organise and coordinate the military and political activities of the D/LPR was maintained and supported through the D/LPR’s severe dependence on the Russian Federation. In particular, Russia’s financial assistance that began in spring 2014, increased throughout 2014, resulting in the D/LPR’s gradual economic dependence on Russia, particularly after the Ukrainian Government ceased social payments and economic support in winter 2014 to 2015. The provision of weapon supplies and training, which began in spring 2014 and increased throughout summer 2014, also became more systematic after the establishment of the 1st and 2nd Army Corps. By August 2015, Russia had established a vast network of at least 54 training camps in Russia, 30 in Crimea and 58 in Donetsk, to train and deploy troops into the D/LPR forces. These contributions upheld the D/LPR’s dependency on the Russian Federation for their continued survival and, consequently, enabled Russia’s continued exercise of overall control over the groups. (See Sections 4.1.2.3.2.5 (Training of the D/LPR Forces by the Russian Federation), 4.1.2.3.2.6 (Financial Assistance and Economic Dependency on the Russia Federation) and 4.1.2.3.2.7 (Supply and Provision of Logistical Support by the Russian Federation).)

Russia’s overall control over the D/LPR, effected through the same means, continues through to the present. For example, in addition to the continued provision of economic assistance, training, military supplies and logistical support, Russia’s 12th RC/8th Army of the Southern Military District has continued to play a pivotal role in organising, coordinating, and planning the activities of the D/LPR’s 1st and 2nd Army Corps. (See Section 4.1.2.3.2.3 (Transfer of Intelligence and Military Officers and Personnel from Russia).) Russia has also persisted with its system of curators, with Vladislav Surkov continuing to act as the main curator overseeing the D/LPR political sphere until 2020, before being succeeded by Dmitry Kozak in the winter of the same year. To the present day, Kozak is said to define politics, strategy and ‘foreign relations’ in the D/LPR, while also representing Russia in diplomatic negotiations. He is assisted in his work by the subordinate Department for Cross-Border Cooperation of the Administration of the President of the Russian Federation, headed by Alexei Filatov. (See Section 4.1.2.3.2.4.9 (Russian Curators/Advisors: 2014 – Present).)

Considering the full scope and cumulative effect of Russia’s contributions to the D/LPR armed groups – including organising, planning and directing their military and political activities, as well as the D/LPR’s continued dependency on Russia as a result of its assistance in the form of military supplies, training and economic assistance – and within
the context of Russia’s continued territorial aims in Donbas, the evidence clearly and convincingly establishes a relationship of overall control. These circumstances militate against any other reasonable conclusions that could be drawn from the evidence.

Thus, in sum, there is clear and convincing evidence to establish that from 14 April 2014 in Donetsk and 30 April 2014 in Luhansk, a NIAC existed between Ukraine and the D/LPR organised armed groups. From July 2014, the NIAC was transformed by the relationship of overall control into an IAC between Russia (through the D/LPR armed forces) and Ukraine. (See Section 4.1.3 (Conclusion on the Classification of Armed Conflict in Donbas).)

5.2.3 OCCUPATION BY PROXY OF DONBAS

Having established that the Russian Federation has exercised overall control over the D/LPR, it was necessary to assess whether the D/LPR has been in effective control of the Donetsk and Luhansk oblasts. This would lead to a finding that Russia occupies Donbas by proxy. (See Section 4.2 (Occupation by Proxy: Is Donbas Occupied?).)

The D/LPR armed groups, while acting under Russia’s overall control, could be said to exercise effective control over territory in Donbas if the follow indicia were satisfied: 1) they were physically present in the territory without the consent of Ukraine; 2) Ukraine had been rendered substantially or completely incapable of exerting its powers in the territory on account of their military presence; and 3) the D/LPR had assumed a position to exercise authority over the territory in lieu of the Ukrainian government. (See Section 4.2.2 (The Law).)

From March to April 2014, the D/LPR armed groups have been physically present in the Donetsk and Luhansk oblasts without the consent of Ukraine, thus satisfying the first criterion of effective control required to establish occupation by proxy. (See Section 4.2.3.1 (Physical Presence of the Armed Forces in a Foreign Territory).)

Turning to the second and third indicators of effective control, the D/LPR armed groups proclaimed their independence and began establishing rudimentary governmental institutions in the spring and summer of 2014, issuing legislation and establishing law enforcement mechanisms. At the same time, intense hostilities between Ukraine and the D/LPR armed groups with support from Russia raged throughout the Donetsk and Luhansk oblasts. While the D/LPR exhibited some form of control over different towns and cities during this time, it is not possible, based on the currently available evidence, to precisely define exact dates and locations in individual towns and cities where hostilities ceased and Ukraine was forced to withdraw. Instead, this period appears to have been defined by increasing hostilities impacting upon the ability of the D/LPR armed groups to exercise effective control. Consequently, it cannot be concluded that the D/LPR exercised effective control over territory in Donetsk and Luhansk between April and 5 September 2014. However, it is recognised that further investigation could likely establish effective control over individual cities and towns prior to 5 September 2014.

Clear and convincing evidence that hostilities had ceased, and Ukraine had been defeated or withdrawn from a clearly defined territory is only available after 5 September 2014 and the signing of the Minsk-I Agreement. After this point, Ukraine withdrew to the contact line that was established pursuant to Minsk-I. From 5 September 2014, there is clear and convincing evidence that Ukraine was incapable of exercising its authority over the following territory:

- Donetsk oblast: Donetsk, Dokuchaievsk, Horlivka, Yenakiieve (except Vuhlehirsk), Zhdanivka, Kirovsk (currently – Khrestivka), Makivka, Snizhne, Torez (currently – Chystyakove), Khartsyzk, Shakhtarsk, Yasynuvata, as well as separate settlements of Novoazovskyi district, Amvrosiivskyi, Starobeshivskyi and Shakhtarskyi districts.

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60 See Section 4.1.2.3.1.2 Intervention of Russian Federation Armed Forces Units on the Territory of Ukraine.
Executive Summary

• Luhansk oblast: Luhansk, Alchevsk, Antratsyt, Brianka, Kirovsk (currently – Holubivka), Krasnyi Luch (currently - Khrustalne), Krasnodon (currently – Sorokine), Pervomaisk, Rovenky, Sverdlovsk (currently – Dovzhansk), and Stakhanov (currently – Kadiivka), as well as settlements of the Antratsytivskyi, Krasnodonskyi (currently – Sorokinskyi), Lutuhynskyi, Perevalskyi, Sverdlovskyi (Currently – Dovzhanskyi) and Slovianoserbskyi districts.

(See Section 4.2.3.2.1.2 (Signing of the Minsk-I Agreement and the Withdrawal of the Ukrainian Forces (September 2014)).)

In late February 2015, after the signing of the Minsk-II Agreement on 12 February and the withdrawal of the Ukrainian forces from Debaltseve on 18 February, the area outside the control of Ukraine expanded to include Debaltseve. This area has remained the same until the present (with only minor changes to the regions where certain towns are situated). The territory outside of the control of Ukraine has most recently been defined as follows:

• Donetsk oblast: Donetsk, Debaltseve, Dokuchaievsk, Horlivka, Yenakiieve, Zhdanivka, Kirovkse (currently – Khrestivka), Makiiivka, Snizhne, Torez (currently – Chistyakove), Khartsyzk, Shakhtarsk, Yasynuvata, as well as separate settlements in Amvrosiivskyi, Shakhtarskyi, Starobeshivskyi, Artemivskyi (currently – Bakhmutskyi), Volnovaskyi, Mariinskyi, Novoazovskyi, Telmanivskyi, Boykivskyi, Yasynuvatskyi districts.

• Luhansk oblast: Luhansk, Alchevsk, Antratsyt, Brianka, Kirovsk (currently – Holubivka), Krasnyi Luch (currently - Khrustalne), Krasnodon (currently – Sorokine), Pervomaisk, Rovenky, Sverdlovsk (currently – Dovzhansk), and Stakhanov (currently – Kadiivka), as well as settlements of Antratsytivskyi, Krasnodonskyi (currently – Sorokinskyi), Sverdlovskyi (Currently – Dovzhanskyi), Novoaidarivskyi, Lutuhynskyi, Popasnianskyi, Perevalskyi, Stanychno-Luhanskyi and Slovianoserbskyi districts.

(See Section 4.2.3.2.1.3 (Donetsk Airport and Debaltseve (September 2014 – February 2015)).)

By the time hostilities in the areas defined above ceased and Ukraine had fully withdrawn, Ukraine was incapable of exercising its authority as demonstrated by its consequent withdrawal of government services, authorities and funding from the area. Consequently, from 5 September 2014 in the territories defined by the Minsk-I Agreement and 18 February 2015 in the territories defined by the Minsk-II Agreement, the second criterion of effective control (i.e., that the effective local government in place at the time of the invasion has been or can be rendered substantially or completely incapable of exerting its powers by virtue of the foreign forces’ unconsented-to presence) was satisfied. (See Section 4.2.3.2.2 (Incapacity of Local Government).)

By 5 September 2014, the D/LPR unequivocally exercised authority in lieu of the Ukrainian government in the territory under its control, in satisfaction of the third criterion of effective control. In particular, the D/LPR had begun to: establish parallel governmental structures from as early as April and May 2014; enact and enforce their own laws from May 2014; formalise their police forces from around September 2014 in Donetsk, and November 2014 in Luhansk; and establish military, and later civilian courts. Further evidence of the D/LPR’s effective control over the territory is derived from their authority over: entry and exit checkpoints from the territory under their control for both people and goods; services in their respective territories, including hospitals, banks and educational institutions; the collection of taxes; and the paying of salaries (for government workers) and social payments such as pensions. Taken as a whole, this established clear and convincing evidence to satisfy the third criterion of effective control (i.e., that the foreign forces are in a position to exercise authority over the territory concerned (or parts thereof) in lieu of the local government) by 5 September 2014.

Consequently, it has been established that from 5 September 2014 in the territories defined by the Minsk-I Agreement (and 18 February 2015 in the territories defined by the Minsk-II Agreement) through to the present, Russia has occupied parts of Donetsk and Luhansk by proxy, through its overall control of the D/LPR armed groups. In particular, the following findings are pertinent: 1) since July 2014, Russia has exercised overall control over the D/LPR armed
groups; and 2) since 5 September 2014, the D/LPR armed groups have exercised effective control over the territories defined by the Minsk-I Agreement (and 18 February 2015 in the territories defined by the Minsk-II Agreement).

5.2.4 APPLICABLE LAW IN THE OCCUPATION OF DONBAS

It is generally considered that occupation by proxy is regulated by the same set of IHL obligations as a situation of classic belligerent occupation. Thus, the theory of occupation by proxy “prevents a legal vacuum arising as a result of a State making use of local surrogates to evade its responsibilities under the law of occupation.”^61 (See Section 4.2.2.1 (Occupation by Proxy).)

The content of the IHL obligations placed upon an Occupying Power are primarily enshrined in the Hague Regulations, the Fourth Geneva Convention, some provisions of AP I, and customary international law. In addition, the IHL rules applicable to IACs continue to regulate any hostilities which may occur during the situation of occupation. (See Sections 3.5.1.1 (Law of Occupation and 4.3.1.3 Obligations of Russia in Respect of its Proxy Occupation of Donbas).)

As parties to the IAC, Russia and Ukraine were (and continue to be in respect of remaining hostilities) bound by the IHL obligations that regulate the conduct of hostilities, as well as the protection of the civilian population and persons hors de combat. These obligations are enshrined in the four Geneva Conventions, AP I and customary IHL. At a minimum, the D/LPR remains bound in the context of the IAC by the IHL obligations that attach to it in the context of a NIAC. (See Sections 4.3.1.1 (Obligations of the D/LPR in Respect of IHL and IHRL) and 4.3.1.2 (Obligations of Ukraine, Russia and the D/LPR in Relation to the Conflicts in Donbas).)

Moreover, the provisions of IHRL apply concurrently with the rules of IHL. Thus, for the duration of the occupation, Russia bears extraterritorial IHL obligations, owing to its effective control over the territory by virtue of its occupation by proxy. This means that it is bound by the human rights obligations enshrined in: 1) the IHRL treaties that it has ratified/acceded to, as they apply extraterritorially in the areas under its effective control; and 2) based on a dynamic interpretation, the IHRL treaties that have been ratified/acceded to by Ukraine, pursuant to Russia’s IHL obligation to respect the laws in force in occupied territory and the territorial nature of human rights protections. In addition, notwithstanding its lack of effective control over the Russian-occupied parts of Donbas, Ukraine must undertake all measures available to it, including through legal and diplomatic means vis-à-vis foreign States and international organisations, to guarantee that its population enjoys its human rights to the maximum extent possible. (See Section 3.5.1.2 (Obligations of Ukraine and Russia under International Human Rights Law).)

5.2.5 STATE RESPONSIBILITY FOR VIOLATIONS OF INTERNATIONAL OBLIGATIONS IN DONBAS

Russia, the D/LPR and Ukraine are all alleged to have engaged in conduct in Donbas in violation of their obligations under IHL and/or IHRL. Russia or Ukraine could be held responsible under the law of State responsibility for conduct alleged to violate their international obligations if the violation can be proven and the conduct attributed to either State. Conduct by Russia’s or Ukraine’s State organs, such as the RFAF, UAF or the ministries of either government, can be attributed to Russia or Ukraine since the conduct of a State organ is considered an act of the State. In relation to conduct of the D/LPR, the ability to attribute its actions directly to Russia depends on the level of its dependence upon Russia or the control Russia exercises over the D/LPR. (See Sections 4.3.1.4 (Reported IHL and IHRL Violations in Donbas) and 4.3.1.6 (State Responsibility of Russia and Ukraine for Violations of Their International Obligations).)

Examination of whether the D/LPR was ‘completely dependent’ upon Russia at the time of each alleged violation for purposes of blanket attribution of its conduct to Russia under the law of State responsibility was beyond the scope of the present Legal Opinion. However, if the D/LPR were to be found ‘completely dependent’ upon Russia at the relevant points in time, it could be equated to a Russian State organ in accordance with ARSIWA Article 4 (i.e., a ‘de facto State...

organ’) and the entirety of its conduct could be attributed to Russia for so long as the complete dependence relationship has persisted. (See Section 4.3.1.6.1.2.1 (‘Complete dependence’ (strict control) test.)

In the alternative, specific conduct of the D/LPR could be attributed to Russia under ARSIWA Article 8 if Russia instructed or directed the violation, or exercised ‘effective control’ over the specific operation in which a violation of its international obligations occurred. While assessment of Russia’s responsibility for each violation by the D/LPR within the framework of ARSIWA Article 8 was beyond the scope of this Legal Opinion, the D/LPR’s conduct in the January 2015 attack on Mariupol served as an illustrative example. In this case, there is clear and convincing evidence that the D/LPR’s conduct in violation of Russia’s international obligations is attributable to Russia by virtue of Russia’s instructions to the D/LPR to perpetrate the violation. (See Section 4.3.1.6.1.2.2 (Attribution through supervision and instruction, or direction or control (‘effective control’)).

Even if the D/LPR’s conduct in violation of Russia’s international obligations could not be attributed to Russia, Russia could still be held responsible for its own conduct in relation to the conduct of the D/LPR on account of the relationship of overall control. As the Occupying Power in Donbas, Russia bears a duty of vigilance in respect of the territory. Consequently, Russia is legally responsible for any failure to exert all good efforts to prevent and punish violations by the D/LPR. Moreover, Russia is liable, through its support of the D/LPR, for its violation of the principle of non-intervention in Ukraine. (See Section 4.3.1.6.1.3 (Responsibility of a State for its own conduct as it relates to non-state entities)).

Finally, the provisions of the law of State responsibility “are without prejudice to any question of the individual responsibility under international law of any person acting on behalf of a State”62 Thus, to the extent that allegations of violations of IHL and IHRL amount to international crimes, the individual perpetrators of these acts may attract individual criminal responsibility for their conduct regardless of whether the State may also be held liable. (See Section 4.3.5 (Conclusion on State Responsibility).)

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1. Introduction

1.1 Truth Matters

1.2 What is the Truth?

1.3 The Limitation of Ukraine’s Warfare

1.4 Establishing the Truth
1. **INTRODUCTION**

1.1 **TRUTH MATTERS**

As of 13 February 2022, nearing the eighth anniversary of the Russian Federation’s takeover of Crimea and the commencement of armed conflict in Donbas, Ukraine continues to be hamstrung domestically and internationally by misinformation, disinformation and a deficit in understanding the most relevant and applicable international law to the situations in these territories. Meanwhile, the threat of a Russian invasion into Kyiv looms large.

Ukraine’s best hope for protecting its sovereignty and territory rests not on the battlefield, but on identifying the truth of Russia’s involvement in Ukraine. This is the golden thread that will inform and fortify (geo)political resistance inside and outside of Ukraine, including those concerned with transitional justice and peacebuilding processes that must, ultimately, ensure justice is done and seen to be done. Of course, such steps may seem an underwhelming response. However, when force or reason provide no answers, the truth at least provides a bedrock of legal principle and a record for posterity, the minimum required for accountability and redress.

1.2 **WHAT IS THE TRUTH?**

Information needed to establish the precise nature of Russia’s involvement in Ukraine, based on a careful assessment of the facts against the law, has been lacking since Russia’s Revolution of Dignity in 2014. Accordingly, vastly different versions of the events occurring in Ukraine since 2014 have emerged.

In relation to Crimea, Russia is clearly recognised internationally as the Occupying Power. However, the details of how and when this occupation came to be, the legality of the use of force to effect it, and whether this occupation may have ended in accordance with recognised principles of international law, merit a more fulsome legal enquiry.

As regards Donbas, the Government of Ukraine has asserted that Russia occupies this area through its control over separatist forces. However, internationally, only the Parliamentary Assembly of the Council of Europe has expressed this view, by labelling the area as the ‘temporarily occupied territories in Donetsk and Luhansk’. Other international organisations have referred to Donbas as ‘areas not controlled by the Government’ and ‘territory controlled by armed groups’. Neither of these divergent views has been scrutinised through a careful assessment of the facts as applied to the relevant international legal frameworks.

1.3 **THE LIMITATION OF UKRAINE’S LAWFARE**

That is not to argue that these classification tasks are simple or that the Ukrainian government or civil society have been inactive in this regard. On the contrary, Ukraine’s lawfare, particularly its use of international legal tribunals capable of adjudicating relevant aspects of its inter-state dispute with Russia, has been energetic and, at times, highly skilful. The Ukrainian government has initiated a flurry of international legal cases and claims, including at the ICC, the International Court of Justice (‘ICJ’), the ECtHR and pursuant to the United Nations Convention on the Law of the Sea (‘UNCLOS’), designed to press their case that Russia’s involvement in Ukraine has violated international law. In support of these cases, civil society has been fearless and determined in documenting Russia’s conduct.

However, Ukraine’s engagement of the international justice system is constrained by the many limitations of those courts. Consequently, most of Ukraine’s claims, including those at the ICJ (concerning the 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 (‘CERD’)) and those involving the application of UNCLOS, do not directly call for the court or tribunal to assess whether Russia is a party to the conflict in eastern Ukraine, let alone to...
determine precise questions concerning the scale and effect of their support or control over the D/LPR. As a human rights court, the ECHR will be called upon to consider Russia’s territorial control over Donbas for the purposes of establishing the extraterritorial applicability of the European Convention of Human Rights (‘ECHR’). It will not pronounce upon the entirety of the alleged international humanitarian law (‘IHL’) regime of potential relevance to the situation.

Whilst the ICC will need to consider the foundational questions of IHL if it proceeds with an investigation into the situation in Ukraine, the wheels of international criminal justice move at a glacial pace. In 2015, the International Criminal Court (‘ICC’) Office of the Prosecutor initiated a preliminary examination into the situation in Ukraine. The ICC concluded this examination in December 2020, finding a reasonable basis to believe war crimes and crimes against humanity had been committed. However, citing capacity constraints, the Court has yet to request authorisation to open an investigation into the matter.

Therefore, despite the Ukrainian government’s adoption of legislation asserting that Crimea is occupied directly by the Russian Federation, and that Donbas is occupied through Russia’s control over armed groups, these remain political assertions. As such, they remain vulnerable to the ebb and flow of geopolitics, exacerbated by the incompleteness of the factual and legal assessments required to establish the validity of these claims.

1.4 Establishing the Truth

Establishing the truth requires more than identifying whether Russia supports the armed groups in Donbas; this much is known and cannot sensibly be denied. It requires all the facts to be collated so that the applicable humanitarian law rights and responsibilities can be fully established.

The present opinion is designed to reveal the truth about Russia’s role in Crimea and Donbas by collating and thoroughly analysing the available information, in order to classify the conflicts and the contours of the principles of international law, particularly IHL and international human rights law (‘IHRL’), applicable to them. Specifically, it aims to establish to a clear and convincing standard whether and when an international armed conflict began in Crimea; whether and when the Russian Federation occupied Crimea; whether Russia’s intervention in Crimea breached the prohibition against the use of force; whether Russia has validly asserted its sovereignty over Crimea; the classification of the armed conflict in Donbas as either international, non-international, or both; whether the Russian Federation occupies areas of Donbas, either directly or indirectly; and the international law applicable to the situations in Crimea and Donbas.

The answers to these questions will enable Ukraine and the international community at large to guide their national policies towards Crimea and Donbas according to the most vital precepts of international law. In turn, this will enable enhanced protection for civilians, more robust political approaches to resolution of the conflict, improved opportunities for justice, stronger accountability mechanisms and responses and greater safeguarding against denial and recurrence.

This is not a mere conflict classification process bereft of real purpose. It is history in the making – the beginning of a comprehensive reckoning of responsibility for the millions of civilians whose lives have been up-ended by war or violations of humanitarian law without which there can be little hope of any effective transitional justice plan. It is the basis for a return to the rule of law and a fair and public assessment of the responsibility for harms done. It is the

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2 ECHR, “List of Cases: Inter-State Applications”.
3 In its recent judgement in a similar case of Georgia v. Russia, the ECHR ruled that during an active phase of hostilities, “the very reality of armed confrontation and fighting between enemy military forces seeking to establish control over an area in a context of chaos not only means that there is no ‘effective control’ over an area [...]”, but also excludes any form of “State agent authority and control” over individuals,”, therefore the Court would not have jurisdiction to consider any claims concerning the active phase of hostilities. See, Georgia v. Russia App no. 38263/08 (ECHR, 21 January 2021), paras. 125-144.
4 ICC, “Ukraine”.
6 Law of Ukraine No. 2268-VIII “On pecularities of the state policy on ensuring state sovereignty of Ukraine on the temporarily occupied territories in the Donetsk and Luhansk regions” (18 January 2018).
bedrock of any strategy to ensure that Crimea and Donbas are not forgotten, and to end the war in Ukraine on just terms.
2. Methodology

2.1 The Project

2.2 Open Call for Information

2.3 Written Appeals to Governmental Bodies

2.4 Written Appeals to International, Inter-State, and Civil Society Organisations

2.5 Interviews and Oral Consultations with CSOs, Advocates, Journalists, and Activists

2.6 Desk-Based Review

2.7 GRC’s Previous Research and Reports

2.8 Analysis of Information

2.9 Writing Process

2.10 Terminology
2. METHODOLOGY

2.1 THE PROJECT

Global Rights Compliance (‘GRC’) began its project “International Law and Defining Russia’s Involvement in Crimea and Donbas” in May 2020 and completed it on 13 February 2022, with the support of the Swedish Ministry of Foreign Affairs. Bringing together local and international expertise, the project was designed to provide this authoritative international legal opinion concerning Russia’s alleged involvement in Crimea and Donbas (the ‘Opinion’).

The Opinion considers fundamental IHL questions concerning Russia’s alleged involvement in Crimea and Donbas, as well as any impact this assessment has on conflict classification. These questions are critical to a full understanding of the IHL framework relevant to the situations in Crimea and Donbas, and to assessing the full scope of Russia and Ukraine’s international rights and responsibilities in these contexts.

Although Ukrainian governmental bodies and civil society organisations (‘CSOs’) have worked tirelessly to gather information, the current project represents the first exhaustive effort to assemble this information to elucidate the status of Crimea and Donbas under the IHL framework. In order to ensure that the Opinion is objective and comprehensive, GRC has reviewed and analysed the broadest possible scope of information collected by domestic, regional and international governmental and non-governmental organisations pertaining to the situations in Crimea and Donbas.

The Opinion is also informed by two virtual conferences, held in the context of the project. GRC held its first conference, “Neither Here Nor There: Life in Crimea and Donbas”, on 18 March 2021. During the conference, eyewitnesses to the Russian invasion of Crimea and the initiation of the armed conflict in Donbas in 2014, as well as Ukrainian, Russian and international human rights activists, shared their stories and perspectives on the human rights situation in Crimea and Donbas. GRC held the second conference, “Legal (Un)Certainty of Occupation: Crimea and Donbas”, on 9 to 11 June 2021. This conference brought together leading scholars and practitioners in the international human rights and humanitarian law space to obtain considered, expert legal commentary of relevance to the situations in Crimea and Donbas.

2.2 OPEN CALL FOR INFORMATION

In June 2020, after the commencement of the project, GRC placed an announcement on its website notifying the public of the contents and purpose of the project and inviting any and all information holders to share their opinions and findings with GRC. No information was received in response to this call.

2.3 WRITTEN APPEALS TO GOVERNMENTAL BODIES

On 9 June 2020, GRC sent emails to Ukrainian State authorities introducing the project and inviting them to share any and all information in response to research questions and any other information of potential relevance to GRC’s inquiry. Specifically, the emails were sent to Ukraine’s Ministry of Foreign Affairs (‘MFA’) (meetings held, information received), Ministry of Justice (meetings held, information received), Ministry of Reintegration of the Temporarily Occupied Territories of Ukraine (meetings held, no information received), Office of the Prosecutor General (‘OPG’) (meetings held, information received), State Security Service (‘SSU’) (no response), National Police (meeting held, no information received) and Mission of the President of Ukraine in the Autonomous Republic of Crimea (meetings held, no information received). The information received as a result of these interactions is cited in the Opinion without any identifying details in order to protect all relevant actors, especially vulnerable witnesses.

Further, GRC introduced the project to Russian State authorities via email and/or correspondence forms on relevant government websites, and encouraged their cooperation. Specifically, requests for information, including some research questions where the correspondence forms allowed for them, were submitted to Russia’s Ministry of
Defence, Ministry of Interior, Investigative Committee of the Russian Federation, and Public Prosecutor’s Office via the forms on their respective websites (no response received from these bodies), as well as Russia’s Ministry of Natural Resources and Ecology (response redirected the team to the Ministry’s website) and Ministry of Education (full response received on 5 May 2021, the information was not used for the Opinion because the educational system in Crimea was not discussed).

2.4 WrittEn APEALSS To InTernATIonAl, InTEr-STATe, And CvIL SoCIETY OrGAnISATIoNS

On 9 June 2020, GRC invited, via email and electronic message delivery services, the Ukrainian CSOs most active in the field of human rights and armed conflict to share information of relevance to the project in response to research questions (see Annex A (Email Introducing the Project)) and any other information of potential relevance to the project. The CSOs included: Ukrainian Legal Advisory Group; Ukrainian Helsinki Human Rights Union; Regional Centre for Human Rights; Crimean Human Rights Group; International Renaissance Foundation; DonbasSOS; Kharkiv Human Rights Group; Truth Hounds; CrimeaSOS; ZMINA; Center for Civil Liberties; and Legal Hundred. Meetings were held in follow up to email exchanges with all the above-listed CSOs except for four that did not respond to our email requests for information. The Opinion takes into account both the information provided directly by these organisations and the information published on their websites.

Additionally, invitations to share information, along with research questions, were later sent by GRC via email and message services to: Right to Protection (9 October 2020, meeting held); Human Rights Group ‘Sich’ (27 October 2020, no information received); VostokSOS (28 October 2020, information received); Almenda (5 November 2020, information received); Ukrainian Human Rights Institute (5 November 2020, no response); Human Rights Vector (5 November 2020, no response); Maidan Monitoring (5 November 2020, no response); Crimean Diaspora (9 November 2020, no response); Maiden of Foreign Affairs (9 November 2020, no response); Civic Committee for the Protection of Constitutional Rights and Civil Liberties (9 November 2020, no response); New Donbas (9 November 2020, no response); Slavic Heart (9 November 2020, no response); Group of Influence (Grupa Vplyvu, 9 November 2020, meeting held); Gorenie (12 November 2020, no response); Country of Free People (12 November 2020, no response); and Ukrainian Institute of Strategies of Global Development and Adaptation (9 December 2020, no response). Public reports of many of these organisations were reviewed for purposes of the Opinion.

Via email and based upon research questions, GRC also requested information from international human rights and security organisations and research institutions. These included: DRA (9 October 2020, information received); International Partnership for Human Rights (19 October 2020, information received); Human Right Watch (20 October 2020, information received); Human Rights House (20 October 2020, information received); Center for European Policy Analysis (20 October 2020, no response); People in Need (20 October 2020, no response); Freedom House (20 October 2020, no response); Amnesty International Ukraine (20 October 2020, no response); Norwegian Refugee Council (20 October 2020, no response); Helsinki Foundation for Human Rights (28 October 2020, information received); International Crisis Group (9 November 2020, no response); Open Democracy (9 November 2020, no response); East European Security Research Initiative (9 November 2020, no response); Partnership for Human Rights ‘Libereco’ (12 November 2020, no response); Norwegian Helsinki Committee (12 November 2020, no response); National Endowment for Democracy (12 November 2020, no response); International Centre for Black Sea Studies (26 November 2020, no information received); International CSO Safety Organisation (26 November 2020, no response); Institute for the Study of War (26 November 2020, no response); Frontline Defenders (26 November 2020, no response) and European Human Rights Advocacy Centre (9 December 2020, no response). GRC analysed information

8 It is unclear whether the Ministry received the request because the website does not send any confirmation message upon submission of the form. Subsequent attempts brought the same unclear result.
9 These included WhatsApp, Facebook Messenger and Telegram.
10 These included WhatsApp, Facebook Messenger and Telegram.
received from the organisations that provided it, as well as the reports prepared and published by the named organisations, for purposes of the Opinion.

Further, GRC contacted a range of Russian CSOs most active in the field of human rights and armed conflict in Ukraine with the same request for information and corresponding list of research questions. These included: For Human Rights (9 December 2020, no response); Global Rights of Peaceful People (9 December 2020, no response); Civic Assistance Committee (24 November 2020, meeting held); Committee of Soldiers’ Mothers (24 November 2020, no response); Sova Center (24 November 2020, no response); Zona Prava (24 November 2020, no response); Moscow Helsinki Group (24 November 2020, no response); Moscow Human Rights Bureau (24 November 2020, no response); Russian Research Center for Human Rights (24 November 2020, no response); Agora (24 November 2020, meetings held); Anti-Discrimination Center ‘Memorial’ (16 November 2020, information received); Human Rights Center ‘Memorial’ (16 November 2020, no response) and Institute of Modern Russia (26 November 2020, no response). GRC analysed information received from the organisations that provided it, as well as the reports prepared and published by the named organisations, for purposes of the Opinion.

### 2.5 Interviews and Oral Consultations with CSOs, Advocates, Journalists, and Activists

As explained above, GRC sent invitations to meet and share information to a number of CSOs via email and/or messenger services. Between August 2020 and May 2021, GRC held interviews and oral consultations with those international and domestic Ukrainian and Russian CSOs, active in the field of human rights and armed conflict, that were responsive to GRC’s invitations to meet. These included: Human Rights Watch; Ukrainian Legal Advisory Group; ZMINA; Ukrainian Helsinki Human Rights Union; Regional Center for Human Rights; Crimean Human Rights Group; Vostok SOS; DonbasSOS; Kharkiv Human Rights Protection Group; Right to Protection; Truth Hounds; CrimeaSOS; Center for Civil Liberties; Coalition for Justice and Peace in Donbas; Human Rights Center Alternative; Blakytnyi Ptakh; Institute of the Mass Information; Almenda; Maidan of Foreign Affairs; Human Rights Group ‘Sich’; StopFake; Helsinki Foundation in Warsaw; and Anti-Discrimination Center ‘Memorial’.

Additionally, GRC conducted interviews with several Ukrainian and Russian advocates, journalists, activists and opinion leaders whose names will not be revealed for safety reasons. These interviews mainly served to discuss these individuals’ reports, investigations and other work and to check that all available materials were reviewed and analysed for the Opinion.

### 2.6 Desk-Based Review

GRC reviewed all publicly available information pertaining to the inter-state disputes between Ukraine and the Russian Federation at the ICJ and ECtHR, individual cases at the ECtHR and UN treaty bodies, and the preliminary examination at the ICC. Further, statements and reports relating to human rights, armed conflict and occupation in Crimea and Donbas by international and inter-state organisations and foreign governments were analysed, including the UN treaty bodies and Special Rapporteurs, the EU and Council of Europe (‘CoE’) bodies, and US State Department country reports on human rights practices.


GRC reviewed the websites of the Kremlin, Russia’s Investigative Committee, Federal Security Service (‘FSB’), Ministry of Justice, Ministry of Defence, Ministry of Natural Resources and Ecology and Ministry of Education, and the websites

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11 These included WhatsApp, Facebook Messenger and Telegram.
of the Ukrainian Ministry of Defence, Ministry of Veterans, Ministry of Reintegration of the Temporarily Occupied Territories, Ministry of Justice, OPG and SSU.

Moreover, GRC reviewed the reports and other open-source materials produced by Ukrainian and Russian CSOs and journalists since 2014, including, but not limited to, those of the Ukrainian Helsinki Human Rights Union, Crimean Human Rights Group, Vostok SOS, Truth Hounds, Coalition for Justice and Peace in Donbas, Russian Memorial, Civic Assistance Committee, Russian Research Centre for Human Rights, Moscow Bureau of Human Rights, Moscow Helsinki Group, Zona Prava and SOVA Center.

Finally, GRC searched for and analysed media/press reports, covering the topic of human rights, armed conflict and occupation in Crimea and Donbas, produced by foreign and domestic (Ukrainian and Russian) news media sources including, but not limited to, The Guardian, The New York Times, Financial Times, Al Jazeera, Ukrayinska Pravda, Levyy Bereg, Radio Svoboda, Hromadske, Dozhd, Meduza, Bild, RBC and TASS. These reports offered GRC a broad view of the situations in Crimea and Donbas, the human rights and IHL violations committed and an analysis of the relevant practices on the ground.

2.7 GRC’s Previous Research and Reports

GRC has been working in Ukraine since 2015 and has produced numerous studies and reports relating to the investigation, prosecution and adjudication of conflict-related crimes, and Ukraine’s transitional justice processes more generally. Of particular relevance are GRC’s reports on the applicable IHL and human rights principles in Ukraine published in 2017, namely “Is Donbas Occupied?” and “Law on the Occupied Territories: Ukraine and 10 Minimum Steps for Action”.

2.8 Analysis of Information

For this report, GRC developed a list of research questions (see Annex B (Research Questions)) and, on the basis of the available information and project goals, identified key components of the Opinion, namely the legal status of Crimea and Donbas since 2014 and the applicable law.

GRC did not conduct an independent investigation to establish whether the incidents referred to in its Opinion occurred. Instead, it relied on the investigations conducted by the above-identified organisations and, following the recommendations of the Lund-London Guidelines, employed the ‘clear and convincing’ evidence standard. According to this standard, evidence is clear and convincing when it is highly and substantially more likely to be true than untrue. This is a less rigorous test than the ‘beyond a reasonable doubt’ test, but nonetheless requires proof that “there is a high probability that a particular fact is true”.

To this end, every source of information was evaluated for its reliability and credibility. Reports of the UN, OSCE, Human Rights Watch, Amnesty International, Bellingcat, CEPA, Chatham House and Geneva Academy were generally considered reliable and credible on their own. Other sources, including domestic governments’ statements and reports, CSO reports and media publications were considered reliable and credible if their information could be corroborated by independent sources.

GRC also reviewed academic scholarship in the fields of international humanitarian and human rights law, with a focus on armed conflict, occupation, international obligations, state responsibility, and the situation in Ukraine.

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13 UCMC, “Global Rights Compliance names 10 steps for Ukraine to take to efficiently regulate the occupied territories” (7 December 2017).
15 See the definition in Colorado v. New Mexico, 467 U.S. 310 (1984).
2.9 Writing Process

The findings in this Opinion are based on information collected by GRC from the above-listed sources and other sources listed in footnotes, primarily between June 2020 and May 2021, and thereafter analysed by GRC. Additional legal and factual research was conducted at the drafting stage for each of the Opinion’s chapters using electronic legal databases and online search tools in English, Russian, and Ukrainian.

This Opinion does not purport to provide a comprehensive account of the prevailing humanitarian and human rights situations in Crimea and Donbas, a full account of the IHRL and/or IHL violations that have occurred, or a detailed description of the hostilities. The aim of the Opinion is specifically to examine the facts that allow for an assessment of 1) whether and when an international armed conflict began in Crimea; 2) whether and when the Russian Federation occupied Crimea; 3) whether Russia’s intervention in Crimea breached the prohibition against the use of force; 4) whether Russia has validly asserted its sovereignty over Crimea; 5) the classification of the armed conflict in Donbas as either international, non-international, or both; 6) whether the Russian Federation occupies areas of Donbas, either directly or indirectly; and 7) the international law applicable to the situations in Crimea and Donbas.

2.10 Terminology

In the Opinion, legal terms are employed within the meaning of the relevant legal instruments cited in footnotes. Factual terms are used colloquially in most cases and are explained in footnotes.

Generally, the terms ‘Donbas’, ‘parts of Donbas’ and ‘D/LPR’ are used interchangeably in reference to the parts of the Donetsk and Luhansk oblasts not controlled by the Government of Ukraine. References to the ‘D/LPR’, their organs, policies, legislation and decisions, as well as references to the de facto authorities of Crimea, their policies, legislation and decisions are not indicative of any degree of recognition of these entities. Instead, throughout the Opinion, these references serve to describe the legal and factual developments in Crimea and Donbas in a meaningful and comprehensive manner.

Similarly, the terms which describe the events in Crimea and Donbas since early 2014, such as ‘referendum’, ‘elections’, ‘appointment’ and others, even if used without quotation marks, are used merely to provide a clear accounting of events. The usage of these terms does not imply recognition of legal validity.
3. The Situation in Crimea

3.1 Classification of the Armed Conflict  p. 13
3.2 Belligerent Occupation: Is Crimea Indeed Occupied?  p. 23
3.3 (Il)legality of the Use of Force to Effect the Russian Occupation of Crimea  p. 42
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3.5 Applicable Law in Crimea  p. 72
Donbas & Crimea:
Legal Un/Certainty

21 November 2013
Protests begin in Kyiv against decision of Ukrainian government not to sign an association agreement with the EU and, instead, to strengthen ties with Russia.

21 February 2014
Viktor Yanukovych, the President of Ukraine at the time, flees country. Ukrainian Parliament amends Constitution to allow for his replacement.

22 to 23 February 2014
Russian President Vladimir Putin orders Russian forces to “commence the return of the Crimea to Russia.”

1 March 2014
Yanukovych, now deposed, requests Russian military presence in Crimea “to restore law and order, peace and stability and to protect the people of Ukraine”. Russian-appointed Aksyonov publicly requests Russia “to provide assistance in restoring peace and calmness in Crimea”. Russia’s parliament approves request from President Putin to authorise (further) use of the RFAF in Crimea.

6 March 2014
Deputies of Russian-controlled Crimean Parliament adopt resolution calling for Crimea to join Russian Federation and for holding a referendum on the matter.
Donbas & Crimea: Legal Un/Certainty

Timeline of Key Events – Crimea

11 March 2014
Russian-controlled Crimean Parliament adopts “declaration of independence of Crimea and Sevastopol”, which Russia immediately recognises. The Ukrainian MFA protests Russia’s recognition of the declaration, deeming it a “direct intrusion” into Ukraine’s internal affairs.

14 March 2014
Constitutional Court of Ukraine determines that decision to hold referendum in Crimea is unconstitutional.

15 March 2014
Ukraine’s Parliament formally dissolves Russian-controlled Crimean Parliament.

16 March 2014
Unconstitutional ‘referendum’ on the accession of Crimea to Russia, organised by the formally dissolved Crimean Parliament, nevertheless takes place. Majority of voters allegedly vote in favour of accession.

17 March 2014
Russian-controlled Crimean Parliament unilaterally declares Crimea’s independence from Ukraine and adopts resolution in favour of acceding to Russia.

18 March 2014
The Russian Federation, ‘Republic of Crimea’ and City of Sevastopol sign ‘Treaty on Accession’ in Moscow, purporting to establish Russian sovereignty over Crimea through annexation.

20 March 2014
Ukraine’s Parliament denounces the Treaty as violating international law. States and international organisations reject any change to Ukraine’s territorial integrity.

26 March 2014
Valery Gerasimov, the RFAF’s Commander-in-Chief, reports all military facilities in Crimea are under Russian control and all Ukrainian personnel are disarmed. Hostilities in Crimea end.

13 February 2022
End of period under examination. The Russian occupation (and annexation) of Crimea continues.
3. THE SITUATION IN CRIMEA

This introduction provides a brief overview of the context giving rise to the present legal analysis of the situation in Crimea. In the years since Ukraine gained its independence in 1991, the political situation in the country has gone through challenges, particularly in Crimea and Donbas. The most recent crisis started in November 2013 when then Ukrainian President, Victor Yanukovych, announced the suspension of trade and association talks with the EU, opting to revive economic ties with Russia instead. This triggered months of mass rallies in Kyiv, with the number of protesters reaching 800,000 by the end of 2013. The protests continued into February 2014 when they became increasingly violent and culminated in the death of at least 130 persons, mostly protesters, allegedly killed by Ukrainian security forces. Following this, Yanukovych fled to Russia, and Ukraine’s parliament removed Yanukovych as president.

Shortly thereafter, Russian forces invaded the Autonomous Republic of Crimea (‘Crimea’), sealed it off from mainland Ukraine, blockaded the Ukrainian military units stationed inside and stormed seized Crimean governmental institutions, military objectives and strategic civilian infrastructure. On 16 March 2014, a referendum on the on the status of Ukraine’s Crimean Peninsula took place wherein, according to Russia, more than 95% of those participating voted in favour of Crimea’s secession from Ukraine. Representatives of the Russian Federation, the ‘Republic of Crimea’ and the City of Sevastopol signed the “Treaty on Accession of the Republic of Crimea to the Russian Federation” (‘Treaty on Accession’) on 18 March 2014, which was ratified soon after by the Russian Federation Council.

With the Treaty on Accession, Russia claimed sovereignty over Crimea. Ukraine and the international community, with the exception of a handful of States, reject Russia’s claim over the Peninsula, instead considering that Russia has unlawfully occupied and annexed Ukrainian territory.

The following sub-sections provide an analysis of the events leading up to and including Russia’s take-over of Crimea from the perspective of IHL. It begins by determining the start of the international armed conflict in Crimea, before


18 BBC, ‘Ukraine profile – Timeline’ (5 March 2020); Reuters, ‘Timeline: Events in Ukraine’s political history since 1991’ (29 March 2019); S. Pifer, ‘Ukraine: Six years after the Maidan’ (Brookings, 21 February 2020).


21 Wall Street Journal, ‘Crimea Checkpoints Raise Seccession Fears’ (28 February 2014). See also video of checkpoints on TSN YouTube Channel, ‘Armed civilians set up checkpoints at the entrance to the Crimea’ (27 February 2014); Reuters, ‘Ukrainian leader warns Russia after armed men seize government HQ in Crimea’ (27 February 2014); Interfax Ukraine, ‘About 50 armed men in military uniform seize Simferopol Airport in early hours of Friday’ (28 February 2014).

22 See for example Ukrainska Pravda, ‘In the Crimea there is an armed invasion of Russia – Kunitsyn’ (28 February 2014). See also Russia Times, ‘Putin acknowledges Russian military serviceman were in Crimea’ (17 April 2014); BBC, ‘Crimea referendum: Voters ‘back Russia union’’ (16 March 2014); A. Peters, ‘Sense and Nonsense of Territorial Referendums in Ukraine, and Why the 16 March Referendum in Crimea Does Not Justify Crimea’s Alteration of Territorial Status under International Law’ (EHIL:TALK, 16 April 2014); Ukrainyski Tyzhden, ‘Faulcifications at the “referendum” in Crimea: dead and Russian souls, carrots and forced choice’ (17 March 2014).


25 Afghanistan, Cuba, North Korea, Kyrgyzstan, Nicaragua, Sudan, Syria, and Zimbabwe. See, UNGA Res 11493 UN Doc GA/11493 (27 March 2014); Guardian, ‘Afghan president Hamid Karzai backs Russia’s annexation of Crimea’ (24 March 2014); Moscow Times, ‘Visiting Russia, Fidel Castro’s Son Scoffs at U.S. Sanctions Over Crimea’ (31 March 2014); KyivPost, ‘Nicaragua recognizes Crimea as part of Russia’ (27 March 2014).

26 UNGA Res 11493 UN Doc GA/11493 (27 March 2014); Guardian, ‘Afghan president Hamid Karzai backs Russia’s annexation of Crimea’ (24 March 2014); Moscow Times, ‘Visiting Russia, Fidel Castro’s Son Scoffs at U.S. Sanctions Over Crimea’ (31 March 2014); KyivPost, ‘Nicaragua recognizes Crimea as part of Russia’ (27 March 2014).
moving on to analyse whether and when the situation in Crimea amounted to an occupation and/or annexation. The section also assesses the legal validity of Russia’s justifications for its use of force in, and claim of sovereignty over, Crimea.

### 3.1 Classification of the Armed Conflict

Legal commentary on the situation in Crimea tends to focus only on belligerent occupation.27 While the law of occupation falls under the framework of international armed conflict (‘IAC’),28 it may not suffice to cover all periods of time during which IHL might have afforded protection to those not taking part in an armed conflict.29 What follows is an assessment of the commencement of the IAC in Ukraine.

#### 3.1.1 Overview of the Law

IACs are predominantly governed by the Hague Regulations of 1907, the four Geneva Conventions, Additional Protocol I (AP I), and customary international law (i.e., a source of international law binding on all States which is derived from the practice of States).30 Common Article 2 to the Geneva Conventions defines the scope of application of the rules applicable to IACs as follows:

> In addition to the provisions which shall be implemented in peacetime, the present Convention shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them.

International jurisprudence has interpreted from this that an IAC exists where there is a “resort to armed force between States”.31 The reason for the use of armed force is irrelevant for purposes of classification of an IAC,32 and an IAC may exist even if one of the Parties to the conflict denies its existence.33

Resort to armed force includes the unilateral use of force by one State against another, even if the latter does not or cannot respond by military means.34 In this regard, the Commentary to Common Article 2 clarifies that “[t]he fact that a State resorts to armed force against another suffices to qualify the situation as an armed conflict within the meaning

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28 International Committee of the Red Cross Commentary of 2020 to Geneva Convention (III) relative to the Treatment of Prisoners of War (12 August 1949) (‘ICRC 2020 Commentary to Geneva Convention [I]’), Common Article 2, paragraph 2 includes within the definition of an IAC “all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance”.
29 See, Rome Statute, Article 8(2)(a) that applies to grave breaches of the Geneva Conventions of 12 August 1949 and Article 8(2)(b) that applies to other serious violations of the laws and customs applicable in international armed conflict, whereas Article 8(2)(c) applies to serious violations of common Article 3, and Article 8(2)(d) applies to other serious violations of the laws and customs applicable in armed conflicts not of an international character. Articles 8(2)(c) and (d) do not apply to situations of internal disturbances and tensions.
33 ICRC Commentary to Geneva Convention III (2020), Common Article 2, paras. 236, 269, 276. See, H.-P. Gasser, ‘International Humanitarian Law: An Introduction’, in H. Haug (ed.), Humanity for All: The International Red Cross and Red Crescent Movement (Paul Haupt Publishers, 1993), pp. 510-511: “any use of armed force by one State against the territory of another, triggers the applicability of the Geneva Conventions between the two States. [...] It is also of no concern whether or not the party attacked resists. [...] As soon as the armed forces of one State find themselves with wounded or surrendering members of the armed forces or civilians of another State on their hands, as soon as they detain prisoners or have actual control over a part of the territory of the enemy State, then they must comply with the relevant convention”. See also, Y. Dinstein, The Conduct of Hostilities under the Law of International Armed Conflict (3rd ed, CUP 2016), p. 1: “The threshold of an international armed conflict (IAC) is crossed automatically once two or more States wage hostilities against each other, irrespective of the intensity or the length of the fighting”. For an opposing view according to which an IAC must meet a certain threshold of intensity, see international Law Association, ‘Final Report on the Meaning of Armed Conflict in International Law’ (2010).
of the Geneva Conventions.\textsuperscript{35} It adds that “[i]n a similar vein, an unconsented-to-invasion or deployment of a State’s armed forces on the territory of another State – even if it does not meet with armed resistance – could constitute a unilateral and hostile use of armed force by one State against another, meeting the conditions for an international armed conflict under Article 2(1).\textsuperscript{36} This includes the situation where the “armed forces of one State which are within the territory of another State with the agreement of the receiving State,” violate the conditions of the agreement.\textsuperscript{37} Similarly, in addition to the use of armed force against the opposing State’s armed forces, the use of armed force directed against the opposing State’s territory, civilian population/objects or infrastructure would constitute an IAC.\textsuperscript{38}

Armed conflict presumes the use of military means against the opposing State, usually with the involvement of the armed forces. This includes the deployment of troops, use of artillery, or resort to jetfighters or combat helicopters on enemy territory.\textsuperscript{39} Nevertheless, for a situation to amount to an IAC, there is no requirement that the use of armed force between the States reach a specific level of intensity or duration.\textsuperscript{40} It also makes no difference how many casualties ensue or how many members of the armed forces participated in the conflict.\textsuperscript{41} As such, the isolated use of armed force by one State against another or unilateral use of armed force met without resistance may still amount to an IAC.\textsuperscript{42} In this respect, a single border skirmish between the armed forces of two States or a State’s capture of an individual on the territory of another State may amount to an IAC.\textsuperscript{43}

An IAC may also come into existence where the armed confrontation does not involve military personnel, but rather non-military State agencies such as paramilitary forces, border guards or coast guards, where they are engaged in armed violence displaying the same characteristics as that involving State armed forces.\textsuperscript{44} Thus, where a State resorts to means and methods of warfare against another State, this qualifies as an IAC, irrespective of which organ within that State was responsible.\textsuperscript{45} This could include agents of the State, as long as the use of force was by the de jure or de facto organs of the State and not private persons.\textsuperscript{46} Situations that are the result of a mistake or of an individual’s ultra vires acts (i.e., acts taken in excess of one’s power and authority), which are not endorsed by the State, would not amount to an IAC.\textsuperscript{47}


\textsuperscript{37} UNGA Res 33/14 (XXIX) (14 December 1974), Article 3. See also, Res RC/Res.6, Amendments to the Rome Statute of the International Criminal Court on the crime of aggression (11 June 2010).

\textsuperscript{38} ICRC 2020 Commentary to Geneva Convention III, Common Article 2, para. 257.

\textsuperscript{39} ICRC 2020 Commentary to Geneva Convention III, Common Article 2, para. 258.

\textsuperscript{40} ICRC 2020 Commentary to Geneva Convention III, Common Article 2, paras. 269-277. See also, Tadić Interlocutory Appeal, para. 70: “an armed conflict exists whenever there is resort to armed force between states” (emphasis added); Prosecutor v. Delalić et al., IT-96-21-T, Trial Judgement 16 November 1998 (“Delalić Trial Judgement”), para. 184 (see also para. 208); Katanga Trial Judgement, para. 1173; Bembo Trial Judgement, para. 128. D. Akande, Classification of Conflicts, p. 13; M. Sassoli, International Humanitarian Law, Rules, Controversies, and Solutions to Problems Arising in Warfare (Edward Elgar, 2019), p. 170. For an opposing view, according to which an IAC must meet a certain threshold of intensity, see International Law Association, “Final Report on the Meaning of Armed Conflict in International Law” (2010).

\textsuperscript{41} ICRC 2020 Commentary to Geneva Convention III, Common Article 2, paras. 269-277; ICRC 2016 Commentary to Geneva Convention I, Common Article 2, paras. 236-244 citing at fn. 70 - Digest of United States Practice in International Law (1981–1988), Vol. III, 1993, p. 3456 (“Some States, for example, have considered that an international armed conflict triggering the application of the Geneva Conventions had come into existence after the capture of just one member of their armed forces”); ICRC 1958 Commentary to Geneva Convention IV, Common Article 2, pp. 20–21.

\textsuperscript{42} ICRC 2020 Commentary to Geneva Convention III, Common Article 2, paras. 275-277.

\textsuperscript{43} RULAC, “Contemporary challenges for classification: Fragmentation of armed conflicts” (Geneva Academy, last updated 15 September 2021); International Committee of the Red Cross, “Report on International humanitarian law and the challenges of contemporary armed conflicts” (October 2015), p. 8; ICRC 2020 Commentary to Geneva Convention III, Common Article 2, para. 274.

\textsuperscript{44} UNGA Res 33/14 (XXIX) (14 December 1974), Article 3. See also, Res RC/Res.6, Amendments to the Rome Statute of the International Criminal Court on the crime of aggression (11 June 2010).

\textsuperscript{45} ICRC 2020 Commentary to Geneva Convention III, Common Article 2, para. 259.

\textsuperscript{46} ICRC 2020 Commentary to Geneva Convention III, Common Article 2, para. 261.


\textsuperscript{48} ICRC 2020 Commentary to Geneva Convention III, Common Article 2, para. 274. This analysis, which involves the scope of application of international humanitarian law, must be distinguished from the situation of attribution in the context of State responsibility, where the State is responsible for the ultra vires acts of its organs. See, ICRC 2020 Commentary to Geneva Convention I, Common Article 2, para. 274, noting: “It is important, however, to rule out the possibility of including in the scope of application of humanitarian law situations that are the result of a mistake or of individual ultra vires acts, which – even if they might entail the international responsibility of the State to which the individual who committed the acts belongs – are not endorsed by the State concerned. Such acts would not amount to armed conflict.”
Finally, although there is no requirement that the use of armed force reach a certain level of intensity, the triggering act must be of a hostile nature “in order to overcome the enemy or force it into submission, to eradicate the threat it represents or force it to change its course of action”.48 Thus, the use of armed force must create a belligerent relationship. Where a State consents, or explicitly requests, the use of force on its territory by another State, an IAC would not exist provided that the intervention stays within the limits delineated by the consenting State and the consent is not withdrawn.49 When an IAC is established, IHL and the relevant rights and obligations thereunder become applicable on the whole of the territories of the States party to the conflict.50

3.1.2 ASSESSMENT

In accordance with the above, a State’s deployment of troops on the territory of another State, without the consent of the receiving State, will trigger an international armed conflict. On 28 May 1997, Russia and Ukraine signed an agreement on the Status and Conditions of Stay of the Black Sea Fleet of the Russian Federation in the Territory of Ukraine (‘BSF Agreement’).51 In accordance with the terms of this Agreement, Ukraine consented to the presence of Russian forces on its territory, within the limits delineated by the Agreement. Thus, the assessment of the beginning of an IAC in Crimea will be considered against the backdrop of the BSF Agreement.

As the following will demonstrate, available information suggests that Russia deployed forces into Ukraine in excess of Ukraine’s consent under the BSF Agreement as early as late January 2014, in satisfaction of the conditions for qualification of the situation as an IAC. However, there is insufficient clear and convincing evidence to corroborate this evidence at present. In contrast, there is clear and convincing evidence that, by the date of 27 February 2014, Russia’s actions in Crimea amounted to a clear and hostile resort to armed force against Ukraine. Accordingly, an IAC came into existence at least as of this date.

3.1.2.1 THE BLACK SEA FLEET AGREEMENT

On 28 May 1997, Ukraine and Russia signed the BSF Agreement.52 This Agreement allowed for Russian forces to be physically present in Crimea with the consent of the GoU53 while obliging Russia to notify Ukraine of the number of personnel and weapons it will deploy in Crimea by 1 January of each year.54 The Agreement stipulated that the main base of the Russian Black Sea Fleet (‘BSF’) would be located in Sevastopol. Other approved bases and locations of the Russian servicemen deployed to the Russian military bases in Crimea pursuant to the BSF Agreement (i.e., the Russian BSF forces) included the 31st test centre and its relevant security facilities, Gvardiyske airbase and its relevant security facilities, military sanatorium “Yalta”, the 830th communication and relay post in Yalta, the 1001th high-frequency communication point in Pryberezhe and the 2436th rocket fuel warehouse at the Mamut station.55 Article 15(5) of the BSF Agreement provided that “[m]ovements related to the activities of military formations outside their places of

48 ICRC 2020 Commentary to Geneva Convention III, Common Article 2, para. 258. See also, J. Grignon, ‘The beginning of application of international humanitarian law: A discussion of a few challenges’ (2014) 96 International Review of the Red Cross 139, pp. 146-147: “Whatever the nature of the object(s) or person(s) targeted, IHL pertaining to IAC applies as soon as a desire to harm the State against which the armed force is exercised can be inferred from this targeting; this is what is implied by the phrase “against another State”. In other words, the use of force on the territory of another State must be hostile in nature.”
49 ICRC 2020 Commentary to Geneva Convention III, Common Article 2, para. 252 (see also, paras. 290-291, 293).
53 Agreement between Ukraine and the Russian Federation on the parameters of the division of the Black Sea Fleet ‘Division of the Black Sea Fleet Agreement’ signed by Ukraine and the Russian Federation on 28 May 1997, Article 7(2). The Agreement stipulated that the main base of the Russian BSF would be located in Sevastopol, and other bases and locations of the BSF in Crimea are the 31st test centre, including the relevant security facilities, Gvardiyske airbase, including the relevant security facilities, military sanatorium “Yalta”; 830th communication and relay post in Yalta, 1001th high-frequency communication point in Pryberezhe, and 2436th rocket fuel warehouse at the Mamut station.
54 BSF Agreement, Article 4(2).
55 Division of the Black Sea Fleet Agreement, Article 3(1),
deployment” may only take place “after coordination with competent authorities of Ukraine including, in particular, the Ministry of Defence of Ukraine.”

Pursuant to this agreement, Russia notified Ukraine on 30 December 2013 of its intended deployment of 10,936 personnel to Crimea in 2014.\(^{57}\) Ukraine authorised this deployment of personnel, along with military equipment.\(^{58}\)

### 3.1.2.2 Presence of Russian Forces in Crimea from Late December 2013 to 2 February 2014

According to Ukrainian intelligence, starting in late December 2013, the Russian Federation began to strengthen its facilities located on the premises of the BSF in Sevastopol.\(^{59}\) In late January 2014, it strengthened its military presence in Crimea by transporting additional troops into the Peninsula by air, land and sea.\(^{60}\) Ukraine appears to have considered at least some of this late January contingency as unauthorised by the BSF Agreement, noting in testimony before the ECHR that, based on its intelligence reports, military aircraft transported “further unauthorised military personnel” to ports and airbases on the Peninsula on 2 February 2014.\(^{61}\)

If indeed the presence of Russian military personnel was unauthorised as of late January and early February 2014, and in the absence of any other information to suggest Ukraine consented to it, then this Russian military deployment into Ukrainian territory constituted a unilateral and hostile use of armed force by Russia against Ukraine, triggering an IAC.\(^{62}\) Nevertheless, this information originates solely from Ukrainian intelligence reports\(^{63}\) and it has not been possible to corroborate or disprove the additional troop deployment’s conformity with the BSF Agreement and contemporaneous Ukrainian consent to a clear and convincing standard with the information presently available. In the absence of further information, the troop deployments of late January and 2 February 2014 will not be considered further.

### 3.1.2.3 Presence of Russian Forces in Sevastopol City Square on 23 February 2014

On the night of 22 to 23 February 2014, Russian President Vladimir Putin gave orders and instructions to Russian forces to “commence the return of the Crimea to Russia”.\(^{64}\) Subsequently, on 23 February, a column of up to 400 men in Russian paratrooper (“VDV”) uniforms moved from the BSF ships and support vessels located in Sevastopol, towards the training grounds of the Russian BSF’s 810th Naval Infantry, several units of which then moved into Sevastopol’s city square in armoured personnel carriers.\(^{65}\)

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\(^{56}\) BSF Agreement, Article 15(5); Decree of the President of Ukraine №705/2008, ‘On the decision of the National Security and Defense Council of Ukraine of August 13, 2008 “On the situation around the movements associated with the activities of military formations of the Black Sea Fleet of the Russian Federation outside their locations in Ukraine”’ (13 August 2008).

\(^{57}\) Ukraine v. Russia (re Crimea), paras. 28(v), 36, 317.

\(^{58}\) Ukraine v. Russia (re Crimea), paras. 28(v), 29(xxiv), 36. This included the deployment of 32 combat waterborne ships; eight combat cutters; four special function ships; 54 logistics vessels; 11 logistics cutters; 114 units; 103 armoured combat vehicles; 77 aircraft; and 45 artillery systems.

\(^{59}\) The Prosecutor General’s Office YouTube Channel, “Judicial hearing in the case of accusing Yanukovich of treason” (testimony of Anatoliy Burgomistrenko) (28 December 2017).

\(^{60}\) Ukraine v. Russia (re Crimea), paras. 38 and 318 (“The [Ukrainian] Government argued that the number of Russian troops in Crimea had started to increase […] which the [Russian] Government did not contest”). Ukraine v. Russia (re Crimea), para. 38 (“In late January 2014 transport aircraft brought contingents of paratroopers to the BSF naval base in the village of Gvardyisk”), citing, witness statement of Ihor Voronchenko.

\(^{61}\) Ukraine v. Russia (re Crimea), para. 38 (“On 2 February 2014 nine military aircraft transported further unauthorised military personnel to the airbases at Kacha, Gvardyisk and Khersones. On the same day Russian troops arrived at the ports of Kerch, Feodosiya, Ordzhonikidze and Sevastopol. Up to eight large landing crafts (“VDV”), unloading further unauthorised troops, entered the ports of Kerch”). See also, The Prosecutor General’s Office YouTube Channel, “Judicial hearing in the case of accusing Yanukovich of treason” (testimony of Anatoliy Burgomistrenko) (28 December 2017). According to Burgomistrenko’s testimony, Ukrainian intelligence discovered that at least since 2 February 2014, ships of the Russian BSF were transferring special forces and paratroopers from the territory of the Russian Federation to Crimea.


\(^{63}\) Ukraine v. Russia (re Crimea), paras. 38, 318 and 266(i).

\(^{64}\) BBC, ‘Putin: Crimea annexed so as not to abandon its nationalists’ (9 March 2015); BBC, ‘Putin reveals secrets of Russia’s Crimea takeover plot’ (9 March 2015); Reuters, ‘Putin says plan to take Crimea hatched before referendum’ (9 March 2015).

\(^{65}\) M. Kofman, K. Migacheva, B. Nichiporuk, A. Radin, O. Tkacheva, J. Oberholtzer, Lessons from Russia’s Operations in Crimea and Eastern Ukraine (RAND Corporation 2017), p. 7 (‘Kofman, Lessons from Russia’s Operations’). This is indirectly confirmed by Putin’s interview wherein he said that the Russian forces were deployed under the guise of enhancing security of the BSF objects. See, YouTube Channel Russia 24, ‘Crimea: Way to the Motherland. Documentary by Andrey Kondrashov’ (16 March 2016).
Some have alleged that the Russian movement into the city square of Sevastopol – a civilian area – constituted a military formation outside the agreed places of Russian deployment under the BSF Agreement. To the extent that the city square, as a civilian area, was not an agreed place of Russian deployment, movement into this location would have required prior coordination with the competent authorities of Ukraine, pursuant to Article 15(5) of the BSF Agreement. If indeed the movement exceeded the bounds of Ukraine’s consent under the BSF Agreement, was purposeful, authorized by Russia and occurred without prior coordination with Ukraine, then the entry into Sevastopol’s city square constituted a resort to armed force against Ukraine and, thus, triggered an IAC.

The evidence of Putin’s order to overtake Crimea is suggestive of the fact that this particular movement into the Sevastopol city square was authorised by the Russian State. However, this evidence does not clearly and convincingly exclude the possibility that this particular movement was undertaken by an emboldened unit acting ultra vires, nor does it suggest subsequent endorsement of the act by Russia. Furthermore, even in the case that the act was subsequently endorsed by Russia, it has not been possible to locate information that speaks to whether prior coordination by Russia with the then-competent Ukrainian authorities occurred in advance of the movement. As such, this incident will not be considered further.

### 3.1.2.4 The Protests of 26 February 2014

On 25 February 2014, the Supreme Council of Crimea (i.e., the Crimean Parliament) announced that it was to hold an extraordinary session the following day, the agenda of which was to depend on whether the Ukrainian Parliament decided on early parliamentary elections in Crimea. This indicated that the question of holding a referendum on the status of Crimea might be included in the agenda. However, on 26 February, only 49 of the 100 deputies presented themselves for the session. As such, the extraordinary session of the Crimean Parliament did not transpire.

In response to this situation, two opposing rallies took place that day outside the building of the Supreme Council in Simferopol. The Mejlis of the Crimean Tatar people organised one rally in support of Ukrainian sovereignty and the status of Crimea as an inseparable part of Ukraine. Separately, the Ukrainian ‘Russian Unity’ political party organised a rally in order to “resist destabilization of the situation, preserve and extend the authority of the Republic of

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60 O. Zadorozhni, ‘Russia’s Annexation of Crimea in The Light of Russian-Ukrainian Agreements on The Black Sea Fleet’ (2016) 3 UA 47, p. 53. The Agreement stipulated that the main base of the Russian BSF would be located in Sevastopol. Other approved bases and locations of the BSF in Crimea included the 31st Test centre and its relevant security facilities, Gvardiyske airbase and its relevant security facilities, military sanatorium “Yalta”, the 830th communication and relay post in Yalta, the 1001st high-frequency communication point in Pryberezhe, and the 2436th rocket fuel warehouse at the Mamut station.

61 O. Zadorozhni, ‘Russia’s Annexation of Crimea in The Light of Russian-Ukrainian Agreements on The Black Sea Fleet’ (2016) 3 UA 47, p. 47.

62 The ‘Supreme Council’ of the Autonomous Republic of Crimea (i.e., the ‘Crimean Parliament’ or the ‘Crimean Verkhovna Rada’) is the Crimean parliamentary body of 100 elected deputies whose purpose is to promote the rights and interests of the population of Crimea and to address matters in the region. See, Law of Ukraine No. 90/98-BP, ‘About the Verkhovna Rada of the Autonomous Republic of Crimea’ (28 December 2015), Articles 1 and 4.


68 Mejlis of the Crimean Tatar People is the single permanent highest executive and representative body of the Crimean Tatars.

Crimea”. Clashes between demonstrators sympathetic to Ukraine (‘pro-Ukrainian demonstrators’) and to Russia (‘pro-Russian demonstrators’) resulted in the death of two individuals and the injury of around 70 more.  

There is no information to suggest that the pro-Ukrainian and pro-Russian demonstrators acted other than as private persons. Thus, their actions could not be classified as a resort to armed force between Russia and Ukraine.

### 3.1.2.5 Arrival of the Russian Cossacks

Starting from 26 February 2014, the Russian Cossacks – a self-governing group of Russian citizens who formed their own ‘people’s militia’ (i.e., a paramilitary group) – entered the territory of Crimea from the Russian Federation with the stated aim to “protect the residents of Crimea”. Specifically, a paramilitary group of 50 Kuban Cossacks, a southern regional Russian Cossack group, arrived in Crimea via the Kerch ferry port and went immediately to the Headquarters of the BSF. The Russian Cossack detachments that went to Crimea comprised approximately 1,000 members and were formed from the members of the Temryuk and Anapa regional Russian Cossack societies, as well as from the Russian Cossacks of Taman, Yekaterinodar, Kavkaz, Maikop branches and Chernomorski region. While an IAC may come into existence where there is an armed confrontation involving paramilitary forces, there is no information to suggest that any such armed confrontation took place on this day.

### 3.1.2.6 The Seizure of the Governmental Buildings on 27 February 2014

On 27 February 2014, Russia dramatically increased its military presence in Crimea. Over 100 heavily armed men in military uniform – dubbed ‘the little green men’ and later confirmed to be Russian Special Forces – stormed and seized the buildings of Crimea’s Parliament and Council of Ministers (i.e., the executive branch of Crimea’s government) in a clear resort to armed force by Russia against Ukraine. Following the seizure of these buildings,
Russian forces raised the Russian flag above the Crimea Parliament building.\(^87\) In uniform, they guarded the perimeter,\(^88\) while the Russian Cossacks guarded the entrance,\(^89\) and snipers took up positions on the roof.\(^90\) As observed by the Office of the Prosecutor General of Ukraine (‘OPG’), these soldiers threatened “the representatives of the law-enforcement agencies present in [these buildings], 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.”\(^91\)

The events of 27 February marked a clear resort to force by Russia against Ukraine. The use of force was unilateral, in that Ukraine did not militarily resist the Russian invasion.\(^92\) Nevertheless, it is clear that Ukraine did not consent to the presence. This is evident from a statement of the Ukrainian Foreign Ministry that day, demanding “all military units of the Russian Black Sea Fleet to refrain from moving beyond places on the Ukrainian territory where they are temporarily stationed”,\(^93\) indicating that their presence had exceeded the terms of the BSF Agreement and lacked contemporaneous consent from the GoU at this point in time.

Moreover, Russian forces along with former Ukrainian Berkut officers,\(^94\) the ‘Crimean Self-Defense’ (‘CSD’)\(^95\) and Russian Cossacks,\(^96\) had blocked major access points to the Crimean Peninsula,\(^97\) thereby preventing the entry and

\(^87\) Proceedings in the case accusing Viktor Yanukovych of treason (28 December 2017). (“In January 2014 [Voronchenko] received information from intelligence Ukraine that Russia was preparing for hostilities. For example, there were four rapid reaction brigades in the Southern District (the RF, dislocated in Ulyanovsk, Pskov, Tula, Talatyi, Ivanovo) that were retrained and trained before the Sochi Olympic Games. Voronchenko says that these brigades later blocked Ukrainian military units.”). These troops became known as the ‘little green men’ as they were among the first Russian units to be fitted in the new uniform. Ukraine v. Russia (re Crimea), para. 32.

\(^88\) Guardian, ‘Crimean parliament seized by unknown pro-Russian gunmen’ (27 February 2014); Sunday Times, ‘Russian flag is raised as Crimea defies new order’ (28 February 2014); CNN, ‘Gunmen seize government buildings in Ukraine’s Crimea, raise Russian flag’ (27 February 2014).

\(^89\) Ukraine v. Russia (re Crimea), paras. 42 and 44, citing Letter from the Prosecutor General’s Office of Ukraine of 28 November 2016 (reference no. 10/4/1/22437-16-746 Ref.-16) […] (“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 …”).

\(^90\) DW, ‘Russian Cossacks and the Ukrainian conflict’ (15 May 2015).

\(^91\) Ukraine v. Russia (re Crimea), para. 44, citing Letter from the Prosecutor General’s Office of Ukraine of 28 November 2016 (reference no. 10/4/1/22437-16-746 Ref.-16) […] (“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 …”).

\(^92\) Ukraine v. Russia (re Crimea), para. 44, citing Letter from the Prosecutor General’s Office of Ukraine of 28 November 2016 (reference no. 10/4/1/22437-16-746 Ref.-16) […] (“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 …”).

\(^93\) Ukraine v. Russia (re Crimea), para. 147(16) and 331, citing a documentary entitled Crimea: The way home, aired by the Rossiya TV channel, containing an interview with, among others, President Vladimir Putin of the Russian Federation. Ukraine v. Russia (re Crimea), paras. 266(l) and 32, citing witness statement of Ihor Voronchenko, deputy commander of the Naval Forces of the Armed Forces of Ukraine for Coastal Defence at the time of the events. The military units Voronchenko was referring to were the four operational brigades of elite troops that were created in Russia in 2010 to ensure safety during the twenty-second Olympic Winter Games in Sochi, Russia. Following the completion of the 2014 Sochi Winter Olympics on 23 February 2014, these military forces were moved to Crimea. Voronchenko provided similar information about these units in his testimony in the case against Viktor Yanukovych. See, The Prosecutor General’s Office YouTube Channel, ‘Proceedings in the case accusing Viktor Yanukovych of treason’ (Testimonies of Ihor Voronchenko) (28 December 2017). (“In January 2014 [Voronchenko] received information from Ukrainian intelligence that Russia was preparing for hostilities. For example, there were four rapid reaction brigades in the Southern District (the RF, dislocated in Ulyanovsk, Pskov, Tula, Talatyi, Ivanovo) that were retrained and trained before the Sochi Olympic Games. Voronchenko says that these brigades later blocked Ukrainian military units.”). These troops became known as the ‘little green men’ as they were among the first Russian units to be fitted in the new uniform. Ukraine v. Russia (re Crimea), para. 32.

\(^94\) Guardian, ‘Crimean parliament seized by unknown pro-Russian gunmen’ (27 February 2014); Sunday Times, ‘Russian flag is raised as Crimea defies new order’ (28 February 2014); CNN, ‘Gunmen seize government buildings in Ukraine’s Crimea, raise Russian flag’ (27 February 2014).

\(^95\) Ukraine v. Russia (re Crimea), paras. 42 and 44, citing Letter from the Prosecutor General’s Office of Ukraine of 28 November 2016 (reference no. 10/4/1/22437-16-746 Ref.-16) […] (“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 …”).

\(^96\) DW, ‘Russian Cossacks and the Ukrainian conflict’ (15 May 2015).

\(^97\) Ukraine v. Russia (re Crimea), para. 44, citing Letter from the Prosecutor General’s Office of Ukraine of 28 November 2016 (reference no. 10/4/1/22437-16-746 Ref.-16) […] (“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 …”).
resistance of the Ukrainian Armed Forces (‘UAF’) from the mainland.\(^\text{98}\) They also blockaded Ukrainian naval bases and a military airport.\(^\text{99}\)

### 3.1.2.7 Continued Hostilities in Crimea from 28 February Until 26 March 2014

Russia’s unilateral resort to armed force against Ukraine, including its takeover of key Ukrainian infrastructure in the Crimean Peninsula, continued and intensified in the period following 27 February 2014. This continuation appears to have furthered Putin’s stated aim of overtaking and incorporating Crimea into the Russian Federation.

On 28 February 2014, Russian forces assisted by the CSD and/or Russian Cossacks began to blockade and seize strategic Ukrainian military infrastructure objects, including airports,\(^\text{100}\) sea harbours\(^\text{101}\) and radio and TV stations.\(^\text{102}\) The Russian military and CSD began to blockade Ukrainian military bases as well, including by cutting their electricity and communication systems.\(^\text{103}\) The Russian forces also led the CSD and Russian Cossacks in seizing Ukraine’s 1\(^{st}\) Marine Battalion in Feodosia.\(^\text{104}\)

On 1 March, the upper chamber of Russia’s parliament, the Federation Council, approved a request from President Putin to further authorise the use of the Russian Federation Armed Forces (‘RFAF’) “[i]n connection with the extraordinary situation that has developed in Ukraine and the threat to citizens of the Russian Federation”.\(^\text{105}\) Russian forces blockaded Ukraine’s 55\(^{th}\) Anti-Aircraft Missile Regiment in Evpatoria,\(^\text{106}\) and border control unit in Balaklava, Crimea.\(^\text{107}\)

On 2 March 2014, Russian forces invaded the premises of the 727\(^{th}\) Separate Radar Company of the tactical group ‘Crimea’ in Sudak, removed weapons and ammunition from the military base and offered Ukrainian servicemen the opportunity to swear allegiance to Russia in order to retain their weapons and ranks.\(^\text{108}\) The Ukrainian servicemen refused to do so, but remained isolated and contained.\(^\text{109}\) Also on 2 March, the Russian Special Forces (i.e., the ‘little green men’) blockaded the 36\(^{th}\) Coast Guard Brigade in Perevalne.\(^\text{110}\)

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\(^\text{98}\) Ukraine v. Russia (re Crimea), para. 50.

\(^\text{99}\) Ukraine v Russia (re Crimea), para. 49; Hromadske, “Ivan Ivanich, this is it, Russia came”- How Ukrainian Crimea was cut off day by day’ (15 March 2019); A. Golubeva, A. Chernous, G. Erman, “Return” or “take over by force”? Crisis in Ukraine in the Ukrainian and Russian history textbooks’ (BBC, 15 March 2019); M. Semena, “How it was: 27 February 2014, Simferopol. Takeover... A chapter from a future book” [Krym.Realii, 28 February 2021].

\(^\text{100}\) International Crimes in Crimea: An Assessment of Two and a Half Years of Russian Occupation (IPHR September 2016), para. 32; InterFax, “About 50 armed men in military uniform seize Simferopol Airport in early hours of Friday” (28 February 2014); UkrInform, “Armed People Take Under Control Airports In Crimea” (28 February 2014).

\(^\text{101}\) UNIAN, “In the Crimea, a missile boat of the Russian Black Sea Fleet blocked the exit of Ukrainian border ships - the source” (28 February 2014).

\(^\text{102}\) KyivPost, “Gunmen seize Simferopol television station, turn off Channel 5, 1+1, turn on Rossiya 24” (6 March 2014); Economist, “Edging closer to war” (1 March 2014).

\(^\text{103}\) The Occupation of Crimea: No markings, no names and hiding behind civilians (RCHR, UKHHRU 2019), p. 20; The Prosecutor General’s Office YouTube Channel, “Judicial hearing in the case accusing Viktor Yanukovych of treason” (Testimonies of Maryna Kanalyuk) timeloced: 3:00-4:00 (28 December 2017).

\(^\text{104}\) Krym.Realii, “Ukrainian military in Crimea: day of resistance” (2 March 2019); TSI, “The Russian military has been blocking a Marine battalion in Feodosia for a week now” (6 March 2014); BBC, “Ukraine crisis: ‘Russians’ occupy Crimea airports” (28 February 2014); A. de Carbonnel, A. Prentice, “Armed men seize two airports in Ukraine's Crimea, Yankowykh reappears” (Reuters, 28 February 2014); S. Sukhankin, “Unleashing the PMCs and Irregulars in Ukraine: Crimea and Donbas” (JamesTown, 3 September 2019).

\(^\text{105}\) President of Russia, “Vladimir Putin submitted appeal to the Federation Council” (1 March 2014). See also, UN OHCHR, “Report on human rights situation in Ukraine” (15 April 2014), para. 20; BBC, “Russian parliament approves troop deployment in Ukraine” (1 March 2014). Nevertheless, according to an address made on 14 March 2014, Putin stated that, “strictly speaking, nobody has acted on this permission yet. Russia’s Armed Forces never entered Crimea; they were there already in line with an international agreement.” Putin went on to emphasise that, while Russia “did enhance [its] forces there” Russia did not exceed the personnel limit of forces permitted in Crimea: 25,000.

\(^\text{106}\) Ministry of Veterans Affairs, “I did not betray the flag of Ukraine”: the story of the occupation of Crimea by the military, who left the peninsula one of the last” (25 March 2019); BBC, “Evpatoria, Final. The Ukrainian military is making a choice” (22 March 2014).

\(^\text{107}\) Radio Svoboda, “Residents of Balaklava stood between the border guards of Ukraine and the Russian military” (1 March 2014).

\(^\text{108}\) O. Perepadya, M. Bushuyen, “In Crimea the Russian military demands in Ukrainians “to surrender”” (DW, 2 March 2014); Ukrainska Pravda, “Russian military in Crimea exports weapons from Ukrainian military units” (2 March 2014); LB, “The Russian military in Crimea takes out the weapon from the Ukrainian military units, – a source” (2 March 2014).

\(^\text{109}\) O. Perepadya, M. Bushuyen, “In Crimea the Russian military demands in Ukrainians “to surrender”” (DW, 2 March 2014); Ukrainska Pravda, “Russian military in Crimea exports weapons from Ukrainian military units” (2 March 2014); LB, “The Russian military in Crimea takes out the weapon from the Ukrainian military units, – a source” (2 March 2014).

\(^\text{110}\) Ukrainskiy Tzhyden, “Soldiers of the 36th Coast Guard Brigade. Heroes of the undeclared Russian-Ukrainian war” (11 December 2015); Ukrainska Pravda, “Russian troops have blockaded the Ukrainian unit in Perevalne and are demanding that they lay down their arms” (2 March 2014); Presa Ukraini, “Soldiers of the 36th Coast Guard Brigade believe that Crimea was actually handed over to Russia [PHOTOS]” (23 March 2015); D. Putila, A. Karibinychy, V. Rudyka, “Ukraine’s Armed Forces on the Eve of the Conflict” [Militarni, 12 March 2020]; National Security and Defence Council of Ukraine, “Speech of First Deputy to the Secretary of the NSDC of...
On 3 March, Russian forces blocked Ukrainian military unit A2320 in Perevalne,\textsuperscript{111} the Ukrainian Azov Black Sea Regional Directorate of Ukraine in Simferopol,\textsuperscript{112} and Ukrainian military base 2904 in Bakhchysarai.\textsuperscript{113} On 5 March, the Russian military seized Ukraine’s anti-aircraft missile regiment at Cape Fiolent in Sevastopol,\textsuperscript{114} and blocked Ukrainian military base A0883 in Kerch, unsuccessfully demanding the servicemen to surrender.\textsuperscript{115} By 6 March 2014, the Russian military, Russian Cossacks and CSD had gained control over Ukraine’s Kerch Strait ferry line.\textsuperscript{116} The following day, they let six military trucks with Russian license plates into the territory of Crimea.\textsuperscript{117} They also took over the command post of the Ukrainian tactical group ‘Crimea’.\textsuperscript{118}

On 8 March 2014, the Russian forces and the CSD stormed Ukraine’s military unit A-2355 located in Sevastopol.\textsuperscript{119} Days later, on 10 March, they seized Ukrainian military unit A-2904 in Bakhchysarai,\textsuperscript{120} and the CSD seized Ukraine’s military hospital – military unit A-4614.\textsuperscript{121} On 12 March, Russian forces blocked Ukrainian military unit A-4519 in Yevpatoria.\textsuperscript{122}

By 16 March 2014, Russia’s armed forces in Crimea had increased to 18,430\textsuperscript{123} and had surrounded nearly all Ukrainian military units and civilian infrastructure on the Peninsula.\textsuperscript{124} As a result of the overwhelming nature of this presence, the Ukrainian forces (long isolated and contained)\textsuperscript{125} were compelled to surrender and agree to a truce with the Russian government on 16 March 2014.\textsuperscript{126} Despite this, Russian forces continued in their offensive against Ukrainian military and civilian positions, without encountering any resistance.\textsuperscript{127}

\textsuperscript{111} Radio Svoboda, ‘Part A-2320 (Pass) under siege by the Russian military’ (3 March 2014); Komsomolskaya Pravda, ‘Reference in civilian clothes’ (16 March 2014); Dumskaya, ‘Crimean self-defence’ is being identified: one was recognised as Hero of Russia and another one’s Russian military ID was revealed’ (5 March 2014).


\textsuperscript{113} Prosecutor’s Office of the Autonomous Republic of Crimea and Sevastopol City, ‘Information and the Course of Events’.

\textsuperscript{114} TSN, ‘The Russian military captured a military unit in Sevastopol’ (5 March 2014); Ukrainska Pravda, ‘The Russian military captured a military unit in Sevastopol’ (5 March 2014).

\textsuperscript{115} The Ukrainian forces held their ground until 18 March, when Russian forces took over the base without a fight. Prosecutor’s Office of the Autonomous Republic of Crimea and Sevastopol City, ‘Information and the Course of Events’; Ukrainska Pravda, ‘The Russian military has blocked a unit in Kerch, demanding to surrender weapons’ (5 March 2014); Krym.Realii, ‘How to capture Kerch: a chronicle of events in 2014’ (29 February 2020).

\textsuperscript{116} Radio Svoboda, ‘Ukrainian TV channels have been shut down in Crimea and telephones are probably being tapped’ (6 March 2014); Taurica.net ‘Ferry line in Kerch is being controlled by armed people’ (6 March 2014).

\textsuperscript{117} Ukraine v. Russia (Re Crimea), para. 84.

\textsuperscript{118} The Prosecutor General’s Office YouTube Channel, ‘Judicial hearing in the case of accusing Yanukovych of treason’ (testimony of Anatoliy Burgomistrenko) (28 December 2017); Ipress, ‘Ukrainian servicemen from the Crimea group are leaving military facilities’ (23 March 2014).

\textsuperscript{119} Ukrainska Pravda, ‘In Sevastopol, Russian soldiers stormed a Ukrainian military unit’ (8 March 2014). Reportedly, in this assault, the CSD wounded a Russian journalist who was filming the events. See, ib, ‘Russian journalist injured in Crimea’ (8 March 2014).

\textsuperscript{120} O. Stryhnyk (ed), Peninsula of Fear: Five years of unfreedom in Crimea (CHRG, RCHR, CCL, ZMINA, UHHRU 2019) p. 11; Ukrainska Pravda, ‘In Bakhchisarai, the kidnapped commander handed over the military unit to the invaders’ (10 March 2014).

\textsuperscript{121} Radio Azatutyn, ‘Self-defence of Crimea’ seized the military hospital of Simferopol’ (10 March 2014); YouTube Channel NTDRussian, ‘Military base and hospital seized in Crimea forever’ (11 March 2014).

\textsuperscript{122} O. Stryhnyk (ed), Peninsula of Fear: Five years of unfreedom in Crimea (CHRG, RCHR, CCL, ZMINA, UHHRU 2019), p. 6; Delo, ‘Servicemen of the 55th Ukrainian anti-aircraft missile regiment refused to lay down their arms’ (12 March 2014).

\textsuperscript{123} Ukraine v. Russia (re Crimea), paras. 318-319

\textsuperscript{124} European Commission For Democracy Through Law (Venice Commission), Opinion On ‘Whether The Decision Taken By The Supreme Council Of The Autonomous Republic Of Crimea In Ukraine To Organise A Referendum On Becoming A Constituent Territory Of The Russian Federation Or Restoring Crimea’s 1992 Constitution Is Compatible With Constitutional Principles’ Opinion no. 762 / 2014 (21 March 2014) (‘Opinion on Crimea Referendum’), paras. 22 and 28. For example, according to the Venice Commission ‘[for a referendum to give full effect to [the fundamental] principles [of electoral law], it must be conducted in accordance with legislation and the administrative rules that ensure the following principles: the authorities must provide objective information; the public media have to be neutral, in particular in news coverage; the authorities must not influence the outcome of the vote by excessive, one-sided campaigning [...]’. Parliamentary Assembly, ‘Recent developments in Ukraine: threats to the functioning of democratic institutions’, Resolution 1888 (2014), para. 16; NATO, ‘Statement by the North Atlantic Council on the so-called referendum in Crimea’, Press Release (17 March 2014); A. Vavovic, M. Collett-White, ‘Crimea prepares for referendum under heavy military presence’ (Reuters, 15 March 2014); France24, ‘Everything you need to know about Crimea’s referendum’ (15 March 2014).

\textsuperscript{125} France24, ‘West scrambles to bolster Ukraine as Russia tightens grip on Crimea’ (3 March 2014); CNBC, ‘Russian forces seize two Ukrainian bases in Crimea’ (19 March 2014); Politico, ‘Russian troops seize Crimea’ (1 March 2014).

\textsuperscript{126} The agreement was signed on 16 March 2014. Reuters, ‘Ukraine, Russia agree Crimea truce until March 23: Ukraine minister’ (16 March 2014).

\textsuperscript{127} BBC, ‘Ukraine officers ‘killed in attack on Crimea base’ (18 March 2014); TSN, ‘In Novoazovske, a military unit was stormed under the cover of women and children’ (19 March 2014); Radio Svoboda, ‘Crimean authorities: Ukrainian units ‘pass’ under the Russian flag’ (21 March 2014); Korrespondent, ‘Russian military seized Ukrainian submarine “Zaporizhzhya”’ (21 March 2014).
On 18 March, Russia stormed Ukraine’s 13th Photogrammetric Center military unit in Simferopol, confiscating IDs, weapons and money from the Ukrainian servicemen.128 During the operation, an unidentified sniper (alleged to be a Russian soldier by the Ukrainian Prime Minister at the time)129 shot dead one Ukrainian serviceman and injured another, unprovoked.130 In the same incident, men wearing Russian uniforms captured the commander of the 13th Photogrammetric Center.131 It was later revealed that Igor Girkin (aka ‘Strelkov’), alleged to be a retired Russian FSB officer,132 commanded some pro-Russian forces during this operation, although it is unclear whether these were Russian forces or the CSD.133 Available information suggests that Ukrainian servicemen did not mount an armed response to the attack. However, a pro-Russian fighter was also shot and killed in the incident, allegedly by the same sniper who shot the Ukrainian serviceman.134 As outlined below, this marked an intensification of Russian seizures of Ukrainian military bases and attacks on Ukrainian military objects, which continued through 26 March.

On 19 March, the Russian special forces (i.e., the ‘little green men’), officers of Russia’s BSF and Russian-leaning civilians attacked the Southern Naval Base (‘SNB’) of the Ukrainian Navy.135 On the same day, the CSD, Russian Cossacks and Russian-leaning civilians attacked and seized the Headquarters of the Ukrainian Navy, which Russia had blockaded for weeks prior to the attack.136

From 20 to 22 March 2014, the Russian BSF, assisted by the CSD and/or Russian Cossacks, stormed the Ukrainian corvette war ships, ‘Ternopil’ and ‘Lutsk’, as well as the large Ukrainian command ship, ‘Slavutych’.137 Russian forces attacked and seized Ukraine’s submarine, ‘Zaporizhzhia’ on 21 March.138 On 22 March, Russian soldiers without insignia, Russian Cossacks and pro-Russian civilians attacked the 204th Sevastopol Tactical Aviation Brigade and stormed Ukrainian military unit A-4515 (Belbek airfield), along with the CSD.139 Days later, on 24 March, Russian forces attacked and seized Ukraine’s amphibious ship, ‘Konstantin Olshansky’.140 On 25 March, the Russian military disabled and captured the final remaining Ukrainian warship, ‘Cherkasy’, in Crimean waters.141

Russian forces, often along with members of the CSD and/or Russian Cossacks,142 seized all Ukrainian military structures in Crimea by 26 March 2014.143 On this day, Valery Gerasimov, the RFAF’s Commander-in-Chief, reported

128 HuffPost, ‘Ukraine Officer Shot Dead In Simferopol, Crimea’ (18 March 2014); Krym.Realii, ‘Five years ago, Ukrainian military leader Sergei Kokurin was killed in Crimea’ (18 March 2019).
129 BBC, ‘Ukraine officer killed in attack on Crimea base’ (18 March 2014).
130 BBC, ‘Ukraine officer killed in attack on Crimea base’ (18 March 2014); HuffPost, ‘Ukraine Officer Shot Dead In Simferopol, Crimea’ (18 March 2014); Radio Svoboda, ‘Dead and missing. Victims of the “bloodless” annexation of Crimea’ (18 March 2020).
131 BBC, ‘Ukraine officer killed in attack on Crimea base’ (18 March 2014); HuffPost, ‘Ukraine Officer Shot Dead In Simferopol, Crimea’ (18 March 2014).
132 See Section 4.1.2.3.2.4.4.2 Igor Girkin.
133 See Chapter 4.1.2.3.2.4.4.2.
134 Komsomolska Pravda, ‘Ruslan Kazakov, who died at the hands of a sniper in Simferopol, was buried near Volgograd’ (24 March 2014); Komsomolska Pravda, ‘A sniper who shot two people was detained in Simferopol’ (19 March 2014).
135 UHHRU, ‘The Occupation Of Crimea: No Markings, No Names And Hiding Behind Civilians’, Video-NVZ-22, Video-NVZ-23, Photo-NVZ-9, Photo-NVZ-10 in the possession of the authors (Kyiv 2019). See also, TSN, ‘In Novozernoye, a military unit was stormed under the cover of women and children’ (19 March 2014); TSN, ‘Women and Children Become Shields for Invaders in Novozernoye’ (19 March 2014).
136 UHHRU, ‘The Occupation Of Crimea: No Markings, No Names And Hiding Behind Civilians’, Video-SVS-CNFN-12 (Kyiv 2019); BBC, ‘The headquarters of the Ukrainian fleet was seized in Crimea’ (19 March 2014). After the gate had been taken down, people in civilian clothes, including women and children, were the first to enter the HQ grounds and the last to enter were the “little green men” who dispersed around the perimeter of the HQ. See also, Podrobnosti-TV, ‘Russian military continues to blockade the Crimean units’ (3 March 2014); BBC, ‘The headquarters of the Ukrainian fleet was seized in Crimea’ (19 March 2014).
139 The Prosecutor General’s Office YouTube Channel, ‘Judicial hearing in the case of accusing Yanukovych of treason Part 2’ (Testimonies of Yuli Mamchur), starting from 1:23:35 till 1:24:00; Russian Forces storm one of the last Ukrainian military outposts in Crimea’ (23 March 2014).
141 BBC, ‘Russians seized last Ukrainian ship in Crimea’ (25 March 2014); Radio Svoboda, ‘“Spartans” of the fleet: how the last Ukrainian ship was captured in the Crimea’ (22 February 2020).

132 See this section, above, and Section 4.1.2.3.2 Overall Control: Participants in the Internal Armed Conflict Act on Behalf of the State.
142 RIA, ‘Russian flags are raised in all military units of Crimea’ (1 March 2020). See, for example, Ukraine v. Russia (re Crimea), paras. 52-59; UHHRU, ‘The Occupation Of Crimea: No Markings, No Names And Hiding Behind Civilians’ (Kyiv 2019); O. Skrypnyk, T. Fechonchyk (eds), ‘The Peninsula of Fear: Chronicle of Occupation and Violation of Human Rights in Crimea’, pp. 5-18; Secretary of State for Foreign and Commonwealth Affairs William Hague, ‘Oral Statement to Parliament on the UK’s Response to the Situation in Ukraine’ (4 March 2014).
that all military facilities in Crimea had been placed under the control of the Russian forces and that Ukrainian personnel had been disarmed. He described that “as of March 26, the flags of the Russian Federation have been raised in all 193 military units and institutions of the Armed Forces of Ukraine stationed on the territory of the Republic of Crimea”.\textsuperscript{144} This marked the conclusion of hostilities in Crimea.\textsuperscript{145}

3.1.3 CONCLUSION ON THE CLASSIFICATION OF ARMED CONFLICT IN CRIMEA

While available information suggests that Russia deployed forces into Ukraine in excess of Ukraine’s consent under the BSF Agreement as early as late January 2014, in satisfaction of the conditions for qualification of the situation as an IAC, this information cannot presently be corroborated to a clear and convincing evidential standard. In contrast, the information surrounding the events of 27 February 2014 is clear and convincing. It indicates a hostile use of armed force, by Russian forces against Ukraine, sufficient to trigger an IAC. It is of no consequence that Ukraine did not or could not mount an armed resistance to Russia’s actions, as the unilateral use of force by one State against another suffices to meet the conditions for an IAC, even if the latter does not or cannot respond by military means.\textsuperscript{146}

Thus, while it cannot be ruled out that further investigation may establish an earlier date of commencement, presently available information establishes to a clear and convincing standard that the situation in Crimea amounted to an IAC at least as of 27 February. Accordingly, IHL and the relevant rights and obligations thereunder became applicable on the whole of the territories of Ukraine and Russia at least as of this time.

Russia’s unilateral resort to armed force against Ukraine, including its takeover of key Ukrainian infrastructure in Crimea, continued and intensified through 26 March 2014.\textsuperscript{147} However, as will be seen below, the conclusion of hostilities did not bring an end to the application of IHL on the Peninsula.\textsuperscript{148} The following section will examine whether and when Russia occupied Crimea.

3.2 BELLIGERENT OCCUPATION: IS CRIMEA INDEED OCCUPIED?

According to Common Article 2 to the Geneva Conventions, the Conventions “apply to all cases of total or partial occupation of the territory of a High Contracting Party”.\textsuperscript{149} What constitutes ‘occupation’, however, is not defined by the Geneva Conventions. The definition lies in Article 42 of the Hague Regulations, which provides that: “[t]erritory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised”.\textsuperscript{150} This provision is generally

\textsuperscript{144} TSN, ‘Russia boasts of seizing all military units in Crimea and disarming soldiers’ (26 March 2014); Ukrainisky Tyzhden, ‘General Staff of the RF AF boasted of the Russian flag above all military units in Crimea’ (26 March 2014).

\textsuperscript{145} For an understanding of the criteria used to determine the end of an armed conflict see ICRC 2020 Commentary to Geneva Conventions, Common Article 2, paras. 307-317, esp para 216. This IAC may be distinguished from the IAC that arose on 11 July out of events in Donbas.

\textsuperscript{146} ICRC 2020 Commentary to Geneva Convention III, para. 256. See also, Prosecutor v. Delalić et al., IT-96-21-T, Trial Judgement, 16 November 1998 (‘Delalić Trial Judgement’), para. 184; Prosecutor v. Thomas Lubanga Dyilo, Case No. ICC-01-04/01-06, Decision on the Confirmation of Charges, 29 January 2007, para. 207.

\textsuperscript{147} For an understanding of the criteria used to determine the end of an armed conflict see ICRC 2020 Commentary to Geneva Conventions, Common Article 2, paras. 307-317, esp para 216. This IAC may be distinguished from the IAC that arose on 11 July out of events in Donbas.

\textsuperscript{148} ICRC 2020 Commentary to Geneva Conventions, Common Article 2, para. 216.

\textsuperscript{149} Geneva Conventions of 1949 (12 August 1949) 75 UNTS 31 (‘Geneva Conventions’), Common Article 2 (2).

\textsuperscript{150} Hague Convention (V) Respecting the Rights and Duties of Neutral Powers and Persons in Case of War on Land (18 October 1907) 205 CTS 299 (‘Hague Regulations 1907’), Article 42.
accepted as the customary law definition of occupation under IHL.\textsuperscript{151} Furthermore, the use of the term ‘belligerent’ necessarily implies that authority is exercised over foreign, enemy territory.\textsuperscript{152}

IHL imposes a wide-ranging set of obligations on a State that occupies the territory of another State (i.e., the Occupying Power). These obligations primarily derive from the Hague Regulations, the Fourth Geneva Convention, provisions of Additional Protocol I (‘AP I’) and customary international law.\textsuperscript{153} Therefore, determining whether and when Crimea was occupied is critical to establishing the applicable law and, thus, to establishing the scope of the international obligations attaching to Russia and Ukraine in this context.

Whether a territory is occupied is a question of fact that must be examined on a case-by-case basis.\textsuperscript{154} What follows is an assessment of whether and when Russia occupied Crimea.

### 3.2.1 Overview of the Law

Belligerent occupation (hereinafter, ‘occupation’) must have an international element to it, meaning two or more States must be pitted against one another, even if the State whose territory was seized offers no resistance to the occupation.\textsuperscript{155} Justification given by an Occupying Power for its occupation – for example, that it is ‘liberating’ the inhabitants of the occupied territory – does not change the legal classification.\textsuperscript{156} Importantly, classifying a territory as ‘occupied’ does not confer sovereignty to the occupier.\textsuperscript{157} It is “an uncontested principle of international law” that unilateral annexation of an occupied territory by the Occupying Power has no legal validity and is considered null and void.\textsuperscript{158}


\textsuperscript{152} Y. Dinstein, Law of Belligerent Occupation, para. 94. Therefore, there is a coercive element to belligerent occupation. See, Y. Dinstein, Law of Belligerent Occupation, para. 105. See also, M. Sassoli, International Humanitarian Law, p. 177.

\textsuperscript{153} Geneva Convention IV, Article 154.


\textsuperscript{156} Y. Dinstein, Law of Belligerent Occupation, para. 105; Armed Activities Judgement, para. 173.

\textsuperscript{157} See, Y. Ari-Takahashi, The Law of Occupation: Continuity and Change of International Humanitarian Law, and its Interaction with International Human Rights Law (Brill | Nijhoff 2009) (“Ari-Takahashi, Law of Occupation”), p. 42 (“One of the general principles underlying Article 43 of the Hague Regulations is that belligerent occupation is a precarious and transitional authority with no conferred of sovereignty upon the occupying power.”); Y. Dinstein, Law of Belligerent Occupation, para. 161 (“The main pillar of the law of belligerent occupation is embedded in the maxim that the occupation does not affect sovereignty. The displaced sovereign loses possession of the occupied territory de facto but retains title de jure [...]. In the words of L. Oppenheim, “[t]here is not an atom of sovereignty in the authority of the Occupying Power.”); citing L. Oppenheim, ‘The Legal Relations between an Occupying Power and the Inhabitants’ (1917) 33 LQR 363, 364; D. Fleck, Handbook of International Humanitarian Law, p. 273 (“International law of belligerent occupation is built upon the assumption that the occupying power does not acquire sovereign rights over the territory, but exercises provisional and temporary control”); Beit Souk Village Council v. The Government of Israel, HGI 2006/04, Judgement (30 May 2004) (“Beit Souk Village Council Judgement”), para. 27 (“This Court has emphasized time and time again that the authority of the military commander is inherently temporary, as belligerent occupation is inherently temporary.”).

\textsuperscript{158} Article 47 of the Fourth Geneva Convention states that an Occupying Power cannot deprive the civilian population of an occupied territory of its protection through an annexation. See also, Additional Protocol I, Article 4, para. 172; Y. Sandos, et al. (eds.), Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949 (ICRC 1987) (“Commentary on the Additional Protocols”), Additional Protocol I, Article 4, para. 172. See also, Y. Dinstein, Law of Belligerent Occupation, paras. 164-165 (“any unilateral annexation of an occupied territory – in whole or in part – by the Occupying Power would be legally stillborn”); Y. Ari-Takahashi, Law of Occupation, p. 44 (“The principle that annexation of occupied territory is interdicted has been firmly anchored in the customary law and international judicial practice”); D. Fleck, Handbook of International Humanitarian Law, p. 273 (“The annexation of foreign territory is no doubt prohibited by international law”); UNSC Res 662 (9 August 1990) UN Doc S/RES/662 (1990) (“Decides that annexation of Kuwait by Iraq under any form and whatever pretext has no legal validity, and is considered null and void”). For example, both the UN Security Council and the ICI have held that Israel’s purported unilateral annexation of East Jerusalem (occupied territory) is without any legal effect. See, UNSC Res 252 UN Doc S/RES/252 (1968) (21 May 1968) (“all legislative and administrative
A territory is considered occupied when it is placed under the *de facto* authority of a hostile army, to the extent that the authority exercises a high degree of control over the territory.\(^{169}\) The concept of ‘effective control’ has been used in jurisprudence to specify and substantiate the degree of authority and control required to amount to occupation.\(^{166}\) Accordingly, territory belonging to a State becomes occupied when it comes under the effective control of hostile, foreign armed forces. This is the case even if the occupation meets no armed resistance and there is no fighting.\(^{161}\)

Three cumulative conditions must be met to establish that a territory is under the effective control of a foreign State:\(^{162}\)

(i) The armed forces of a State are physically present in a foreign territory without the consent of the effective local government in place at the time of the invasion;

(ii) The effective local government in place at the time of the invasion has been or can be rendered substantially or completely incapable of exerting its powers by virtue of the foreign forces’ unconscionable-to-pose; and

(iii) The foreign forces are in a position to exercise authority over the territory concerned (or parts thereof) in lieu of the local government.

An occupation can only be said to begin once all of these conditions are met.\(^{163}\) At that point, the geographical scope of the application of the law of occupation extends throughout the area over which the Occupying Power has ‘effective control’.\(^{164}\) What follows is an assessment of whether and when Russia occupied Crimea.

### 3.2.2 ASSESSMENT

In accordance with the test above, in order to establish whether and when Russia occupied Crimea, it must be examined whether: 1) Russia’s armed forces are physically present in Crimea without the consent of the GoU; 2) the GoU has been or can be rendered substantially or completely incapable of exerting its powers by virtue of the unconscionable-to-pose of the Russian forces; and 3) that the Russian forces are in a position to exercise authority over Crimea in lieu of Ukraine. Where all three of these conditions are satisfied, Russia may be said to be the Occupying Power in Crimea. The following sections will evaluate whether these conditions are satisfied.

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\(^{160}\) Hague Regulations 1907, Article 42; Supreme Court of Israel, Zoharan Yunis Muhammad Mara’abe et al. v. The Prime Minister of Israel et al., Case No. HCJ 7957/04, Judgement, 15 September 2005, para. 22; M. Sassoli, *International Humanitarian Law: An Introduction and Questions and Answers* (OUP 2004).

\(^{161}\) Y. Dinstein, *Law of Belligerent Occupation*, para. 63. The Israeli Supreme Court has also held that the separation fence built by Israel on occupied territory (Judea and Samaria) “cannot be motivated by a desire to ‘annex’ territories to the state of Israel.” In addition, the Court specified that while “the military commander of territory held in belligerent occupation must maintain a balance between the needs of the army on one hand, and the needs of the local inhabitants on the other [...], there is no room for an additional system of considerations,” such as the annexation of territory. *See, Beit Sourik Village Council Judgement*, para. 27.

\(^{162}\) Three cumulative condition.

\(^{163}\) In accordance with the test above, in order to establish whether and when Russia occupied Crimea, it must be examined whether: 1) Russia’s armed forces are physically present in Crimea without the consent of the GoU; 2) the GoU has been or can be rendered substantially or completely incapable of exerting its powers by virtue of the unconscionable-to-pose of the Russian forces; and 3) that the Russian forces are in a position to exercise authority over Crimea in lieu of Ukraine. Where all three of these conditions are satisfied, Russia may be said to be the Occupying Power in Crimea. The following sections will evaluate whether these conditions are satisfied.

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3.2.2.1 **Physical Presence of Russian Forces in Ukraine Without the Consent of the GoU**

To establish the existence of effective control by a State over the territory of another, the armed forces of the intervening State must be physically present in a foreign territory without the consent of the effective local government in place at the time of the invasion. Thus, the following sections will determine whether Russia’s armed forces were physically present in Crimea without Ukraine’s contemporaneous consent.

### 3.2.2.1.1 Presence of Russian Forces in Crimea

#### The Law

Under IHL, foreign presence has been understood to mean that the intervening State must have “boots on the ground” (i.e., have positioned members of its armed forces in or near the foreign territory). This does not mean that the State must field troops throughout the totality of the territory. Instead, all that is required is that the intervening State have “a sufficient force present, or the capacity to send troops within a reasonable time to make the authority of the occupying power felt.” This means that effective control may, to some degree, be exercised remotely.

#### Assessment

Between 1997 and 2014, Russian troops were physically present on the Crimean Peninsula within the agreed parameters of the BSF Agreement. As discussed above, Russia’s military presence in Crimea continued and expanded at least as of 27 February 2014. By 12 March 2014, the number of Russian troops on the Peninsula had increased from 10,936 (i.e., the agreed number under the BSF Agreement) to 18,430. By 18 March 2014, this number had risen to 22,000. By 2018, Russia’s military presence in Crimea had increased to 31,500, in addition to 40 tanks (0 in 2014), 583 armoured vehicles (92 in 2014), 162 artillery systems (24 in 2014), 122 military airplanes (22 in 2014), 62 helicopters (37 in 2014) and 78 ships (27 in 2014). Russia further bolstered its military presence in Crimea in March 2014. By 12 March 2014, this number had risen to 22,000. By 2018, Russia’s military presence in Crimea had increased to 31,500, in addition to 40 tanks (0 in 2014), 583 armoured vehicles (92 in 2014), 162 artillery systems (24 in 2014), 122 military airplanes (22 in 2014), 62 helicopters (37 in 2014) and 78 ships (27 in 2014). Russia further bolstered its military presence in Crimea in March 2014.

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165 For a more in-depth discussion of the requirement of physical presence, see Section 4.2.3.1 Physical Presence of the Armed Forces in a Foreign Territory.
166 Y. Dinstein, Law of Belligerent Occupation, paras. 140; Sassoli, International Humanitarian Law, p. 306; Chiragov et al. v. Armenia App no 13206/05 (ECHR, 16 June 2015) 54 ILM 965, p. 989; Sargsyan v. Azerbaijan App no 40167/06 (ECHR, 16 June 2015), para. 94. There is no set number of troops required to establish effective control. Indeed, according to the United States’ Field Manual, “it is immaterial whether the authority of the occupant is maintained by fixed garrisons or flying columns, whether by small or large forces, so long as the occupation is effective” (see, US, Field Manual: The Law of Land Warfare (1956), p. 139. However, international jurisprudence can shed some light on the number of troops that have been present when a situation of occupation was found to exist. For example, 30,000 personnel of the Turkish armed forces were stationed throughout the occupied territory of northern Cyprus (Loizidou v. Turkey, App no 40/1993/435/514 (ECHR, 26 November 2006) (“Loizidou Merits Judgement”), para. 16. At the height of Uganda’s deployment in the territory of the Democratic Republic of the Congo, fewer than 10,000 soldiers of its armed forces were present. As the ICJ concluded that Uganda only occupied the province of Ituri at the relevant time, the number of troops required to establish that occupation would have been less than 10,000 (Armed Activities Judgement, paras. 170 and 178).
168 Neletile & Martinsvil Judgement, para. 217. See also, Y. Dinstein, Law of Belligerent Occupation, paras. 191-194 (“This is based on a statement in the US Army Field Manual of 1956 that a belligerent occupation does not require ‘fixed garrisons’. The 2015 US Department of Defence Law of War Manual states: ‘It is sufficient that the occupying force can, within a reasonable time, send detachments of forces to enforce its authority within the occupied district. […]’”), citing, US, Field Manual: The Law of Land Warfare (1956), p. 139 and US Department of Defence, Law of War Manual (2015), p. 764. However, this requirement to have a sufficient force present or the ‘capacity to send troops’ must take the form of ground troops as “[b]elligerent occupation cannot rest solely on either naval power or air power”. See, Y. Dinstein, Law of Belligerent Occupation, para. 195. See also, ICRC, Occupation and Other Forms of Administration of Foreign Territory, p. 17 (“The necessity of having troops on the ground was driven home by the clear rejection of the view that occupation could be enforced solely by either naval power or air power”). In addition, what constitutes ‘a reasonable time’ in this context is not always an easy determination (see, Y. Dinstein, Law of Belligerent Occupation, paras. 191-194).
170 BSF Agreement.
171 See Section 3.1.2.7 Continued hostilities in Crimea from 28 February until 26 March 2014.
172 Ukraine v. Russia (re Crimea), paras. 318-319 (“The [Russian] 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 […] provided for under the Agreements. […] 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.”)
Crimea in 2019, with its deployment of an air defence system in and around Crimea.\(^{177}\) It also strengthened its naval forces, threatening the security situation in the Black Sea and the Sea of Azov.\(^{178}\)

The rapid growth of the Russian armed forces in Crimea continued in 2020. Among other measures, Russia reportedly moved its air and sea-based means of delivering nuclear weapons to Crimea and renovated the Peninsula’s nuclear storage infrastructure.\(^{179}\) The same strengthening of Russia’s military presence persisted in 2021, when Russia built new military bases in Crimea and transported more airborne troops, motorised rifle and armoured units, attack helicopters, smoke generators, reconnaissance drones and jamming equipment into the Peninsula.\(^{180}\)

It is clear from the above that Russia’s physical presence in Crimea has been continuous since at least January 2014,\(^{181}\) and continues to date. However, satisfaction of the condition of physical presence of foreign troops requires that the presence be unconsented-to by the territorial sovereign.\(^{182}\) Thus, it must now be examined if and when the consent of the Ukrainian government to the presence of Russian troops in Crimea, pursuant to the BSF Agreement, was exceeded or withdrawn.

3.2.2.1.2 Ukraine’s lack of consent to the presence of Russian forces in Crimea

Further to physical presence, it must be established that the State on whose territory foreign forces have been deployed did not consent to the presence of the foreign forces on its territory.\(^{183}\) Occupation will not exist when the deployment of foreign forces has been authorised by an agreement with the State on whose territory the foreign forces are deployed (‘the territorial State’).\(^{184}\)

3.2.2.1.2.1 The law

Any consent by the territorial State to the presence of foreign military forces must be genuine (i.e., uncoerced and expressed, whether explicitly or tacitly).\(^{185}\) While the law of occupation does not elaborate on the precise contours of tacit consent, it has been established that a lack of military resistance does not suffice to amount to consent.\(^{186}\)

Consent must also be valid.\(^{187}\) This entails that the consent to the presence of foreign forces on a State’s territory derive from a legitimate authority that is authorised to act on behalf of the State in such matters.\(^{188}\) External recognition plays a decisive role in the assessment of legitimacy.\(^{189}\) Accordingly, “[o]nly when the inviting party is

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\(^{177}\) F. Chang, ‘Are the Russians Coming?: Russia’s Military Buildup Near Ukraine’ (Foreign Policy Research Institute, 25 February 2019).


\(^{179}\) UNGA, Problem of the militarization of the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine, as well as parts of the Black Sea and the Sea of Azov (3 December 2020) UN Doc A/75/L.38/REV.1; European Security and Defence, “How Much Has Russia Militarised the Crimea?” (10 March 2020).

\(^{180}\) KrymReality, ‘The Ukrainian space center showed how Russia is building up its military presence in the Crimea’ (8 February 2021); Wall Street Journal, “Satellite Images Show Russia’s Expanding Ukraine Buildup” (20 April 2021); OSCE Parliamentary Assembly, Resolution on “The Destabilizing Military Build-Up by The Russian Federation Near Ukraine, in The Temporarily Occupied Autonomous Republic of Crimea and The City of Sevastopol, Ukraine, The Black Sea and The Sea Of Azov”, SC (21) URG 03 E.

\(^{181}\) The consistency of presence prior to January 2014, in accordance with the Black Sea Fleet Agreement, has not been verified in the context of the present Opinion.

\(^{182}\) ICRC Commentary to Geneva Convention III (2020), Common Article 2, para. 337.

\(^{183}\) Armed Activities Judgement, paras. 49-54.

\(^{184}\) Korango Trial Judgement, para. 1179.

\(^{185}\) ICRC Commentary to Geneva Convention III (2020), Common Article 2, para. 296. See, however, the view of experts involved in the ICRC’s Expert Meeting Report that consent to the presence of foreign forces must be explicit. See, ICRC, Occupation and Other Forms of Administration of Foreign Territory, (2012) p. 10.


\(^{188}\) ICRC Commentary to Geneva Convention III (2020), Common Article 2, para. 296. See also, G. Nolte, Intervention by Invitation (OUP 2010).

\(^{189}\) See, Cyprus v. Turkey App no 8007/77 (ECFR, 10 July 1978), p. 146 (In response to Turkey’s argument that the Greek Cypriot government was not entitled to represent the State of Cyprus, the European Commission of Human Rights dismissed Turkey’s objection observing that “the applicant Government have been, and continue to be, recognised internationally as the Government of the Republic of Cyprus and that their representation and acts are accepted accordingly in a number of contexts of diplomatic and treaty relations and of the working of international organisations”); Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro) (Judgement) (2007) ICTR Rep 43 (‘Bosnia Genocide Judgement’), para. 44 (The Court held that Mr. Alja Izetbegovic – who authorised the application to the ICTJ and who, according to Serbia, at that time was not the President of Bosnia – “was recognized, in particular by the United Nations, as the Head of State of Bosnia and Herzegovina”). See also, A. Tancredi, ‘The Russian annexation of the Crimea’ 1
recognised externally as the legitimate government – i.e. expressing the state’s authority – is intervention by invitation considered a lawful interaction between sovereign states.”¹⁹⁰ Acceptance by an intervening State alone of an illegitimate source of authority will not suffice to legalise or justify its military intervention in another State on the basis of that ‘authority’s’ consent.¹⁹¹ Lastly, where consent is validly granted by a legitimate and effective government, any intervention must remain within the bounds of the consent given in order to remain under the protection of the consent.¹⁹²

With respect to the granting of consent in a manner that violates the domestic law of a State, the law of occupation does not provide the answer. However, turning to the more general principles of international law, the ICJ has determined that such a situation will not, in and of itself, negate consent.¹⁹³ This is because, as described by the Court, “there is no general legal obligation for States to keep themselves informed of legislative and constitutional developments in other States which are or may become important for the international relations of these States”.¹⁹⁴

An exception to the rule exists where the violation of the provision of a territorial State’s internal law is “manifest and concerned a rule of its internal law of fundamental importance.”¹⁹⁵ Rules governing the authority within a territorial State to conclude agreements with foreign powers are deemed provisions of internal law “of fundamental importance”.¹⁹⁶ A violation is considered manifest “if it would be objectively evident to any State conducting itself in the matter in accordance with normal practice and in good faith”.¹⁹⁷ In relation to the violation of a domestic law limitation upon a Head of State to conclude agreements with other States, the ICJ has held that such a violation cannot be considered manifest, unless the provision is “at least properly publicized”.¹⁹⁸ This is because “Heads of State belong to the group of persons who, [...] ‘[i]n virtue of their functions and without having to produce full powers’ are considered as representing their State.”¹⁹⁹

3.2.2.1.2.2 ASSESSMENT

As noted previously, for years, pursuant to the BSF Agreement of 28 May 1997, Russian forces had been physically present in Crimea with the consent of the GoU.²⁰⁰ Nevertheless, Ukraine, as the lawful sovereign over the territory of


¹⁹¹ S. Talmon, Recognition of Governments in International Law: With Particular Reference to Governments in Exile (1998), p. 149, cited by V. Bilcová, ‘The Use of Force by the Russian Federation in Crimea’ (2015) 75 ZaOvR 27, p. 41 and A. Tancredi, ‘The Russian annexation of the Crimea’, pp. 15-16. According to Tancredi, “[t]his is aptly illustrated by the disapproval expressed by the UN General Assembly in Resolution 44/240, adopted on 29 December 1989, against the US intervention in Panama, deplored as a ‘flagrant violation of international law’”. On that occasion, the United States tried, rather reluctantly, to justify their invasion invoking also the tacit consent of Mr G. Endara, whom the US alone recognized as the legitimate President of Panama, and who was in internal exile on a US military base in Panama.”


¹⁹⁴ Land and Maritime Boundary between Cameroon and Nigeria, para. 266; Maritime Delimitation in the Indian Ocean Judgement, para. 49. “As the Court has previously observed, “there is no general legal obligation for States to keep themselves informed of legislative and constitutional developments in other States which are or may become important for the international relations of these States” (Jbid., p. 430, para. 266).”

¹⁹⁵ Vienna Convention on the Law of Treaties, Article 46(1). See also, Land and Maritime Boundary between Cameroon and Nigeria, para. 265; Maritime Delimitation in the Indian Ocean Judgement, para. 49.

¹⁹⁶ Land and Maritime Boundary between Cameroon and Nigeria, para. 265.


¹⁹⁸ Agreement between Ukraine and the Russian Federation on the parameters of the division of the Black Sea Fleet ‘Division of the Black Sea Fleet Agreement’ signed by Ukraine and the Russian Federation on 28 May 1997, Article 7(2). The Agreement stipulated that the main base of the Russian BSF would be located in Sevastopol, and other bases and locations of the BSF in Crimea are the 31st test centre, including the relevant secure facilities, Garudyske airbase, including the
Crimea, did not consent to the presence of Russian forces on its territory from at least the start of the IAC on 27 February 2014. Ukraine’s lack of consent has remained consistent through to the present day.

3.2.2.1.2.2.1 (LACK OF) CONSENT IN THE PERIOD FROM 27 TO 28 FEBRUARY 2014

As shown above in the context of conflict classification, Russia’s military presence in Crimea exceeded the bounds of Ukrainian consent by 27 February, when Ukraine’s Foreign Ministry requested “all military units of the Russian Black Sea Fleet to refrain from moving beyond places on the Ukrainian territory where they are temporarily stationed”, indicating that the presence of Russia’s troops in Crimea had exceeded the terms of the BSF Agreement and lacked contemporaneous consent from the GoU at this point in time. Despite this, Russia has sought to justify the presence of its armed forces in Crimea from 1 March 2014 onwards and, thereby, reject allegations of a Russian occupation of the Peninsula, by asserting that Ukraine consented to its military presence as of this date. What follows is an assessment of the validity of this Russian claim which, if true, may negate any finding of occupation from and during the period of consent.

3.2.2.1.2.2.2 (LACK OF) CONSENT IN THE PERIOD FROM 1 MARCH 2014

In order to establish the consensual (i.e., non-belligerent) nature of its military presence in Crimea, Russia pointed to invitations issued by its appointed ‘Prime Minister’ of Crimea, Sergey Aksyonov, as well as Viktor Yanukovych, who had recently been removed from his position as President of Ukraine. Available information establishes that on 1 March 2014, Aksyonov made a public statement requesting the President of Russia “to provide assistance in restoring peace and calmness in Crimea.” Russia has alleged that it is on the basis of this request that President Putin appealed to the Russian Federation Council to “use the Armed Forces of the Russian Federation on the territory of Ukraine until the social and political situation in [Ukraine] is normalized.” President Putin also referred to a “direct appeal from the incumbent and […] legitimate President of Ukraine, Mr Yanukovych, asking [Russia] to use the Armed Forces to protect the lives, freedom and health of the citizens of Ukraine.” Yanukovych confirmed that he had indeed appealed to Russia, on 1 March, to use its armed forces in Ukraine.

3.2.2.1.2.2.2.1 INVITATION BY AKSYONOV

Turning first to Aksyonov’s invitation, the Government of Ukraine considers that Aksyonov’s appointment as ‘Prime Minister’ of Crimea on 27 February 2014 was unconstitutional and therefore that he was not a legitimate leader of Crimea. Regardless of whether Aksyonov could have been considered a legitimate leader of the Ukrainian administrative territory of Crimea, he could not have validly consented to foreign military intervention on behalf of the State of Ukraine. As the leader of a sub-national government, he clearly would not hold the authority to bind the

relevant security facilities, military sanatorium “Yalta”; 830th communication and relay post in Yalta, 1001st high-frequency communication point in Prybrezhne, and 2436th rocket fuel warehouse at the Mamut station.


This comports with the preliminary assessment of the ICC in the Situation in Ukraine, which finds that the situation in Crimea amounted to an armed conflict by at least 26 February 2014. See ICC OTP, Report on Preliminary Examination Activities (14 November 2016), para. 158; ICC OTP, Report on Preliminary Examinations, 2016 (5 December 2019), para. 270; Ukraine v. Russia (Re Crimea), para. 224, citing the ICC reports.

2 BSF Agreement, Article 15(5).

Note, this is after the Russian forces entered Crimea and seized the local government buildings on 27 February 2014. Ukraine v. Russia (Re Crimea), paras 48, 202-208.

3 Aksyonov was appointed the Head of Crimea on 27 February 2014 in violation of the Constitution of Ukraine, and the President of Ukraine reaffirmed the unconstitutionality of Aksyonov’s appointment on 1 March 2014. See, Decree of the President of Ukraine on the Head of the Council of Ministers of the Autonomous Republic of Crimea No. 187/2014 of 1 March 2014.

4 BBC, “Moscow “will not leave without attention” Crimea’s request for assistance” (1 March 2014); UNSC Meeting Record (1 March 2014) UN Doc S/PV.7124, p. 3. See also, UNSC Meeting Record (3 March 2014) UN Doc S/PV.7125, p. 3; Vesti, “Crimean Prime Minister asked Putin to ensure peace on the peninsula” (1 March 2014).

5 President of Russia, “Vladimir Putin submitted appeal to the Federation Council” (1 March 2014); UNSC Meeting Record (1 March 2014) UN Doc S/PV.7124, p. 3; UNSC Meeting Record (3 March 2014) UN Doc S/PV.7125, p. 3.

6 President of Russia, “Vladimir Putin answered journalists’ questions on the situation in Ukraine” (4 March 2014).

7 Associated Press, ‘AP Interview: Yanukovych admits mistakes on Crimea’ (2 April 2014) (“Ukraine’s ousted president conceded Wednesday that he made a mistake when he invited Russian troops into Crimea and vowed to try to negotiate with Vladimir Putin to get the coveted Black Sea peninsula back”). See also, UNSC, “Letter dated 3 March 2014 from the Permanent Representative of the Russian Federation to the United Nations addressed to the Secretary-General” UN Doc S/2014/146 (3 March 2014).

State of Ukraine under the general principles of customary international law – an authority reserved for the highest available organ of the State.\(^{210}\) Indeed, as noted by the United States’ Ambassador to the UN in response to Russia’s attempt to justify its intervention to the UN Security Council on the basis of Aksyonov’s invitation, “the prohibition on the use of force would be rendered moot were subnational authorities able to unilaterally invite military intervention by a neighbouring state.”\(^{211}\) Therefore, Aksyonov’s invitation cannot be accepted as a valid expression of Ukraine’s consent to Russia’s military presence in Ukraine.

### 3.2.2.1.2.2.2 INVITATION BY YANUKOVYCH

Turning to Yanukovych’s invitation to Russia to intervene in Crimea, the Ukrainian Parliament determined on 22 February 2014 that, having fled the country, Yanukovych unconstitutionally removed himself from his post as President of Ukraine.\(^{212}\) In response, the Parliament voted to call early presidential elections on 25 May 2014.\(^{213}\) In the interim, it appointed Oleksandr Turchynov to the Presidency,\(^{214}\) pursuant to Ukrainian parliamentary resolution No. 742-VII of 22 February 2014.\(^{215}\) Ukraine publicised this change of leadership on 23 February\(^{216}\) and the new head of the Ukrainian State received international recognition as such.\(^{217}\)

Nevertheless, Russia has argued that the Ukrainian Parliament removed Yanukovych from power unconstitutionally and that, consequently, Yanukovych remained the legitimate president of Ukraine, able to bind the State, at the time of his invitation to Russia to intervene in Ukraine.\(^{218}\) The following analysis will assess the validity of this Russian argument.

Grounds for removal of a Ukrainian President are limited by Ukraine’s Constitution to formal resignation, inability to function due to health, impeachment and death.\(^{219}\) Yanukovych did not die, formally resign, nor does any information suggest he was removed for health reasons that rendered him unable to perform his functions. Further, the Parliament did not follow the impeachment procedure set out in Ukraine’s 1996 Constitution.\(^{220}\) For example, among other conditions, the procedure required a majority of Parliament to initiate the impeachment process, the creation of a temporary special investigative commission, Ukrainian Constitutional Court review, and a vote in favour of


\(^{212}\) BBC, ‘Ukrainian MPs vote to oust President Yanukovych’ (22 February 2014); Verkhovna Rada of Ukraine, Decision on Self-Removal of the President of Ukraine from Performing Constitutional Duties and Calling Early Elections of the President of Ukraine No. 757-VII (22 February 2014).

\(^{213}\) BBC, ‘Ukrainian MPs vote to oust President Yanukovych’ (22 February 2014); Verkhovna Rada of Ukraine, Decision on Self-Removal of the President of Ukraine from Performing Constitutional Duties and Calling Early Elections of the President of Ukraine No. 757-VII (22 February 2014).

\(^{214}\) With regard to the constitutionality of Turchynov’s appointment: On 21 Feb 2014, Verkhovna Rada passed the law No. 742-VII which amended Article 112 of the Constitution of Ukraine as follows:

In case of early termination of powers of the President of Ukraine in accordance with Articles 108, 109, 110, 111 of this Constitution, the duties of the President of Ukraine for the period before the election and assumption of the new President of Ukraine shall be entrusted to the Chairman of the Verkhovna Rada of Ukraine. The Chairman of the Verkhovna Rada of Ukraine may not exercise the powers provided for in paragraphs 2, 6-8, 10-13, 22, 24, 25, 27, 28 of Article 106 of the Constitution of Ukraine during the term of office of the President of Ukraine. Turchynov became the Chairman of the Verkhovna Rada on 22 February 2014 with a constitutional majority of 288 votes in favour (at least 225 votes required) for his appointment.

\(^{215}\) Resolution of the Verkhovna Rada of Ukraine, Plenary session on 22 February 2014.

\(^{216}\) Resolution of the Verkhovna Rada of Ukraine on entrusting the Head of the Verkhovna Rada of Ukraine with the performance of the duties of the President of Ukraine in accordance with Article 112 of the Constitution of Ukraine No. 764-VII (23 February 2014); OCHIR, Accountability for killings in Ukraine from January 2014 to May 2016, para. 20; RFE/RL, ‘Amnesty International: Five Years After Euromaidan, Justice For The Victims ‘Still Not Even In Sight’’ (19 February 2019). When voting to replace Yanukovych with an interim President, Verkhovna Rada acted pursuant to art. 112 of the Constitution of Ukraine as amended on 21 February 2014.

\(^{217}\) Resolution of the Verkhovna Rada of Ukraine on entrusting the Head of the Verkhovna Rada of Ukraine with the performance of the duties of the President of Ukraine in accordance with Article 112 of the Constitution of Ukraine No. 764-VII (23 February 2014); BBC, “The speaker of the Rada Turchynov was appointed acting President of Ukraine” (23 February 2014); RBC, “The Rada appointed Turchynov Acting President of Ukraine” (23 February 2014); Ukrainska Pravda, “Turchynov Selected Acting President Of Ukraine” (23 February 2014).

\(^{218}\) See, e.g., The White House. President Barak Obama, “Responding to the Situation in Ukraine” (20 February 2014); Svenska Dagbladet, “Bildt’s Quisling tweet surprises” (4 March 2014); DW, “The President of Belarus recognizes the legitimacy of the Ukrainian authorities” (13 April 2014); Gordon, “Bildt: Ukraine’s new government must be supported immediately” (22 February 2014); Radio Svoboda, “The EU recognizes the legitimacy of the new government in Ukraine - spokesman” (24 February 2014); BBC, “Poland’s crucial role as Yanukovych’s rule crumbled” (25 February 2014).

\(^{219}\) President of Russia, ‘Vladimir Putin answered journalists’ questions on the situation in Ukraine’ (4 March 2014) (President Putin referred to the “direct appeal from the incumbent and […] legitimate President of Ukraine, Mr Yanukovych, asking [Russia] to use the Armed Forces to protect the lives, freedom and health of the citizens of Ukraine”). See also, UNSC Meeting Record UN Doc S/PV.7125 (3 March 2014), pp. 3-4.

\(^{220}\) Constitution of Ukraine, Article 108.

\(^{221}\) Constitution of Ukraine, Article 111.
impeachment by three-quarters of the member of the Parliament of Ukraine.221 The Parliament did not abide by, or purport to abide by, any of these procedural impeachment steps in its removal of Yanukovych.222 Accordingly, the removal of Yanukovych would likely be ruled unconstitutional under the domestic laws of Ukraine.

Despite this, Yanukovych was – in fact and functionally – no longer in a position of legitimate authority over Ukraine by the time of his 1 March invitation to Russia, having been formally replaced as President by the Ukrainian Parliament.223 As noted above, Ukraine publicised the appointment of the new Ukrainian President and the removal of Yanukovych’s authority.224 This change of administration received widespread, external (international) recognition, including by the United Nations, European Union, United States, Japan, Turkey, Belarus and others.225 International law prescribes that it is this international recognition of the Turchynov government, and not Russia’s recognition of the Yanukovych government, that is determinative of representativeness.226 Thus, having been internationally recognised as deposed and replaced, Yanukovych lacked the legitimacy to represent and bind Ukraine. As such, his invitation cannot be considered a valid expression of Ukraine’s consent to Russia’s military presence in Crimea.

Even if it could be argued that Yanukovych remained the de jure President of Ukraine on 1 March 2014 by virtue of the alleged unconstitutionality of his removal from power, his consent could be invalidated by Ukraine as a manifest violation of a fundamentally important provision of Ukraine’s Constitution.227 Under the Ukrainian Constitution, the Ukrainian Parliament must approve a President’s invitation of foreign troops into Ukraine in order to give effect to it.228 The relevant provision of Ukraine’s Constitution governs the authority within the State to conclude agreements with foreign powers and, as such, it qualifies as a provision of fundamental importance under public international law.229 That the particular provision is aimed at limiting the authority to consent to an act which would otherwise amount to a violation of the prohibition on the use of force, a jus cogens norm230 (or ‘peremptory norm’, i.e., a cardinal principle of international law from which no derogation is permitted),231 would appear to further substantiate that this provision was of fundamental importance to Ukraine.

Moreover, Russia’s violation of this provision would be manifest because Ukraine’s de facto removal of Yanukovych’s authority as Head of State and, accordingly, its removal of his authority to conclude agreements with other States,
was properly publicised. 232 Ukraine widely broadcast its stripping of Yanukovych’s authority and its appointment of an interim Ukrainian President in his stead, pending the election of a new President. 233 The international community openly recognised and accepted the legitimacy of the new appointment. 234 Thus, the limitation on Yanukovych’s power to conclude an agreement to invite foreign armed forces into Ukrainian territory was “objectively evident to any State conducting itself in the matter in accordance with normal practice and in good faith.” 235 Indeed, Russia’s own leadership acknowledged awareness of Ukraine’s change of leadership. 236 Therefore, Russia cannot have validly relied upon Yanukovych’s 1 March request as an expression of Ukraine’s consent.

Finally, even if it were to be accepted that Yanukovych was authorised to give consent and did so effectively, Russia’s intervention did not remain within the limits of the consent given, 237 further demonstrating the invalidity of the justification of consent. In his letter of 1 March 2014, Yanukovych invited Russia to intervene “to restore law and order, peace and stability and to protect the people of Ukraine.” 238 Russia’s intervention, however, went far beyond the limited confines of Yanukovych’s invitation by virtue of its conduct in capturing Crimea’s key infrastructure, replacing its governing officials with Russia-appointed individuals and arranging a referendum that purported to effect the secession of Crimea from Ukraine. 239 In addition, Russia then purported to transfer sovereignty over Crimea to itself and incorporate the Peninsula into Russian territory by virtue of the 18 March Treaty on Accession. 240 Yanukovych’s invitation to intervene could in no way be interpreted as consenting to Russia’s seizure and assertion of sovereignty over Ukraine’s Crimean Peninsula. Accordingly, Yanukovych’s 1 March request would still not qualify as an expression of Ukraine’s consent.

In sum, both Aksyonov’s and Yanukovych’s 1 March 2014 requests to Russia fail as expressions of consent on the part of Ukraine. Ukraine’s lack of consent to the presence of Russian armed forces in Crimea, which began from at least 27 February 2014, has remained consistent through to present day.

3.2.2.1.2.2.3 [LACK OF] Consent through Present Day

Ukraine has been vocal in its rejection of consent to Russia’s military presence in Crimea. For example, on 6 March 2014, the Ukrainian Prime Minister met with the European Council to discuss potential measures to oppose Russia’s presence, which it considered to amount to an “unprovoked violation of Ukrainian sovereignty and territorial integrity by the Russian Federation.” 241 Moreover, on 11 March, the Ukrainian MFA protested the recognition of Crimea’s declaration of independence by Russia, condemning it as a “direct intrusion” into Ukraine’s internal affairs. 242 On 15 March 2014, Ukraine urged the UN Security Council to adopt a resolution on non-recognition of the referendum and to find means to stop Russia’s aggression. 243 On 20 March 2014, Ukraine’s Parliament denounced the Treaty on...

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232 Land and Maritime Boundary between Cameroon and Nigeria, para. 265.  
233 BBC, "The speaker of the Rada Turchynov was appointed acting President of Ukraine" (23 February 2014); RBC, "The Rada appointed Turchynov Acting President of Ukraine" (23 February 2014); Ukrainia Pravda, "Turchynov Selected Acting President Of Ukraine" (23 February 2014).

234 See, e.g., The White House, President Barak Obama, "Responding to the Situation in Ukraine" (20 February 2014); Svenska Dagbladet, "Bildt's Quisling tweet surprises" (4 March 2014); DW, "The President of Belarus recognizes the legitimacy of the Ukrainian authorities" (13 April 2014); Gordon, "Bildt: Ukraine’s new government must be supported immediately" (22 February 2014); Radio Svoboda, "The EU recognizes the legitimacy of the new government in Ukraine - spokesman" (24 February 2014); BBC, "Poland’s crucial role as Yanukovych’s rule crumbles" (25 February 2014).

235 Land and Maritime Boundary between Cameroon and Nigeria, para. 265.

236 President of Russia, ‘Vladimir Putin answered journalists’ questions on the situation in Ukraine’ (4 March 2014); ICC OTP, Report on Preliminary Examination Activities (14 November 2016), para. 155; Interfax, ‘Putin considered the situation in Ukraine a civil war’ (23 May 2014).


238 See, Sections 3.2.2.2 Substantial or Complete Incapacity of the GoU to Exert its Powers in Crimea and 3.4 Sovereignty over Crimea, below.

239 President of Russia, ‘Agreement on the accession of the Republic of Crimea to the Russian Federation signed’ (18 March 2014).

240 See also, OHCHR, ‘Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol (Ukraine)’ (25 September 2017), para. 26. On 21 March 2014, the Parliament of the Russian Federation ratified a Constitutional Law “On the Accession of the Republic of Crimea to the Russian Federation and the Creation of the New Constituent Entities of the Republic of Crimea and the City of Federal Importance Sevastopol within the Russian Federation”. In its announcement of the signing of the Treaty on Accession, the Kremlin indicated that “[t]he agreement is based on the free and voluntary expression of will by the peoples of Crimea at a nationwide referendum”.

241 European Council, Statement of the Heads of State or Government on Ukraine (Brussels, 6 March 2014).


Accession as violating international law and called upon the international community to refrain from recognising Russia’s “annexation of Crimea”. On 15 April 2014, the Ukrainian Parliament adopted the ‘Law on ensuring the rights and freedoms of citizens and the legal regime in the temporarily occupied territory of Ukraine’, wherein it stated that Russia had been occupying Crimea since 20 February 2014.

Since 2014, Ukraine has consistently voiced its opposition to Russia’s military presence in Crimea in international fora, including at meetings of the UN General Assembly, Arria formula meetings, Parliamentary Assembly of the Council of Europe (‘PACE’) meetings and roundtable discussions, EU-Ukraine talks, and OSCE meetings. Further, Ukraine has continuously reiterated its calls for the return of Crimea to Ukraine’s control, including in the joint declaration signed by 44 Heads of State and/or Government and international organisations during the Crimea Platform on 23 August 2021. During the September 2021 UN General Assembly meeting, the Ukrainian President invited all UN Member States “to join the joint declaration of the participants of the Crimea Platform, condemning the occupation”. More recently, on 17 December 2021, Ukraine’s MFA welcomed the most recent UN General Assembly resolution on Crimea, commending its strong language and noting that Ukraine “will continue taking maximal measures to deoccupy [Crimea] and to bring Russia to international legal responsibility”. On 19 January 2022, the Ukrainian MFA demanded the Slovakian Minister of Economy to refute his statement that the “Russians will not return Crimea”, noting that any attempts to normalise relationships with Russia which “took over Crimea by force” encourage impunity and further violations of international law. Based on the foregoing, it can be concluded that, from at least 27 February 2014 to present, Russian armed forces have maintained a physical presence in Crimea without the consent of the Ukrainian government.

246 Verkhovna Rada of Ukraine, Declaration on the Struggle for the Liberation of Ukraine No. 1139-VII (20 March 2014). The lawfulness of Russia’s purported annexation of Crimea is discussed further below in Section 3.4.1 Overview of the Law.
247 Verkhovna Rada of Ukraine, Law of Ukraine No. 1207-VII ‘On Ensuring the Rights and Freedoms of Citizens and the Legal Regime in the Temporarily Occupied Territory of Crimea’ (15 April 2014). The law suggested that Crimea had been occupied by Russia since 20 February. This is the date reportedly indicated on the medals produced by the Russian Defence Ministry “For the Return of the Crimea”. See Directorate-General For External Policies, ‘The situation of national minorities in Crimea following its annexation by Russia’ (2016), fn. 145, and Ukrainian MFA, ‘10 facts you should know about Russian military aggression against Ukraine’ (19 December 2019). On the medal, see KHRPG, ‘Incriminating Crimean medal or fake?’ (25 April 2014); Korrespondent, ‘Russia has established a medal for the return of Crimea’ (25 March 2014); RFE/RL, ‘The Online Debate Over A Mysterious Russian “Medal”’ (24 April 2014).
248 UN News, ‘In UN address, Ukraine President denounces Russia’s “aggressive expansionist policies”’ (26 September 2018); United Nations YouTube Channel, ‘Ukraine – President Addresses General Debate, 73rd Session’ (27 September 2018); RFE/RL, ‘Poroshenko: Russia Uses UN Veto As “License To Kill”’ (29 September 2015).
251 Ukrainian MFA, ‘De-occupation of Crimea will remain on EU-Ukraine political and expert dialogue agenda until full restoration of territorial integrity of Ukraine’ (14 December 2020).
252 Permanent Mission of Ukraine to the International Organisations of Vienna, ‘Statement on Russia’s ongoing aggression against Ukraine and illegal occupation of Crimea’ (15 October 2020); Permanent Mission of Ukraine to the International Organisations of Vienna, ‘Statement on Russia’s ongoing aggression against Ukraine and illegal occupation of Crimea’ (2 July 2020).
253 Ukrainian MFA, ‘Statement by the Ministry of Foreign Affairs of Ukraine on the human rights situation in temporarily occupied Crimea’ (21 May 2020); President of Ukraine, ‘Joint statement by President of Ukraine Volodymyr Zelensky and President of the Republic of Poland Andrej Duda’ (12 October 2020); United Nations. Meetings Coverage and Press Releases, ‘Resolutions Calling on Withdrawal of Forces from Crimea, Establishing Epidemic Preparedness International Day among Texts Adopted by General Assembly’ (7 December 2020); Ukrainian MFA, ‘De-occupation of Crimea will remain on EU-Ukraine political and expert dialogue agenda until full restoration of territorial integrity of Ukraine’ (14 December 2020); Permanent Mission of Ukraine to the United Nations in New York, ‘Statement by the delegation of Ukraine at the UN General Assembly debate on agenda item “Situation in the temporarily occupied territories of Ukraine”’ (23 February 2021); Ukrainian MFA, ‘Crimea Platform to Keep Occupation of Crimea in Focus of Constant International Attention – Emine Ovharpaz’ (5 October 2020).
254 Crimea Platform is an international consultation and coordination format introduced by Ukraine in August 2021 aimed at de-occupation of Crimea. See, Crimea Platform.
255 The 44 Heads of State and/or Government and international organisation include: Latvia, Lithuania, Estonia, Poland, Slovakia, Hungary, Moldova, Slovenia, Finland, Romania, Georgia, Croatia, Sweden, Switzerland, Czech Republic, Turkey, France, Germany, Spain, Italy, Belgium, Austria, the Netherlands, Luxembourg, Ireland, Denmark, Bulgaria, Montenegro, North Macedonia, UK, Portugal, US, New Zealand, Malta, Japan, Australia, Cyprus, Canada, Greece, Norway, European Commission, NATO, Council of Europe, and Organization for Democracy and Economic Development-GUAM. See, Ukrainian MFA, ‘Joint Declaration Of The International Crimea Platform Participants’ (23 August 2021); Ukrinform, ‘Forty-four countries and organizations: full list of Crimea Platform participants announced’ (19 August 2021).
256 President of Ukraine, ‘Speech by President of Ukraine Volodymyr Zelensky at the general debate of the 76th session of the UN General Assembly’ (23 September 2021).
257 Interfax, ‘Ukraine welcomes the adoption by the UN General Assembly of an enhanced resolution on Crimea’ (17 December 2021).
258 RFE/RL, ‘The Ukrainian MFA responded to the Slovakian Minister’s statement that “the Russians will not return Crimea”’ (19 January 2022).
3.2.2.2 Substantial or Complete Incapacity of the GoU to Exert its Powers in Crimea

The second criteria of occupation requires that the local authorities who were governing the occupied territory at the time of the invasion have been or can be rendered substantially or completely incapable of exerting their powers due to the presence of the foreign forces. 257 This also requires that the forces of the territorial State must have surrendered, been defeated, have withdrawn258 or have been “contained in isolated enclaves”. 259 As noted in respect of this last criterion, “[c]ertain isolated enclaves may even remain in the hands of forces loyal to the displaced sovereign: if successfully contained, belligerent occupation may robustly exist elsewhere”. 260

The effective local government in Crimea at the time of the Russian invasion was Ukraine. 261 As noted above, 262 Ukraine did not militarily resist Russia’s use of force against it in Crimea, but neither did Ukraine’s forces in Crimea immediately surrender. Nevertheless, Russian forces successfully contained and isolated forces loyal to Ukraine including by blockading them inside their Ukrainian military bases263 and by blocking access to the Peninsula by forces from the Ukrainian mainland. 264 This rendered Ukraine substantially or completely incapable of exerting its powers over the Crimean Peninsula from 27 February 2014 onwards. 265

As described above, 266 Russian Special Forces267 (i.e., the ‘little green men’) stormed and seized the buildings of Crimea’s Parliament and Council of Ministers on 27 February 268. During this operation, the Russian forces disarmed

257 Y. Dinstein, Law of Belligerent Occupation, paras. 188-189. Armed Activities Judgement, para. 173 (“In the present case the Court will need to satisfy itself that the Ukrainian armed forces in the DRC were not only stationed in particular locations but also that they had substituted their own authority for that of the Congolese Government”); Naletilić & Martinović, Judgement, para. 217 (“the Occupying Power must be in a position to substitute its own authority for that of the occupied authorities, which must have been rendered incapable of functioning publicly”).

258 Naletilić & Martinović, judgement, para. 217.

259 Y. Dinstein, Law of Belligerent Occupation, p. 51.


261 Constitution of Ukraine, Articles 134, and 135(2): ‘Any decisions adopted on the Crimean local level cannot be in contradiction with the Constitution of Ukraine’.

262 See Section 3.1.2.6 The Seizure of the Governmental Buildings on 27 February 2014.

263 Ukraine v Russia (re Crimea), para. 49; Hromadske, ‘“Ivan Ivanych, this is it, Russia came”: How Ukrainian Crimea was cut off day by day’ (15 March 2019); A. Golubeva, A. Chernous, G. Erman, ““Return” or “take over by force”? Crisis in Ukraine in the Ukrainian and Russian history textbooks” (BBC, 15 March 2019); M. Semena, “how it was: 27 February 2014, Simferopol. Takeover... A chapter from a future book” (Krym.Reali, 28 February 2021).

264 Ukraine v Russia (re Crimea), para. 50; OHCHR, ‘Enforced Disappearances in the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine, Temporarily Occupied by the Russian Federation’ (31 March 2021), fn. 21; Ukrainska Pravda, ‘Entry to Crimea was blocked by unknown people in camouflage with St. George ribbons and machine guns’ (1 March 2014); LB, ‘Entry to Crimea is blocked’ (1 March 2014).

265 Ukraine v Russia (re Crimea), para. 46, citing 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’ (15 March 2014); Law of Ukraine ‘On the security of the rights and freedoms of the population and the legal regime on the hourly repayment of the territory of Ukraine’ (15 April 2014).

266 See Section 3.1.2.6 The Seizure of the Governmental Buildings on 27 February 2014.

267 Ukraine v Russia (re Crimea), para. 42-44, citing witness statement of Ihor Voronchenko; witness statement of Andrii Chshechuk, an organiser of the “Euromaidan Crimea” movement (“Mr Chshechuk [...]; confirmed in a statement [...] that the so-called ‘green men’ had seized the administrative buildings of the Supreme Council and the Cabinet of Ministers of the ARC’); Letter from the Prosecutor General’s Office of Ukraine of 28 November 2016 (refere, citing

268 Ukraine v Russia (re Crimea), para. 26(1) and 32, citing witness statement of Ihor Voronchenko, deputy commander of the Naval Forces of the Armed Forces of Ukraine as Deputy Commander of the Naval Forces of Ukraine for Coastal Defence at the time of the events. The military unit Voronchenko was referring to were the four operational brigades of elite troops that were created in Russia in 2010 to ensure safety during the twenty-second Olympic Winter Games in Sochi, Russia. Following the completion of the 2014 Sochi Winter Olympics on 23 February 2014, these military forces were moved to Crimea. Voronchenko provided similar information about these units in his testimony in the case against Viktor Yanukovych. See, Proceedings in the case accusing Viktor Yanukovych of treason, Testimony of Ihor Voronchenko, Chief of the Coastal Defence Force (27 December 2017): ‘In January 2014 [Voronchenko] received information from Ukrainian intelligence that Russia was preparing for hostilities. For example, there were four rapid reaction brigades in the Southern District [the RF, relocated in Ulyanovsk, Pakov, Talaty, Ivanovo] that were retrained and

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270 Voronchenko said that these brigades later blocked Ukrainian military units.’
local Ukrainian law enforcement agencies and the Russian Cossacks blocked entry to the Crimean Parliament building. Subsequently, the Russian forces dismissed members of Crimea’s Council of Ministers and replaced them with “pre-designated Russia loyalists”. On the same day, Russian forces, former Ukrainian Berkut officers, the CSD and Russian Cossacks, acting in concert, blocked the major land access points to the Crimean Peninsula, preventing the entry of the UAF into Crimea from mainland Ukraine. The Russian military and CSD also began to blockade Ukrainian military bases, including by cutting their electricity and communication systems.

It appears that, from the date of these events, the Ukrainian government’s capacity to exercise its power over Crimea was substantially or completely diminished. This may first been seen in Ukraine’s subsequent inability to carry out executive functions. For example, on 1 March 2014, Sergey Aksyonov, the new Head of the Crimean Council of Ministers (i.e., ‘Prime Minister’) appointed by the Russian-controlled Crimean Parliament after Russia seized the Parliament building, took a decision to arbitrarily subordinate the Crimean security agencies to his command rather than to the central Ukrainian government. On the same day, the President of Ukraine issued a decree stating that Aksyonov’s appointment was unconstitutional and should be revoked. Ukraine was unable to implement this executive decision and Aksyonov remained in power in Crimea.

Shortly after, the fact that Ukraine had lost control over judicial functions in Crimea became evident. On 3 March 2014, the Head of the Ukrainian High Qualification Commission of Judges reminded judges in Crimea to adhere to their oaths and continue to perform their duties accordingly. Nonetheless, available information suggests that Ukrainian courts in Crimea, preparing to become part of the Russian system and uncertain of the applicable law (Ukrainian or Russian), had practically stopped considering cases in Crimea prior to the 16 March 2014 referendum. Ukraine’s lost control over security functions in Crimea also became clear. By 4 March 2014, Ukrainian security services admitted they were unable to “continue performance of their duties in Crimea” because their offices were blockaded by pro-Russian activists and Russian forces, leading them to appeal not to the Ukrainian government, but to the Russian Federation, to facilitate their activities. A week later, the Ukrainian government admitted that it was unable...
to guarantee the safety and security of flights to the Peninsula and closed the airspace over Crimea “until further notice”, further demonstrating its incapacity to exercise its powers over Crimea.285

By 6 March 2014, it was clear that Ukraine had also lost the ability to exercise its authority over the Crimean legislature. At the time, the Crimean Parliament building and access thereto was still under the control of Russian special forces as a result of the takeover on 27 February.286 On 6 March, deputies of the Crimean Parliament held an extraordinary session, during which they adopted a resolution calling for Crimea to join the Russian Federation and for a referendum on the matter to be held on 16 March 2014.287 According to Ukraine’s MFA, this vote failed quorum, lacked transparency,288 and was carried out under the threat of the use of physical force against parliamentary deputies.289 In a special session, the Sevastopol City Council adopted a similar decision on joining the Russian Federation.290 In defiance of Ukraine, on 11 March, the Crimean Parliament adopted a “declaration of independence of Crimea and Sevastopol”.291

On 15 March 2014, in response to the Crimean Parliament’s decision to hold a referendum on independence,292 the lawfulness of which will be discussed further below,293 Ukraine’s Parliament exercised its Constitutional power294 to dissolve the Crimean Parliament.295 However, the Ukrainian government was unable to enforce this resolution; consequently, the Crimean Parliament continued to function.296 Moreover, on 16 March 2014, the Crimean Parliament went forward with the referendum in defiance of Ukraine’s authority. The referendum formed the basis for Crimea’s secession from Ukraine and accession to the Russian Federation.297

On 15 April 2014, Ukraine’s Parliament adopted a law stipulating that, “as a result of [Russia’s] armed aggression”, Crimea has been occupied since 20 February 2014,298 thereby conceding that it did not have effective control over Crimea on 27 February. In this law, Parliament defined the territory of Crimea as temporarily occupied, declared that Russia, as Occupying Power, bore full responsibility for human rights violations in Crimea, and admitted Ukraine’s inability to administer justice in Crimea.299

Ukraine also lost its ability to monitor economic activities in Crimea. On 6 May, the National Bank of Ukraine banned all financial operations and other banking activities in Crimea due to its inability to oversee these activities and ensure that they were lawfully carried out.300

285 Governmental portal, ‘The transit zone over Crimea and the Black Sea is completely under the control of the Sovereign Aviation Service of Ukraine’ (19 June 2014).
286 O. Skrypnyk (ed), Peninsula of Fear: Five years of unfreedom in Crimea (CHRGR, RCHR, CCL, ZMINA, UHHRU 2019), p. 13; Governmental portal, ‘Comment of the Ministry of Foreign Affairs of Ukraine on holding a local referendum in the Autonomous Republic of Crimea on March 16 this year’ (15 March 2014); Guardian ‘Crimea referendum: early results indicate ‘landslide’ for secession’ (as it happened)’ (16 March 2014).
288 The session was closed to journalists and the public, Governmental portal, ‘Comment of the Ministry of Foreign Affairs of Ukraine on holding a local referendum in the Autonomous Republic of Crimea on March 16 this year’ (15 March 2014).
289 Governmental portal, ‘Comment of the Ministry of Foreign Affairs of Ukraine on holding a local referendum in the Autonomous Republic of Crimea on March 16 this year’ (15 March 2014).
291 Ukraine v. Russia (re Crimea), para. 61, citing Resolution of the Verkhovna Rada of the ARC ‘On the declaration of independence of the Autonomous Republic of Crimea and Sevastopol’ (11 March 2014).
293 See, Section 3.4.2.2 Declaration of Independence.
294 As per the Constitution of Ukraine, the Ukrainian Parliament is empowered to dissolve the Crimean Parliament if the latter violates the Constitution or the laws of Ukraine. See Constitution of Ukraine, Articles 85(1) and 85(28).
296 LB, ‘The Crimean parliament is not going to implement the Verkhovna Rada’s decision to dissolve’ (15 March 2014).
297 The legitimacy of this referendum will be discussed in Section 3.4.2.2 Declaration of Independence, below.
299 Law of Ukraine ‘On ensuring the rights and freedoms of citizens and the legal regime in the temporarily occupied territory of Ukraine’ (15 April 2014).
300 Decree of the Board of the National Bank of Ukraine ‘On revocation of banking licenses and general licenses for foreign exchange transactions of individual banks and closing by banks of separate divisions located in the Autonomous Republic of Crimea and the city of Sevastopol’ (6 May 2014).
The factual circumstances described above suggest that by 27 February 2014, Ukraine had been rendered substantially, if not completely, incapable of exerting its sovereign authority over Crimea by virtue of the unconsented-to presence of Russian forces. The events that followed substantiated and furthered this incapacity. There is no information to suggest that Ukraine has regained any capacity to exercise its authority over Crimea to date.

### 3.2.2.3 The Position of Russia to Exercise Authority over Crimea

What distinguishes occupation from a mere invasion is the exercise of governmental authority over the foreign territory by the intervening State, to the exclusion of the territorial State. To establish effective control, it is not necessary that the intervening State “exercise full authority over the territory; instead, the mere capacity to exercise such authority would suffice.” Indeed, there is broad agreement amongst experts that once enemy foreign forces have established a presence in a territory, what counts for the purposes of determining the applicability of occupation law is the ability of the foreign forces to exert authority in the foreign territory and not the actual and concrete exercise of such authority. As the following will demonstrate, Russia was in a position to exercise authority over the Crimean Peninsula from 27 February 2014, to the exclusion of Ukraine.

Firstly, as described above, Russia’s invasion into Crimea on 27 February was not met with any military resistance, and Ukrainian forces inside Crimea were immediately isolated and contained. On the same day, Russia swiftly seized control over the major land access points to Crimea, effectively sealing off the Peninsula. This blocked access to Crimea by Ukrainian forces from the mainland, and provided Russia with unfettered access to transfer weapons and personnel into the Peninsula to establish and enhance its position of authority over the territory.

Russia’s successful takeover on 27 February of key Ukrainian governmental structures and bodies, including Crimea’s Parliament and Council of Ministers, expanded its capacity to exercise authority over the Peninsula. As described by the Ukrainian OPG, Russian armed forces “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.”

Moreover, Russia dismissed incumbent Ministers of the Council of Ministers, and appointed Russian loyalists to this key Crimean legislative body. Most notably, the Crimean Parliament, under the control of Russia’s ‘little green men’,

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101. Decree of The Verkhovna Rada of Ukraine ‘On early termination of powers of the Verkhovna Rada of the Autonomous Republic of Crimea’ (15 March 2014); LB, ‘The Crimean parliament is not going to implement the Verkhovna Rada’s decision to dissolve’ (15 March 2014)

102. See also, e.g., ICC, Report on Preliminary Examination Activities 2020 (14 December 2020), para. 274, describing a preliminary view that Russia has continued to exercise effective control over Crimea as of 14 December 2020. See also UN Human Rights Council ‘Situation of human rights in the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine’ (27 May 2021) A/HRC/47/85, para. 3.

103. This is clear from the wording of Article 42 of the 1907 Hague Regulations: “Territory is considered occupied when it is actually placed under the authority of the hostile army” (emphasis added). See also, Y. Dinstein, Law of Belligerent Occupation, paras. 170-178.


107. See Section 3.1.2.2 Presence of Russian Forces in Crimea from late December 2013 to 2 February 2014.

108. Ukraine v. Russia (re Crimea), paras. 50, 84; Ukhroinform, ‘armed men took control of airports in the Crimea’ (28 February 2014); UNIAN, ‘In Crimea, a missile boat of the Russian Black Sea Fleet blocked the exit of Ukrainian border ships’ (28 February 2014); See, for example, TSN Youtube Channel, ‘Armed invaders of Simferopol airport threaten to kill’ (28 February 2014); Ukrainska Pravda, ‘Simferopol airport is controlled by the “self-defense of the Crimea”’ (28 February 2014); Yuga, ‘How the Cossacks fought in the Crimea: memories of the participants in the operation’ (18 March 2015); Radio Svoboda, ‘Ukrainian TV channels have been shut down in Crimea and telephones are probably being tapped’ (6 March 2014)

109. Ukraine v. Russia (re Crimea), para. 50.

110. Ukraine v. Russia (re Crimea), para. 84.

111. Ukraine v. Russia (re Crimea), paras. 34, 42; OHCHR, ‘Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol (Ukraine)’ (25 September 2017), para. 4, citing interview given to the TV channel ‘Rossiya’ conducted on 17 April 2014 as part of a documentary ‘Crimea. The way home’. See also, President of Russia, ‘Direct Line with Vladimir Putin’ (17 April 2014): ‘Russia created conditions – with the help of special armed groups and the Armed Forces, I will say it straight’; OHCHR, ‘Report on the human rights situation in Ukraine’ (15 April 2014), para. 18; The Nemtsov Report, pp. 11 and 33; M. Kofman, ‘Lessons from Russia’s Operations’, pp. 7-9.


appointed Russian citizen and loyalist, Sergey Aksyonov, as the new (de facto) ‘Prime Minister’ of Crimea, replacing the lawfully appointed Anatoliy Mohilyov.315

Russia’s overwhelming military presence in Crimea, neutralisation of Ukrainian forces, sole access to the territory and takeover of key executive and legislative positions and infrastructure within Crimea provides clear evidence of its ability to exercise authority to the exclusion of Ukraine as of 27 February 2014. The events that followed substantiated and furthered Russia’s established position of de facto authority over Crimea.

As described above,316 in the days and weeks that followed the events of 27 February, the Russian military, supported by the CSD, Berkut and Russian Cossacks, swiftly and without any military resistance, exercised actual control over all Ukrainian military objectives and civilian infrastructure on air, land and sea.317 On 28 February, the RFAF seized Ukraine’s airports318 and sea harbours.319 The RFAF also blockaded radio and TV stations over the next several days320 and, along with the CSD, began blockading Ukrainian military bases, including by cutting their electricity and communication systems.321 This furthered Russia’s position of command and control over the Peninsula by providing a means to restrict information disseminating within, and streaming out of, the territory.322

On 6 March 2014, the Crimean Parliament adopted a Russian-dictated decision to hold a referendum on the status of Crimea. At the time of the vote, the Parliament building remained under the control established by Russia on 27 February, with Russian forces, alongside the CSD and Russian Cossacks, regulating all entrances to the building and maintaining a presence in the voting room.323 Notwithstanding Ukraine’s objection,324 a referendum on the accession of Crimea to Russia took place on 16 March 2014 at the insistence of the Russian-controlled Crimean Parliament.325 The following day, the Crimean Parliament unilaterally declared Crimea’s independence from Ukraine326 and adopted a resolution in favour of acceding to the Russian Federation.327


317 See Section 3.1.2.7 Continued hostilities in Crimea from 28 February until 26 March 2014.

318 See, for example, TSN Youtube Channel, ‘Armed invaders of Simferopol airport threaten to kill’ (28 February 2014); Ukrainska Pravda, ‘Simferopol airport is controlled by the self-defence of the Crimea?’ (28 February 2014); Yuga, ‘How the Cossacks fought in the Crimea: memories of the participants in the operation’ (18 March 2015); Radio Svoboda, ‘Ukrainian TV channels have been shut down in Crimea and telephones are probably being tapped’ (6 March 2014).

319 International Crimes in Crimea: An Assessment of Two and a Half Years of Russian Occupation (PHR September 2016), para. 32; Interfax, ‘About 50 armed men in military uniform seize Simferopol Airport in early hours of Friday’ (28 February 2014); Ukrinform, ‘Armed People Take Under Control Airports In Crimea’ (28 February 2014).

320 UNIAN, ‘In Crimea, a missile boat of the Russian Black Sea Fleet blocked the exit of Ukrainian border ships’ (28 February 2014); A. Klymenko, ‘Occupation of Crimea: How it was. The story of an eyewitness’ (Maydan of Foreign Affairs, 19 February 2018).

321 KyivPost, ‘Gunmen seize Simferopol television station, turn off Channel 5, 3+1, turn on Rossiya 24′ (6 March 2014); Economist, ‘Edging closer to war’ (1 March 2014).

322 UNHCR, ‘The Occupation of Crimea: No markings, no names and hiding behind civilians’ (2019), p. 20; See Testimonies of Maryna Kanaluky, Assistant of the Commander of Ukrainian Navy, Proceedings in Yanukovych trial on Office of the Prosecutor General Youtube Channel ‘Court hearing in the case of accusing Yanukovych of treason’ (27 December 2017), 3:00-4:00.

323 O. Zaporozhets, ‘Russian propaganda during the occupation of Crimea’ (International relations, part ‘Political sciences’); I. Rozklyad, ‘How Ukraine counteracts Russia’s information aggression’ (CEDEM, 12 January 2018).

324 On 27 February 2014, the Crimean Parliament building was seized and surrounded by the Russian military, CSD and Russian Cossacks who controlled all entrances to the building and maintained their presence in the voting room. See, Ukraina v. Russia (re Crimea), paras. 42 and 44, citing Letter from the Prosecutor General’s Office of Ukraine of 28 November 2016 (reference no. 10/41-22437-16-746 Ref.-16); DW, ‘Russian Cossacks and the Ukrainian conflict’ (15 May 2015); O. Skrypnik (ed), Peninsula of Fear: Five years of unfreedom in Crimea (CHR, RCHR, CCI, ZMINA, UNHCRU 2019), p. 13.

325 Governmental portal, ‘Comment of the Ministry of Foreign Affairs of Ukraine on holding a local referendum in the Autonomous Republic of Crimea on March 16 this year’ (15 March 2014); Radio Svoboda, ‘“Return Ukrainian to Ukraine” - Zeletsny on the anniversary of the Russian ‘referendum’ in Crimea’ (16 March 2021).


The Russian Federation, the ‘Republic of Crimea’ and the City of Sevastopol signed the Treaty on Accession in Moscow on 18 March, formalising Russia’s de facto control over Crimea.\(^\text{328}\) As will be discussed further below, this amounted to an unlawful annexation.\(^\text{329}\)

On 20 March 2014, the Russian Parliament voted to ‘accept’ Crimea and Sevastopol into Russia by ratifying the Treaty on Accession.\(^\text{330}\) On 21 March, Russia’s Federation Council also ratified the treaty and adopted a Constitutional Law to give effect to it.\(^\text{331}\) The Constitutional Law established that all persons residing in Crimea as of 18 March 2014 were entitled to Russian citizenship unless they declared their intent to preserve their Ukrainian citizenship.\(^\text{332}\) It further provided that those who obtained Russian citizenship had to undertake compulsory military service. Moreover, Crimea was to integrate into Russia’s economic, financial, credit and legal systems by 1 January 2015.\(^\text{333}\)

After this, Russia considered Crimea a ‘republic’ and Sevastopol a ‘federal city’ of the Russian Federation. Accordingly, Russian federal authorities created territorial departments in Crimea,\(^\text{334}\) while the Russian-controlled\(^\text{335}\) Crimean Parliament continued to perform its functions in accordance with the Russian Constitution, pending formal elections in September 2014.\(^\text{336}\)

On 25 March 2014, Russia established its prosecutor’s office in Crimea.\(^\text{337}\) Russian investigative authorities also began functioning in March and, on 26 March, Sergey Abisov was appointed by the Russian Ministry of the Interior as the interim chief of the (Russian) Crimean police to replace Ukrainian-appointed Valeriy Radchenko.\(^\text{338}\) By 31 March, Russia had completely incorporated Crimea into its postal and social security systems.\(^\text{339}\) On 1 April 2014, the Russian penitentiary system was extended to Crimea, meaning that all criminal sentencing was implemented according to Russian procedures.\(^\text{340}\) On 9 April 2014, Viktor Palagin was appointed by the Russian President as the head of the


\(^\text{329}\) See, Section 3.4 Sovereignty over Crimea.

\(^\text{330}\) Ukraine v. Russia (re Crimea), para. 65.

\(^\text{331}\) Ukraine v. Russia (re Crimea), para. 65.


\(^\text{337}\) Argumenty i Fakty, ‘Prosecutor General Chalika signed an order on creation of the Prosecutor’s office of Crimea’ (25 March 2014); TASS, ‘Poklonskaya Natalya Vladimirovna’.

\(^\text{338}\) Order of the Ministry of Internal Affairs of Russia No. 354 ‘On the appointment of Police Lieutenant Colonel Sergei Abisov as the Minister of Internal Affairs for the Republic of Crimea’ (26 March 2014); Rossiskaya Gazeta, ‘There will be no vacancies’ (27 March 2014). On 6 May 2014, Russian President appointed Abisov the Minister of Interior. See President of Russia, ‘Interior Minister for Republic of Crimea appointed’ (6 May 2014).


Russian FSB in Crimea. By 21 April 2014, Russia had fully incorporated Crimea into its banking system. By early May 2014, Russia had extended its entire criminal legislation to the Peninsula, completely replacing Ukrainian criminal legislation with its own. Russia also established its own court system in Crimea in June 2014. By 1 June, the Russian ruble had become the sole legal tender in Crimea.

Taken together, these events (and the ease with which they occurred), suggest that Russia was already in a position to exert its authority in Crimea as of at least 27 February 2014. From this date onwards, Russia continued to extend its authority by establishing governmental institutions and exercising governmental functions.

3.2.3 CONCLUSION ON THE OCCUPATION OF CRIMEA

Russia’s military presence in Crimea exceeded the bounds of Ukrainian consent by at least 27 February 2014. The number of Russian troops present in Crimea has continued to expand since, and Ukraine’s withholding of consent to this presence has remained firm. Based on the foregoing, it can be concluded that, from at least 27 February 2014 to present day, the Russian armed forces have maintained a physical presence in Crimea without the consent of the Ukrainian government in satisfaction of the first criteria of effective control. Russian forces remain in Crimea without the consent of the Ukrainian government to this day.

It appears also that, from the date of the events of 27 February, the Ukrainian government’s capacity to exercise its power over Crimea had been substantially or completely diminished. In the days and weeks that followed, it was evident that Ukraine had lost its ability to carry out executive functions on the Peninsula. In early March 2014, Ukraine’s loss over judicial functions had also become apparent. By 4 March 2014, Ukrainian security services were described as being unable to “continue performance of their duties in Crimea”, leading them to appeal not to the Ukrainian government but to the Russian Federation to facilitate their activities. Ukraine had also lost control of the Crimean Parliament which, under the control of Russian forces, had adopted a resolution on 6 March calling for Crimea to join the Russian Federation, and for an ‘all-Crimean’ referendum on the status of the Crimean Peninsula. By 11 March, the Crimean Parliament had adopted a “declaration of independence”. The following day, the Ukrainian government admitted that it was unable to guarantee the safety and security of flights to Crimea

341 BBC, ‘Crimean FSB will be headed by a Chekist who cleared Bashkirkia from extremists’ (9 April 2014); Political Crimea, Viktor Palagin – file.


345 By 1 June, the Russian armed forces remained in Crimea without the consent of the Ukrainian government to this day.


348 Law of the Republic of Crimea No. 5-3PK ‘On the system of the state executive bodies of the Republic of Crimea’ (21 May 2014). For instance, recently the Crimean Council of Ministers amended its Regulation concerning the Crimean Ministry of resorts and tourism, reaffirming that the activities of the Ministry are governed by the Russian Constitutional law, laws and bylaws and is part of the Russian governmental structure. See, Decision of the Council of Ministers of the Republic of Crimea No. 145 ‘On adoption of the Regulation on the Ministry of Resorts and Tourism of the Republic of Crimea’ (27 June 2014).

349 Rossiyiskaya Gazeta, ‘Voted unanimously: Sergey Aksyonov is elected the Head of Crimea’ (22 September 2019). The appeal received no response. See, LB, ‘Pro-Russian activists blocked the SSU Department in Sevastopol’ (4 March 2014).


353 Ukraine v. Russia (Re Crimea), para. 61, citing Resolution of the Verkhovna Rada of the ARC ‘On the declaration of independence of the Autonomous Republic of Crimea and Sevastopol’ (11 March 2014).
and closed the airspace “until further notice”, further demonstrating its incapacity to exercise its powers over Crimea.354 On 16 March 2014, the Crimean Parliament, which was still under the control of Russian forces,355 went forward with the referendum in defiance of Ukraine’s authority. Days later, on 18 March, the Russia-backed ‘Republic of Crimea’ purported to accede to Russia. The factual circumstances described above provide clear and convincing evidence that, by 27 February 2014, Ukraine had been rendered substantially, if not completely, incapable of exerting its powers over Crimea by virtue of the Russian forces’ unconsented-to presence on the Peninsula, thus satisfying the second criteria of effective control. The events that followed substantiated and furthered this incapacity.356 There is no information to suggest that Ukraine has since regained any capacity to exercise its powers over Crimea.357

At the same time, Russia had assumed a position to exercise its authority over Crimea by at least 27 February 2014. On this date, Russia sealed off Crimea from mainland Ukraine by seizing control over the major land access points to the Peninsula,358 and gaining unfettered access to transfer weapons and personnel into Crimea in order to establish and enhance its position of authority over the Peninsula.359 On the same day, Russia furthered its capacity to exercise authority over the territory of Crimea when its forces seized Crimea’s Parliament and Council of Ministers,360 ensuring the adoption of conditions and decisions favourable to Russia, such as the decision to hold a referendum on Crimea’s accession to Russia.361 It exercised this capacity immediately when it dismissed incumbent Ukrainian officials, including the Prime Minister of Crimea, and replaced them with Russian loyalists.362 Further exercise of authoritative capacity in Crimea is evident from the events that followed, including its blockade and seizure of Ukraine’s airports,363 sea harbours,364 radio and TV stations,365 and military bases.366 It also evident from its signing367 and ratification368 of the ‘Treaty on Accession’, formalising Russia’s de facto control over Crimea. Further exercise was clear and exhibited through Russia’s integration of Crimea into its national, economic, financial, credit and legal systems.369

354 Cabinet of Ministers of Ukraine, ‘Transit Zone over Crimea and the Black Sea is Fully Control by the State Aviation Service of Ukraine’ (19 June 2014).
355 See, Section 3.1.2.6 The Seizure of the Governmental Buildings on 27 February 2014.
357 For instance, the ICC OTP holds a preliminary view that “Russia has continued to exercise effective control over the territory since that time (18 March 2014)” See ICC OTP, ‘Report on Preliminary Examination Activities 2020’ (14 December 2020), para. 274. See also, UN Human Rights Council ‘Situation of human rights in the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine’ (27 May 2021), para. 3.
358 Ukraine v. Russia (re Crimea), para. 50.
359 Ukraine v. Russia (re Crimea), para. 84.
360 Ukraine v. Russia (re Crimea), paras. 34, 42; OHCHR, ‘Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol (Ukraine)’ (25 September 2017), para. 4, citing Interview given to the TV channel ‘Rossiya’ conducted on 17 April 2014 as part of a documentary ‘Crimea. The Way Home. Documentary by Andrey Kondrashyev’, See also, President of Russia, ‘Direct Line with Vladimir Putin’ (17 April 2014) (“Russia created conditions – with the help of special armed groups and the Armed Forces, I will say it straight”), UN OHCHR, ‘Report on the human rights situation in Ukraine’ (15 April 2014), para. 18; The Nemtsov Report, pp. 11 and 33; M. Kofman, ‘Lessons from Russia’s Operations’, pp. 7-9.
361 Ukraine v. Russia (re Crimea), para. 44, citing Letter from the Prosecutor General’s Office of Ukraine of 28 November 2016 (reference no. 10/4/1-22437-16-746 Ref.-16) [...].
363 International Crimes in Crimea: An Assessment of Two and a Half Years of Russian Occupation (IPHR September 2016), para. 32; Interfax, ‘About 50 armed men in military uniform seize Simferopol Airport in early hours of Friday’ (28 February 2014); Ukrinform, ‘Armied People Take Under Control Airports In Crimea’ (28 February 2014).
364 UNIAN, ‘In Crimea, a missile boat of the Russian Black Sea Fleet blocked the exit of Ukrainian border ships’ (28 February 2014).
365 KyivPost, ‘Gunmen seize Simferopol television station, turn off Channel 5, 1+1, turn on Rossiya 24’ (6 March 2014); Economist, ‘Edging closer to war’ (1 March 2014).
368 Ukraine v. Russia (re Crimea), para. 65. On 21 March 2014, the Parliament of the Russian Federation ratified a Constitutional Law ‘On the Accession of the Republic of Crimea to the Russian Federation and the Creation of the New Constituent Entities of the Republic of Crimea and the City of Federal Importance Sevastopol within the Russian Federation’. In its announcement of the signing of the Treaty on Accession, the Kremlin indicated that “[t]he agreement is based on the free and voluntary expression of will by the peoples of Crimea at a nationwide referendum.”
Accordingly, since 27 February 2014, Russia has been in a position to exercise its authority over the Crimean Peninsula in lieu of the Ukrainian government, thus satisfying the third criteria of effective control. It remains in a position to exercise this authority over Crimea until the present day, and continues exercise this authority in fact, to the exclusion of Ukraine.370

In sum, having satisfied all indicia of effective control, Russia became the Occupying Power in Crimea by 27 February 2014. Its satisfaction of this criteria continues to this day.

3.3 (II) LEGALITY OF THE USE OF FORCE TO EFFECT THE RUSSIAN OCCUPATION OF CRIMEA

As seen above,371 the existence of a state of occupation is assessed solely on the basis of the facts on the ground, without regard to the purpose or the legality of the manner in which the occupation was established.372 This is because “[i]nternational law makes no distinction between a lawful and unlawful occupant in dealing with the respective duties of occupant and population in occupied territory”.373 Accordingly, “it makes no difference whether an occupation has received Security Council approval, what its aim is, or indeed whether it is called an ‘invasion’, ‘liberation’, ‘administration’ or ‘occupation’”, the law of occupation will apply just the same.374

Notwithstanding this, Russia has advanced various arguments to justify its resort to force to effect the occupation of Crimea. These include classifying its intervention as a lawful exercise of self-defence,375 as lawfully protecting Russian nationals abroad,376 as lawfully exercising the responsibility to protect (the Russian-speaking population of Crimea)377 and as lawfully intervening for humanitarian purposes.378 For the sake of comprehensiveness, this Legal Opinion will address these Russian justifications. Following a brief overview of the prohibition on the use of force, the validity of each Russian justification will be assessed in turn.

3.3.1 OVERVIEW OF THE LAW

The threat or use of force by a State against the territorial integrity or political independence of another State is prohibited by Article 2(4) of the UN Charter. This prohibition is considered part of customary international law,379 a jus cogens norm380 and an obligation erga omnes381 (i.e., an obligation in whose fulfilment all States have a legal interest).382 Generally speaking, an action will breach the prohibition on the use of force if it can be considered an ‘armed attack’, the definition of which includes, inter alia, “action by regular armed forces across an international border”.383

371 See Section 3.2 Belligerent Occupation: Is Crimea Indeed Occupied?.
374 ICRC, ‘Occupation and international humanitarian law: questions and answers’ (4 August 2004). See, however, Section 4.2 Occupation by Proxy: Is Donbas Occupied?, for issues related to the application of occupation law in situations of occupation by proxy.
375 See e.g., President of Russia, “Vladimir Putin submitted appeal to the Federation Council” (1 March 2014); ITAR-TASS, “Putin’s Letter on Use of Russian Army in Ukraine Goes to Upper House” (1 March 2014); UNSC Meeting Record (3 March 2014) UN Doc S/PV.7125, p. 3.
376 See e.g., President of Russia, “Vladimir Putin submitted appeal to the Federation Council” (1 March 2014); Ukraine v. Russia (re Crimea), paras. 32-54; UN OHCHR, “Report on the human rights situation in Ukraine” (15 April 2014), pp. 6-7; Ministry of Foreign Affairs of the Russian Federation, “Statement by the Russian Ministry of Foreign Affairs regarding the events in Crimea” (1 March 2014); ITAR-TASS, “Putin’s Letter on Use of Russian Army in Ukraine Goes to Upper House” (1 March 2014).
377 See e.g., President of Russia, “Vladimir Putin submitted appeal to the Federation Council” (1 March 2014); President of Russia, “Direct Line with Vladimir Putin” (17 April 2014); UN OHCHR, “Report on the human rights situation in Ukraine” (15 April 2014), para. 20.
378 See e.g., President of Russia, “Vladimir Putin submitted appeal to the Federation Council” (1 March 2014); President of Russia, “Vladimir Putin answered journalists’ questions on the situation in Ukraine” (4 March 2014).
379 Nicaragua Merits Judgement, para. 190; Construction of a Wall Advisory Opinion, para. 87; UNGA Friendly Relations Declaration.
380 Nicaragua Merits Judgement, para. 190.
382 See e.g., J. Law (ed), A Dictionary of Law (9th ed, OUP 2018); J. Crawford, Brownlie’s Principles, p. lxxxiii.
3.3.2 **Assessment**

As outlined above, Russia’s armed forces crossed the international border between Russia and Ukraine and engaged in military operations, including the blockade and takeover of key Ukrainian civilian and military infrastructure, by at least 27 February 2014. The facts therefore suggest that Russia’s intervention in Ukraine’s Crimean Peninsula violated the prohibition on the use of force. Nevertheless, there are two established exceptions to the prohibition on the use of force – self-defence and UN Security Council authorisation. Only the former, self-defence, will be discussed in this Legal Opinion as there is no information to suggest that Russia sought or received Security Council authorisation for its actions in Crimea.

### 3.3.2.1 Self-defence

Russia has argued that it was acting in self-defence when it intervened in Ukraine’s Crimean Peninsula. This argument is based on Russia’s claim of a “threat to […] the personnel of the military contingent of the Russian Federation Armed Forces deployed on the territory of Ukraine.” On 3 March 2014, Russia’s Ambassador to the UN at the time, Vitaly Churkin, alleged before the UN Security Council that Russia had “information about the preparation of new provocations, including against the Russian Black Sea fleet in Ukraine.” In addition, in the proceedings in the *Ukraine v. Russia (re Crimea)* ECtHR case, Russia sought to justify its expansion of its military presence in Crimea in February and March 2014 as a means to, *inter alia*, “ensure the protection of Russian military forces and objects.”

Article 51 of the UN Charter states that “[n]othing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations.” However, the use of force is permitted only in certain, strictly defined circumstances and States cannot use force “to protect perceived security interests beyond these parameters.”

Central to the right to use self-defence is the occurrence of an ‘armed attack’ against the State invoking self-defence. According to the ICJ, an armed attack includes “not merely action by regular armed forces across an international border, but also ‘the sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another State of such gravity as to amount to’ (*inter alia*) an actual armed attack conducted by regular forces, ‘or its substantial involvement therein’.” As demonstrated by this definition, for a threat or use of force to amount to an ‘armed attack’ there is also a gravity requirement, which distinguishes between the ‘most grave forms’ of force and ‘other less grave forms’, such as border skirmishes or frontier incidents. Only the most grave forms of force will justify a response in self-defence.

If a State’s right to self-defence is triggered by a legitimate ‘armed attack’, that right is subject to the conditions of necessity and proportionality, a requirement which is well-established in customary international law. ‘Necessity’

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384 See Section 3.1.2 Assessment.
385 Charter of the United Nations (adopted 26 June 1945, entered into force 24 October 1945) 1 UNTS XV (‘UN Charter’), Article 51 and 42.
386 In fact, on 15 March 2014, Russia vetoed a UNSC draft resolution that would have condemned the planned Crimea referendum and called on all States not to recognise any alteration of Crimea’s status. Beyond Russia’s veto and China’s abstention, the remaining 13 UNSC Members voted in favour of the draft resolution. See, Draft resolution UN Doc S/2014/189 (15 March 2014); UNSC Meeting record UN Doc S/PV.7138 (15 March 2014); United Nations, ‘Security Council Fails to Adopt Text Urging Member States Not to Recognize Planned 16 March Referendum in Ukraine’s Crimea Region’, Meeting Coverage SC/11319 (15 March 2014).
387 President of Russia, ‘Vladimir Putin submitted appeal to the Federation Council’ (1 March 2014). See also, ITAR-TASS, ‘Putin’s Letter on Use of Russian Army in Ukraine Goes to Upper House’ (1 March 2014) (Federation Council Chairperson, Valentina Matviyenko, alleged there was ‘a threat to [Russia’s] military in Sevastopol and the Black Sea Fleet’).
388 UNSC Meeting Record UN Doc S/PV.7125 (3 March 2014), p. 3. Churkin also stated that the so-called Crimean authorities had asked President Putin to help restore calm in Crimea, assistance which was “entirely legitimate under Russian law, given the extraordinary situation in Ukraine and the threat posed to […] the Black Sea fleet of the Russian Federation in Ukraine.”
389 Ukraine v. Russia (re Crimea), paras. 280, 283, 323.
390 UN Charter, Article 51.
391 Russian Activities Judgement, para. 148.
393 *Nicaragua Merits Judgement*, para. 191; *Oil Platforms Judgement*, para. 51. See also, J. Crawford, Brownlie’s Principles, p. 721.
394 *Nicaragua Merits Judgement*, para. 193; *Oil Platforms Judgement*, para. 51. See also, J. Crawford, Brownlie’s Principles, p. 721.
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has been interpreted to mean that the defending State must only use forceful self-defence as a measure of last resort, where no other options are available to the State in the circumstances. Proportionality requires that “the size, duration, and target of the response broadly correspond to the attack in question.” The repulsion of the armed attack is the only permissible objective of self-defence; thus, it cannot be punitive or retaliatory in character.

There is no information to suggest that Russia was facing an ‘armed attack’, let alone one of sufficient gravity to justify a response in self-defence. In fact, despite Russia’s arguments that it needed to protect Russian military forces and objects in Crimea, the ECHR found that “[Russia] 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.” In addition, the Court indicated that it “paid 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’”, strongly suggesting an alternate motive for Russia’s use of force.

The evidence is thus clear and convincing that Russia did not face an ‘armed attack’ such that its intervention in Crimea could be justified as self-defence. Nevertheless, Russia might also be interpreted as arguing it was exercising ‘pre-emptive self-defence’. The following section will examine Russia’s justification in accordance with this interpretation.

3.3.2.1.1 Pre-emptive Self-Defence

Pre-emptive self-defence involves the anticipatory use of force by a State to avert an imminent armed attack (as compared to an ongoing armed attack, as formulated above). An ‘imminent’ attack “requires that it is believed that any further delay in countering the intended attack will result in the inability of the defending state effectively to defend itself against the attack.” In other words, it must be necessary for the State to act before it is too late. Nevertheless, this form of self-defence is highly controversial and State practice largely opposes it.

In relation to Russia’s justification for its intervention in Crimea, potential invocations of this pre-emptive self-defence argument can be seen in Russia’s references to so-called ‘threats’ to its military personnel on the Peninsula. It can also be seen in Vitaly Churkin’s allegation before the UN Security Council that Russia had “information about the preparation of new provocations, including against the Russian Black Sea fleet in Ukraine.”

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399 Ukraine v. Russia (re Crimea), paras. 324 and 326.
405 See, J. Crawford, Brownlie’s Principles, pp. 723-725 (“Since 1945 the practice of states generally has been opposed to anticipatory self-defence”); C. Gray, International Law and the Use of Force, pp. 170-174 (“Very occasionally states have expressly used anticipatory self-defence. [...] Israel and South Africa both claimed the right to take ‘pre-emptive action’ against incursions from neighbouring states. These claims were expressly rejected by some states on the ground that anticipatory self-defence was unlawful. Other states used other grounds for condemnation. Therefore, authoritative pronouncements on the issue of principle—are the legality of anticipatory self-defence—were avoided in these cases by the Security Council and the General Assembly”).
406 President of Russia, ‘Vladimir Putin submitted appeal to the Federation Council’ (1 March 2014) (“threat to [...] the personnel of the military contingent of the Russian Federation Armed Forces deployed on the territory of Ukraine”); ITAR-TASS, “Putin’s Letter on Use of Russian Army in Ukraine Goes to Upper House” (1 March 2014) (Federation Council Chairperson, Valentina Matviyenko, alleged there was “a threat to [Russia’s] military in Sevastopol and the Black Sea Fleet”;
407 UNSC Meeting Record (3 March 2014) UN Doc S/PV.7125, p. 3.
While the ICJ has never specifically ruled on pre-emptive self-defence, its reasoning in the Armed Activities Judgement appears to exclude the possibility of lawful, pre-emptive use of force in self-defence. In this case, the Democratic Republic of the Congo (‘DRC’) alleged, inter alia, that Uganda had violated the principles of unlawful use of force and non-intervention by invading and occupying substantial parts of Congolese territory. Despite insisting that its use of force in the DRC was not a use of force against an anticipated attack, Uganda nevertheless attempted to defend itself by arguing that its use of force was necessary “to secure Uganda’s legitimate security interests”. The Court, however, found that Uganda’s specified security needs were “essentially preventative – to ensure that the political vacuum [in the DRC did] not adversely affect Uganda,” and to place Uganda “in a position to safeguard [itself] from irresponsible threats of invasion,” among other reasons. Addressing these circumstances, the Court held that Article 51 may justify a use of force in self-defence only if an armed attack involving a grave use of force occurs. Accordingly, in the absence of an armed attack of this nature, a State’s use of force, purportedly to protect its perceived security interests, would not be justified.

Even if pre-emptive action could be said to be permitted under international law, which is unlikely, there is no information to substantiate Russia’s claim of a threat to its forces, let alone an imminent threat. In the absence of evidence of an armed attack against Russia, whether ongoing or imminent, no right of self-defence can have been triggered. Moreover, even if it could be argued that Russia faced an armed attack, self-defence is limited to the restoration of the status quo ante (i.e., the situation that existed before the armed attack). Territorial acquisition, as attempted and achieved by Russia in this context, and discussed further below, would exceed the limits of permissibility. Thus, the principle of self-defence is inapposite to the facts and cannot be relied upon by Russia to legitimise its use of force in Crimea.

In addition to self-defence, Russia invoked several other legal doctrines to justify its actions in Crimea. These include: the protection of nationals abroad; the responsibility to protect; and humanitarian intervention. The acceptance in State practice and legal scholarship of these arguments as justifications for the use of force under international law is questionable. Nevertheless, assessment of the validity of each in the Crimean context is discussed below.

### 3.3.2.2 PROTECTION OF NATIONALS ABROAD

Prior to publicly admitting its soldiers had been present in Crimea in February 2014, Russia sought to justify its intervention in Crimea in early March 2014 as a lawful means of protecting the Russian citizens living there. For example, on 1 March 2014, President Putin appealed to the Russian Federation Council to authorise the use of Russian armed forces in Ukraine, citing “the extraordinary situation that has developed in Ukraine and the threat to citizens...

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408 Armed Activities Judgement, paras. 29-31.
409 Armed Activities Judgement, para. 143.
410 Armed Activities Judgement, para. 143.
411 See, UN Charter, Article 51; Nicaragua Merits Judgement, para. 191; Oil Platforms Judgement, para. 51.
413 The ECHR confirmed that Russia was unable to provide any evidence that its military forces stationed on Crimea faced any threat. Ukraine v. Russia (re Crimea), paras. 324 and 326.
414 See Section 3.4.1 Overview of the Law, below for the discussion on annexation.
416 BBC, ‘Putin: Crimea annexed so as not to abandon nationalists’ (9 March 2015); BBC, ‘Putin reveals secrets of Russia’s Crimea takeover plot’ (9 March 2015); Reuters, ‘Putin says plan to take Crimea hatched before referendum’ (9 March 2015).
of the Russian Federation”. On the same day, Federation Council Chairperson Valentina Matviyenko described that “[t]oday there is a real threat to the life and security of Russian citizens living in Ukraine […] and I think that Russia should not be a bystander.” The next day, on 2 March, in a telephone conversation with then United States President Barack Obama, Putin again “spoke of a real threat to the lives and health of Russian citizens and the many compatriots who are currently on Ukrainian territory [and] stressed that in case of any further spread of violence to Eastern Ukraine and Crimea, Russia retains the right to protect its interests and the Russian-speaking population of those areas.”

The invocation of the need to protect Russian citizens living outside of Russia, including in respect of Ukraine’s Crimean Peninsula, is indicative of the ‘protection of nationals abroad’ doctrine. The concept of ‘protection of nationals’ “refers to the conducting of a military intervention in the territory of a third state aimed at the protection and/or rescuing of threatened nationals of the intervening state.” The clearest formulation of this doctrine was developed by Sir Humphrey Waldock, who identified three cumulative conditions for the protection of nationals: 1) there must be an imminent threat of injury to nationals; 2) a failure or inability on the part of the territorial sovereign to protect them; and 3) the action of the intervening State must be strictly confined to the object of protecting its nationals against injury. It focuses on the rescue and evacuation of nationals in need of protection, implies the engagement of a strictly limited force and does not involve regime change or a prolonged stay.

There is unsettled debate about the legality of the forcible protection of nationals as the involvement of the threat or use of force is incompatible with Article 2(4) of the UN Charter, which prohibits States from using the threat or use of force against the territorial integrity or political independence of any State. Most proponents of this doctrine attempt to reconcile the use of force with Article 2(4) by arguing that it is a form of self-defence under Article 51 of the UN Charter. According to this argument, an imminent threat of injury to a State’s nationals abroad can be equated to an ‘armed attack’ against the State itself, thus triggering the right to use force in self-defence. However, as discussed above, not every action will amount to an ‘armed attack’ for the purposes of triggering a right of self-defence. Indeed, according to the ICJ, only the most grave forms of force will justify a response in self-defence. Where an attack on a State’s nationals abroad could amount to an ‘armed attack’, thus triggering a right of self-

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617 President of Russia, ‘Vladimir Putin submitted appeal to the Federation Council’ (1 March 2014).
618 TASS, ‘Putin’s Letter on Use of Russian Army in Ukraine Goes to Upper House’ (1 March 2014).
619 President of Russia, ‘Telephone conversation with US President Barack Obama’ (2 March 2014).
624 See e.g., T. Ruys, ‘Protection of Nationals’, pp. 235-238; O. Güven, ‘Protection of Nationals Abroad’, pp. 57-58; C. Gray, International Law and the Use of Force, p. 166; J. Crawford, Brownlie’s Principles, p. 165; Venice Commission, ‘Opinion on Russia’s Law on Defence’, pp. 8-10 and 12 (The Venice Commission concluded that “The protection of a State’s citizens on the territory of a third State is mainly a responsibility of the latter State. [...] It can be assumed that as soon as the rescue operation exceeds a minimum intensity and falls within the scope of Article 2(4), the protection of own nationals does not constitute an autonomous justification for the perform of force. [...] It cannot be used as a pretext for military intervention and cannot have as a consequence the stationing of troops in order to ensure the continued protection of the citizens in question.”).
626 T. Ruys, ‘Protection of Nationals’, p. 236. See also, Section 3.3.2.1 Self-defence, for further discussion of self-defence and armed attack.
627 See Section 3.3.2.1 Self-defence.
629 Nicaragua Merits Judgment, para. 191; Oil Platforms Judgement, para. 51. See also, J. Crawford, Brownlie’s Principles, p. 721.
defence, the State invoking ‘protection of nationals’ must adhere to the customary international law requirement that the use of force be necessary and proportionate.\footnote{430} Therefore, “the amount of force must be limited to what is necessary to achieve the goal of the action, namely the protection and/or rescue of nationals.”\footnote{431}

The validity of Russia’s ‘protection of nationals’ justification for its involvement in Crimea is dubious. Even if it could be argued that this doctrine permits a State to lawfully use force on the territory of another State,\footnote{432} the doctrine would not be applicable to the situation faced by Russian citizens in Crimea. None of the three enumerated conditions for application of the doctrine, as identified by Sir Waldock,\footnote{433} were fulfilled in respect of the situation.

First, despite Russia’s arguments to the contrary,\footnote{434} there is no evidence that Russian nationals faced an ‘imminent threat of injury’. In fact, there is no evidence that Russian nationals in Crimea were under any threat of injury whatsoever.\footnote{435} While Russia has pointed to the 23 February 2014 decision of Ukraine’s Parliament to repeal the Law on the Principles of State Language Policy,\footnote{436} which purportedly led the Russian-speaking population of Ukraine to fear systemic discrimination,\footnote{437} this cannot be considered sufficiently grave that an “armed attack” would be justified.\footnote{438}

Second, there is no evidence of a failure or inability on the part of Ukraine to protect the Russian citizens of Crimea prior to Russia’s use of armed force on the peninsula. The ECtHR has confirmed this, finding that none of the grounds submitted by Russia to justify the increase of its military presence in Crimea, including to “ensure that Crimean

\footnote{430} Nuclear Weapons Advisory Opinion, para. 41; Nicaragua Merits Judgment, para. 176; Oil Platforms Judgement, paras. 51 and 76. See also, C. Gray, *International Law and the Use of Force*, p. 169; O. Güven, ‘Protection of Nationals Abroad’, p. 58.

\footnote{431} O. Güven, ‘Protection of Nationals Abroad’, p. 58.


\footnote{433} C. Waldock, ‘The regulation of the use of force by individual states in international law’, p. 467.

\footnote{434} See e.g., Permanent Delegation of the Russian Federation to UNESCO, ‘Legal arguments for Russia’s position on Crimea and Ukraine’ (7 November 2014) (“Ukraine has been swept by murders, massacres, torture, kidnappings, attacks on journalists and human rights activists, imprisonments for political reasons, and flagrant incidents with clearly racist overtones, including anti-Russian and anti-Semitic, organized by order or with a tacit consent of the Kiev authorities”); Russian MFA, ‘Statement by the Russian Ministry of Foreign Affairs regarding the events in Crimea’ (1 March 2014) (“On the night of the 1 March, unknown armed people sent from Kiev, attempted to occupy the building of the Ministry of the Interior of the Autonomous Republic of Crimea. There were victims as a result of this treacherous provocation”); UNSC Meeting Record, *UN Doc S/PV.7124* (1 March 2014), p. 5.

\footnote{435} See e.g., Ukraine v. Russia (re Crimea), paras. 323-324 (The ECtHR found that none of “the purported grounds submitted by [Russia] to justify the increase of the Russian military presence in Crimea [were] corroborated by any convincing evidence. One such ground being to “assist the Crimean people in resisting attack by the Ukrainian armed forces”); Parliamentary Assembly, ‘Recent developments in Ukraine: threats to the functioning of democratic institutions’, Resolution 1988 (2014), para. 15 (“none of the arguments used by the Russian Federation to justify its actions hold true to facts and evidence. There was no […] imminent threat to the rights of the ethnic Russian minority in the country, including, or especially, in Crimea”); Hearing Before the U.S. Commission on Security and Cooperation in Europe, ‘Ukraine: Under Occupation: The State of Human Rights in Crimea’ (116th Congress, Second Session, in January 2020) (Statement by Melinda Haring, Deputy Director, Atlantic Council’s Eurasia Center; Senior Fellow, Foreign Policy Research Institute: “Before annexation, Crimea did not— or, Ukraine did not have a human rights problem with its minorities. Human rights were fine in Ukraine. The minority communities were flourishing”); R. Hofmann, ‘Annexion’, para. 41; R. Geifs, ‘Russia’s Annexation of Crimea’, p. 440; OHCHR ‘Report on the situation of human rights in Ukraine’ (19 September 2014); OSCE, ‘Developing situation in Crimea alarming’, says OSCE High Commissioner on National Minorities (6 March 2014) (following a visit to Kyiv and Crimea, the OSCE High Commissioner on National Minorities reported that she found “no evidence of violations or threats to the rights of Russian speakers”).

\footnote{436} See e.g., UNSC Meeting Record *UN Doc S/PV.7125* (3 March 2014), p. 3 (Statement by Russian Federation representative Mr. Churkin: “The crisis provoked by the State coup in Kyiv as a result of the armed takeover by radical extremists continues to deteriorate and generate very serious threats to the future of [Ukraine]. […] The Parliament of Ukraine took a decision allowing the language rights of minorities […] Demands have been made to limit or criminalize the use of the Russian language […]. The victors wish to exploit the fruits of their victory to trample the rights and basic freedoms of the people”); President of Russia, ‘Address by President of the Russian Federation’ (18 March 2018) (The new so-called authorities began by introducing a draft law to revise the language policy, which was a direct infringement on the rights of ethnic minorities”).

\footnote{437} Verkhovna Rada of Ukraine, ‘On Principles of the State Language Policy’ (10 August 2012). The decision to repeal the Law on the Principles of State Language Policy was never implemented. See, Parliamentary Assembly, ‘Recent developments in Ukraine: threats to the functioning of democratic institutions’, Resolution 1988 (2014), para. 11. See also, V. Baranovsky and A. Mateiko, ‘Responsibility to Protect: Russia’s Approaches’ (2016) 51 The International Spectator 49, p. 62 (“the actual situation did not provide any serious grounds for assessing possible atrocities in dramatic terms. In particular, the threat of linguistic discrimination ensured only from the law that was adopted in haste by the new authorities in Kiev and almost immediately cancelled”). Years later, in February 2018, Ukraine’s Constitutional Court found that the Language Policy itself was unconstitutional and rendered it invalid insofar as it undermined the status of the Ukrainian language as a state language and provided for the unnecessarily wide use of other languages. See, Judgement of the Constitutional Court of Ukraine in the case of the constitutional petition of 57 people’s deputies of Ukraine on compliance with the Constitution of Ukraine (constitutionality) with the Law of Ukraine.” On the Principles of State Language, Case № 1-11/2018, 28 February 2018.

\footnote{438} Nicaragua Merits Judgment, paras. 191 and 195; O. Güven, ‘Protection of Nationals Abroad’, pp. 57-58. In the previous instances in which ‘protection of nationals’ was invoked, the situations involved grave attacks or threats, such as the actual killing of foreign nationals or the taking of foreign nationals as hostages. For example: Belgium’s intervention in the Congo following its independence in 1960 during which time mutinying Congolese troops committed atrocities against Belgian residents and other European nationals; Belgium and the US’s intervention in the Congo in 1964 when rebel forces seized control of certain Congolese cities, prohibited foreign residents from leaving the areas (effectively holding them hostage) and killed thirty five foreign nationals within a few weeks; and Israel’s raid on the Entebbe Airport in Uganda in 1976 where its nationals were being held hostage by terrorists who had hijacked a French aircraft and diverted it to Uganda where they released all non-Israeli passengers. See, T. Ruys, ‘Protection of Nationals’, pp. 240-249.
population could make a democratic choice safely without fear of reprisal from the radicals”, were corroborated by any convincing evidence.\footnote{Ukraine v. Russia (re Crimea), paras. 323-324. See also, Hearing Before the U.S. Commission on Security and Cooperation in Europe, ‘Life Under Occupation: The State of Human Rights in Crimea’ (116th Congress, Second Session, 28 January 2020) (Statement by Melinda Haring: “Before annexation, Crimea did not—nor, Ukraine did not have a human rights problem with its minorities. Human rights were fine in Ukraine. The minority communities were flourishing.”).}

Third, and finally, Russia’s actions as the ‘intervening State’ do not appear to have been “strictly confined to the object of protecting its nationals against injury”.\footnote{C. Waldock, ‘The regulation of the use of force by individual states in international law’, p. 467. See also, T. Ruys, ‘Protection of Nationals’, pp. 234-235; O. Güven, ‘Protection of Nationals Abroad’, p. 56.} As outlined, the ‘protection of nationals’ is solely concerned with protecting individual citizens by evacuating them away from the danger they face. This action must be necessary and proportionate, which precludes pursuing regime change or a prolonged stay in the foreign territory.\footnote{See, O. Güven, ‘Protection of Nationals Abroad’, p. 52; Gray, International Law and the Use of Force, p. 169; T. Ruys, ‘Protection of Nationals’, p. 264 (“attacks against nationals abroad or threats thereof can never justify a prolonged or very large-scale military presence.”).} Russia did not abide by these principles in its operation in Crimea. No Russian citizens were evacuated from any alleged danger.

Instead, Russian troops led the CSD, Berkut and Russian Cossacks in capturing Crimea’s key infrastructure, replacing its executive body with Russian loyalists, and arranging a ‘referendum’ that purported to effect the secession of Crimea from Ukraine in order to facilitate Crimea’s accession to Russia.\footnote{See e.g., O. Güven, ‘Protection of Nationals Abroad’, pp. 66-68; C. Marxsen, ‘The Crimea Crisis: An International Law Perspective’ (2014) 74 ZassR 367, p. 374; D. Wisehart, ‘The Crisis in Ukraine and the Prohibition of the Use of Force: A Legal Basis for Russia’s Intervention?’ (EJIL:Talk!, 4 March 2014).} This intervention could not reasonably be considered necessary to achieve a goal of protecting Russian nationals in Crimea in the circumstances. Nor could the intervention and regime change be considered a proportionate response to any alleged threat to Russian nationals.

In conclusion, in March 2014, Russia argued that it was reserving its right to intervene in Crimea in order to “protect Russian citizens in Crimea”. However, as has been demonstrated, this intervention cannot be justified as a ‘protection of nationals’ operation, whether in accordance with international law or on the facts.\footnote{For example, President Putin appealed to the Federation Council to authorize the use of Russian armed forces in Ukraine “[i]n connection with the extraordinary situation that has developed in Ukraine and the threat to citizens of the Russian Federation” (see, President of Russia, ‘Vladimir Putin submitted appeal to the Federation Council’ (1 March 2014)). However, as noted above, Russian troops were already present in Crimea by the end of February 2014. Another example occurred in the April 2014 Direct Line with Putin, during which he stated: ‘The most obvious risk was that the Russian speaking population was threatened and that the threats were absolutely specific and tangible. This is what made Crimean residents, the people who live there, think about their future and ask Russia for help. This is what guided our decision. I said in my recent speech in the Kremlin that Russia had never intended to annex any territories, or planned any military operations there, never, [...] we also thought, and have always hoped, that all native Russians, the Russian-speaking people living in Ukraine, would live in a comfortable political environment, that they would not be threatened or oppressed. But when this situation changed, and Russians in Crimea were facing exactly that, [...] that’s when we sat down to decide what to do” (see, President of Russia, ‘Direct Line with Vladimir Putin’ (17 April 2014)). See also, UN OHCHR, ‘Report on the human rights situation in Ukraine’ (15 April 2014), para. 20 (“The Russian Government justified its involvement to be in response to the will of the local population and as an effort to protect ethnic Russians and Russian-speakers in the region”).} If “national authorities are manifestly failing to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity,”\footnote{UNGA Res 60/1, UN Doc A/RES/60/1 (24 October 2005) (‘UNGA 2005 World Summit Outcome’), para. 138. R2P was unanimously adopted in 2005 at the UN World Summit, the largest gathering of Heads of State and Government in history. See, Global Centre for the Responsibility to Protect, ‘What is R2P?’.} R2P is an international norm according to which “[e]ach individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity.”\footnote{UNGA Res 68/187, paras. 22-23.} Arguably, this line of reasoning could fall under the notion of responsibility to protect (‘R2P’).
humanity", R2P stipulates that the international community is “prepared to take collective action [...] on a case-by-case basis”.446

Several aspects of the R2P doctrine significantly limit its application: 1) the international community only has the responsibility to protect “when national authorities are manifestly failing to protect their populations”; 2) military intervention will only be permitted in the limited circumstances of genocide, war crimes, ethnic cleansing and crimes against humanity; 3) reacting to a crisis is not an automatic responsibility, States are merely “prepared” to take collective action on a “case-by-case basis”; and 4) any action taken must be collective and under the auspices of the UN Security Council.447

Despite Russia’s repeated reference to the need to protect the Russian-speaking population of Crimea,448 the situation existing there in February and March 2014 did not meet the high threshold required for R2P to be triggered. There is no information to suggest that Ukraine was manifestly failing to protect its Russian-speaking population in Crimea,449 or that genocide, war crimes, ethnic cleansing or crimes against humanity were being committed by Ukraine against the Russian-speaking population.450 Even if these conditions had been met at the relevant time, Russia’s actions still would not have been permitted as it intervened unilaterally without the authorisation of the UN Security Council.451 Russia cannot rely on the R2P doctrine to legitimise its use of force in Crimea.

3.3.2.4 HUMANITARIAN INTERVENTION

Russia has also argued that its use of force in Crimea constituted a humanitarian intervention that was necessary to prevent and/or respond to persecution of the Russian-speaking population or ethnic Russians in Crimea.452 For example, in his appeal to the Russian Federation Council on 1 March 2014, President Putin stated that “[i]n connection with the extraordinary situation that has developed in Ukraine and the threat to [Russian citizens, patriots and armed forces personnel deployed there,] I hereby appeal to the [Federation Council] to use the Armed Forces of the Russian Federation on the territory of Ukraine until the social and political situation in that country is normalised.”453 Subsequently, during an interview on 4 March 2014, Putin described that “[p]rotecting these people is in our national interests. This is a humanitarian mission. We do not intend to subjugate anyone or to dictate to anyone. However, we

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446 UNGA 2005 World Summit Outcome, para. 139. There are three pillars of responsibility under R2P: (1) every state has the Responsibility to Protect its populations from four mass atrocity crimes: genocide, war crimes, crimes against humanity and ethnic cleansing; (2) the wider international community has the responsibility to encourage and assist individual states in meeting that responsibility; and (3) if a state is manifestly failing to protect its populations, the international community must be prepared to take appropriate collective action, in a timely and decisive manner and in accordance with the UN Charter. UNGA, ‘Report of the Secretary-General: Implementing the responsibility to protect’ UN Doc A/63/677 (12 January 2009), pp. 8-10; Global Centre for the Responsibility to Protect, ‘What is R2P?’.


448 See e.g., Permanent Delegation of the Russian Federation to UNESCO, ‘Legal arguments for Russia’s position on Crimea and Ukraine’ (7 November 2014) (“Ukraine has been swept by murders, massacres, torture, kidnappings, attacks on journalists and human rights activists, impersonations for political reasons, and flagrant incidents with clearly racist overtones, including anti-Russian and anti-Semitic, organized by order or with a tacit consent of the Kiev authorities”); Ministry of Foreign Affairs of the Russian Federation, “Statement by the Russian Ministry of Foreign Affairs regarding the events in Crimea” (1 March 2014) (“On the night of the 1 March, unknown armed people sent from Kiev, attempted to occupy the building of the Ministry of the Interior of the Autonomous Republic of Crimea. There were victims as a result of this treacherous provocation”); UNSC Meeting Record, UN Doc S/PV.7124 (1 March 2014), p. 5.

449 See T. H. Lee, ‘The Law of War and the Responsibility to Protect Civilians: A Reinterpretation’ (2014) 55 Harvard International Law Journal 251, pp. 273-274 (“the clear implication is that all three legal justifications offered by Russia were doubtful because there was no real or apparent threat to Russian nationals and soldiers, or to ethnic Russians in Ukraine”); Ukraine v. Russia (re Crimea), paras. 329-324. See also, Hearing Before the U.S. Commission on Security and Cooperation in Europe, ‘Life Under Occupation: The State of Human Rights in Crimea’ (116th Congress, Second Session, 28 January 2020) (Statement by Melinda Haring: “Before annexation, Crimea did not—or, Ukraine did not have a human rights problem with its minorities. Human rights were fine in Ukraine. The minority communities were flourishing”).

450 V. Baranovsky and A. Mateiko, ‘Responsibility to Protect: Russia’s Approaches’ (2016) 51 The International Spectator 49, p. 62 (“the actual situation did not provide any serious grounds for assessing possible atrocities in dramatic terms. In particular, the threat of linguistic discrimination ensued only from the law that was adopted in haste by the new authorities in Kiev and almost immediately cancelled”); OSCE, "Developing situation in Crimea alarming, says OSCE High Commissioner on National Minorities" (6 March 2014) (following a visit to Kyiv and Crimea, the OSCE High Commissioner on National Minorities reported that she found “no evidence of violations or threats to the rights of Russian speakers”); Ukraine v. Russia (re Crimea), paras. 329-324 (The ECHR found that none of “the purported grounds submitted by [Russia] to justify the increase of the Russian military presence in Crimea [were] corroborated by any convincing evidence”. One such ground being to “assist the Crimean people in resisting attack by the Ukrainian armed forces”); Parliamentary Assembly, “Recent developments in Ukraine: threats to the functioning of democratic institutions”, Resolution 1988 (2014), para. 15 (“none of the arguments used by the Russian Federation to justify its actions hold true to facts and evidence. There was no [...] imminent threat to the rights of the ethnic Russian minority in the country, including, or especially, in Crimea”); R. Hofmann, Annexation, para. 41; R. Gefs, ‘Russia’s Annexation of Crimea’, p. 440; OHCHR ‘Report on the situation of human rights in Ukraine’ UN Doc A/HRC/27/75 (19 September 2014).

451 UNGA 2005 World Summit Outcome, para. 139.


453 President of Russia, ‘Vladimir Putin submitted appeal to the Federation Council’ (1 March 2014).
cannot remain indifferent if we see that they are being persecuted, destroyed and humiliated. However, I sincerely hope it never gets to that."454 As the following analysis will show, even if humanitarian intervention was a lawfully invokable justification for violating the *jus cogens* prohibition of the threat or use of force, the threshold was not met in the present case.

There is no universally accepted definition of humanitarian intervention.455 It has generally been defined, for example, as “a threat or use of armed force against another State that is motivated by humanitarian considerations.”456 This broad definition does not indicate that humanitarian intervention provides a legal justification for the use of force.457

While some hold the view that humanitarian intervention is a norm of customary international law,458 this legal position is largely unsupported by States.459 In addition, while the ICJ has not expressly considered the doctrine of humanitarian intervention, the Court may be said to have indirectly rejected it in *Military & Paramilitary Activities in and Against Nicaragua* by stating that “while the United States might form its own appraisal of the situation as to respect for human rights in Nicaragua, the use of force could not be the appropriate method to monitor or ensure such respect.”460 Russia, itself, has previously rejected the theory that international law would permit the use of force on grounds of humanitarian intervention.461

Nevertheless, even if humanitarian intervention was recognised as a rule of customary international law, the direct prohibition of the unilateral use of force under Article 2(4) of the UN Charter would arguably take precedence.462 Moreover, even if a principle of humanitarian intervention could be considered to legitimise an otherwise unlawful use of force, the situation in Ukraine falls far short of the threshold required to justify its application. Guidance in this respect can be drawn from the UK – one of the few States that recognises the doctrine of humanitarian intervention.

The UK holds the position that a legal basis for the doctrine of humanitarian intervention is available provided that three conditions are met.463 First, there must be “convincing evidence, generally accepted by the international

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454 President of Russia, ‘*Vladimir Putin answered journalists’ questions on the situation in Ukraine*’ (4 March 2014).


457 V. Lowe, ‘*Humanitarian Intervention*’, para. 2.


460 Nicaragua Merits Judgement, para. 268. See also, D. Akande, ‘*The Legality of the UK’s Air Strikes*’, para. 6.

461 See e.g., UNSC Meeting Record, *UN Doc S/PV.3988* (24 March 1999), p. 2 (Statement by Russia’s then Ambassador to the UN, Sergey Lavrov: ‘Attempts to justify the NATO strikes [against the Federal Republic of Yugoslavia] with arguments about preventing a humanitarian catastrophe in Kosovo are completely untenable […] these attempts [are] in no way based on the Charter or other generally recognized rules of international law’); Council on Foreign Relations, *The Dilemma of Humanitarian Intervention* (12 June 2013) (‘Russia and China have historically been reluctant to support any form of intervention’).

462 In accordance with Article 103 of the UN Charter, if there is a conflict between obligations under the Charter and those arising from other international agreements, the Charter shall prevail. According to the International Law Commission (‘ILC’), Article 103 of the UN Charter is an example of a rule of international law that is superior to other rules by virtue of a treaty provision. In relation to the scope of Article 103, the ILC also made clear that “Charter obligations may also prevail over inconsistent customary international law.” According to the ILC, the wording of Article 103 of the United Nations Charter becomes inapplicable as a result of such conflict and to the extent of such conflict.” As noted further above in Section 3.3 (II)合法性 of the Use of Force to Effect the Russian Occupation of Crimea, Article 2(4) of the UN Charter prohibits States from using force against other States, with only two specifically outlined exceptions: 1) self-defence (individual or collective); and 2) UN Security Council authorisation. The addition of any further exceptions to this prohibition would contradict the UN Charter and would thus be invalid by virtue of Article 103 of the Charter. See, UN Charter, Articles 2(4), 42, 51 and 103; *Report of the International Law Commission*, (Fifty-eighth session, 2006), p. 420, paras. 34-35 and 41(b).

community as a whole, of extreme humanitarian distress on a large scale, requiring immediate and urgent relief. In the case of Crimea, there is no evidence of humanitarian distress prior to Russia’s intervention.

Second, “it must be objectively clear that there is no practicable alternative to the use of force if lives are to be saved” in Crimea, there is nothing to suggest lives were at risk. Nor is there any information available to suggest that Russia explored and exhausted other practicable means of dispute settlement, such as diplomatic negotiations. To the contrary, a senior State official in the Ukrainian MFA at the time, Andrii Plakhotnuyk, testified to the Oblonsky District Court of Kyiv, during the proceedings in the case accusing Viktor Yanukovych of treason, that the Ukrainian MFA attempted numerous times to organise consultations with the Russian Federation in late February 2014, but that Russia refused to hold conversations even by phone.

The third condition required to establish the legal basis of humanitarian intervention is that “the proposed use of force must be necessary and proportionate to the aim of relief of humanitarian need and must be strictly limited in time and scope to this aim (i.e., the minimum necessary to achieve that end and for no other purpose)”Russia’s invasion of Crimea was neither necessary and proportionate, nor limited in time and scope. As was already explained, there is no evidence of humanitarian distress in Crimea prior to Russia’s military operation. Accordingly, Russia’s use of force against Ukraine in Crimea could not be considered necessary or proportionate to the aim of relieving humanitarian need. Moreover, available evidence, including, most notably, Russia’s unilateral assertion of sovereignty over Crimea in March 2014, strongly suggests that Russia’s aim was not limited to the purported goal of humanitarian intervention. Indeed, on the evening of 22 to 23 February 2014, during a meeting with the heads of Russia’s security agencies, President Putin admitted that he had taken “the decision to start working on the return of Crimea to the Russian Federation”. Furthermore, Russia’s continued presence in Crimea eight years after the initial military operation clearly demonstrates that this intervention was not “strictly limited in time”. Accordingly, Russia’s use of force in Crimea did not meet any of the three cumulative conditions of humanitarian intervention: 1) there was no situation of extreme humanitarian distress on the Peninsula that required immediate and urgent relief; 2) had lives been at risk, there were practicable alternatives to the use of force, such as diplomatic negotiations, which Russia did not pursue; and 3) Russia’s use of force was not necessary and proportionate, or strictly limited in time and scope to its purported aim of humanitarian intervention. Thus, even if humanitarian intervention could legitimise the use of force under international law, it could not render lawful Russia’s use of force in Crimea.

3.3.3 Conclusion on the (Il)legality of the Use of Force

International law does not distinguish between lawful and unlawful occupation; an Occupying Power bears the same legal obligations regardless of how the occupation was established. Nevertheless, as a means of denying its role as...
Occupying Power, Russia advanced a number of arguments to justify its use of force in Ukraine’s Crimean Peninsula, including self-defence, protection of Russian nationals abroad, responsibility to protect (the Russian-speaking population of Crimea) and humanitarian intervention. As has been demonstrated, none of these arguments have been established, whether in accordance with international law or on the facts. Therefore, they cannot serve as any valid legal justification for Russia’s unlawful use of force in Crimea.

The following section will address the issue of sovereignty in the context of Crimea’s occupation.

### 3.4 Sovereignty over Crimea

As described above, there is clear and convincing evidence that Russian armed forces were physically present in Ukrainian territory without the consent of Ukraine by at least 27 February 2014. On this same day, Ukraine was rendered substantially or completely incapable of exerting its powers by virtue of this unconsented-to Russian military presence, and Russia assumed a position to substitute its authority over Crimea in lieu of the Ukrainian government. Having met these conditions of effective control, Russia became the Occupying Power in Ukraine’s Crimean Peninsula on 27 February 2014.

The basic premise of the law of belligerent occupation is that occupation is temporary in nature and does not confer sovereignty to the Occupying Power. Indeed, international law considers the assertion of sovereignty by an Occupying Power over occupied territory to constitute an unlawful annexation. Nevertheless, following the Russian-orchestrated 16 March 2014 referendum in which a purported majority of Crimean citizens voted to join the Russian Federation, the Russian Federation, the ‘Republic of Crimea’ and the City of Sevastopol signed the Treaty on Accession on 18 March, purporting to transfer sovereignty over Crimea from Ukraine to Russia. Days later, the

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473 See e.g., President of Russia, ‘Vladimir Putin submitted appeal to the Federation Council’ (1 March 2014); ITAR-TASS, ‘Putin’s Letter on Use of Russian Army in Ukraine Goes to Upper House’ (1 March 2014); UNCSG Meeting Record UN Doc 5/PV.7125 (1 March 2014), p. 3.

474 See e.g., President of Russia, ‘Vladimir Putin submitted appeal to the Federation Council’ (1 March 2014); Ukraine v. Russia (re Crimea), paras. 32-54; UN OHCHR, ‘Report on the human rights situation in Ukraine’ (15 April 2014), pp. 6-7; Ministry of Foreign Affairs of the Russian Federation, ‘Statement by the Russian Ministry of Foreign Affairs regarding the events in Crimea’ (1 March 2014); ITAR-TASS, ‘Putin’s Letter on Use of Russian Army in Ukraine Goes to Upper House’ (1 March 2014).

475 See e.g., President of Russia, ‘Vladimir Putin submitted appeal to the Federation Council’ (1 March 2014); President of Russia, ‘Direct Line with Vladimir Putin’ (17 April 2014); UN OHCHR, ‘Report on the human rights situation in Ukraine’ (15 April 2014), para. 20.

476 See e.g., President of Russia, ‘Vladimir Putin submitted appeal to the Federation Council’ (1 March 2014); President of Russia, ‘Vladimir Putin answered journalists’ questions on the situation in Ukraine’ (4 March 2014).

477 See Section 3.2.2 Assessment.

478 See Section 3.2.2.1 Physical Presence of Russian Forces in Ukraine Without the Consent of the GoU.

479 See Section 3.2.2.2 Substantial or Complete Incapacity of the GoU to Exert its Powers in Crimea.

480 See Section 3.2.3 The Position of Russia to Exercise Authority over Crimea.


482 Construction of a Wall Advisory Opinion, para. 87; See, Y. Arai-Takahashi, The Law of Occupation: Continuity and Change (Political science, 2009), p. 42: ‘One of the general principles underlying Article 43 of the Hague Regulations is that belligerent occupation is a precarious and transitional authority with no conferral of sovereignty upon the occupying power’; Y. Dinstein, Law of Belligerent Occupation, paras. 161 and 163: ‘The main pillar of the law of belligerent occupation is embedded in the maxim that the occupation does not affect sovereignty. The displaced sovereign loses possession of the occupied territory de facto but it retains title de jure [...]; D. Fleck (ed.), The Handbook of International Humanitarian Law; (3rd edn, OUP 2013) (Fleck, Handbook of International Humanitarian Law’), p. 237: ‘International law of belligerent occupation is built upon the assumption that the occupying power does not acquire sovereign rights over the territory, but exercises provisional and temporary control’.


485 President of Russia, ‘Agreement on the accession of the Republic of Crimea to the Russian Federation signed’ (18 March 2014) (The document bears the signatures of President of the Russian Federation, Vladimir Putin, Chairman of the State Council of the Republic of Crimea, Vladimir Konstantinov, Prime Minister of the Republic of Crimea, Sergei Aksyonov, and Chairman of the Coordinating Council for the establishment of the Sevastopol municipal administration, Aleksei Chaly). See also, OHCHR ‘Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol (Ukraine)’ (25 September 2017), para. 26. In its announcement of the signing of the Treaty on Accession, the Kremlin indicated that “[t]he agreement is based on the free and voluntary expression of will by the peoples of Crimea at a nationwide referendum.”
Russian Parliament and Federation Council ratified the treaty and adopted a Constitutional Law to effectuate it.\(^{488}\)

As the Occupying Power, Russia’s claim of sovereignty over the territory it occupies appears to be at odds with the fundamental tenets of the law of belligerent occupation and the prohibition on annexation.\(^{489}\) However, Russia has rejected this qualification. It has sought to justify its intervention and its assertion of sovereignty over Crimea in ways alleged to align with the framework of international law,\(^{490}\) including most notably that it was supporting the ‘Crimean peoples’ right of self-determination, specifically their right to secede from Ukraine and accede to Russia,\(^{491}\) or that it accepted the accession of a purportedly ‘independent State’ that effected its ‘lawful secession’ through a declaration of independence.\(^{492}\)

Following a brief overview of the prohibition on annexation, this section will discuss whether international law indeed supports these claims.

In sum, despite Russia’s claims to the contrary, the events in Crimea cannot be classified as a legitimate expression of self-determination or as a lawful accession of a lawfully ceded territory. Accordingly, the section concludes that Russia has unlawfully annexed Crimea.\(^{493}\) As a matter of international law, Russia’s purported acquisition of Crimea has had no legal validity, rendering it null and void.\(^{494}\) As such, Russia continues to occupy Crimea and is bound by the obligations that attach to an Occupying Power under the IHL framework governing occupation.\(^{495}\)

3.4.1 **OVERVIEW OF THE LAW**

Annexation may be defined as “the forcible acquisition of territory by one State at the expense of another State.”\(^{496}\)

It is distinguished from occupation insofar as occupation “is essentially a temporary, de facto situation, which deprives the occupied Power of neither its statehood nor its sovereignty”, whereas annexation involves a State’s unilateral assertion of sovereignty over the territory of another State.\(^{497}\)
International law prohibits annexation. The prohibition forms part of customary international law, as recognised as a *jus cogens* norm, and is an obligation *erga omnes*. This follows from the fact that the prohibition on annexation is a corollary, and essential to, the “effective implementation of the prohibition of the threat or use of force”, itself a *jus cogens* norm and an obligation *erga omnes*. Accordingly, any territorial acquisition effected through the use of force has no legal validity and is considered null and void. Importantly, all States are under an obligation not to recognise an unlawful acquisition of territory. Russia, itself, has openly accepted these statements of law. This is clear from its votes in favour of the key UN Security Council resolutions condemning annexation and breaches of territorial integrity in other parts of the world. In its written statement on the question submitted to the ICJ for its Kosovo Advisory Opinion, Russia noted that “[t]erritorial integrity is an unalienable attribute of a State’s sovereignty” that has acquired the character of a universal and peremptory norm which “provide[s] a guarantee against any dismemberment of the [State’s] territory”.

3.4.2 Assessment

As will be demonstrated, despite Russia’s arguments to the contrary, neither the principle of self-determination nor the Russian controlled Crimean Parliament’s declaration of independence can negate the finding that Crimea was unlawfully annexed by Russia. A right to self-determination exercised through unilateral secession is only permitted, if at all, in very limited circumstances, none of which applied to the situation existing in Crimea before its annexation. Additionally, while declarations of independence are not prohibited under international law, *per se*, the Crimea

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498 In accordance with Article 2(4) of the UN Charter, Member States must ‘refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state...’. The UN General Assembly has unanimously declared that ‘the territory of a State shall not be the object of acquisition by another State resulting from the threat or use of force. No territorial acquisition resulting from the threat or use of force shall be recognised as legal’ (UNGA Friendly Relations Declaration).

499 *Construction of a Wall Advisory Opinion*, para. 87, according to the International Court of Justice (‘ICJ’) “[a]s the Court stated in Nicaragua Merits Judgment, the principles as to the use of force incorporated in the Charter reflect customary international law (see pp. 98-101, paras. 187-190); the same is true of its corollary entailing the illegality of territorial acquisition resulting from the threat or use of force’. See also, UNGA Friendly Relations Declaration; See also, *International Status of South-West Africa (Advisory opinion)* (1950) ICJ Rep 128, (‘South-West Africa Advisory Opinion’), p. 7; UNGA Friendly Relations Declaration; R. Hofmann, ‘Annexation’, para. 21.


501 *Construction of a Wall Advisory Opinion*, para. 159.


505 *Construction of a Wall Advisory Opinion*, para. 159.

506 See, UN Charter, Article 2(4); UNGA Friendly Relations Declaration; Nicaragua Merits Judgment, paras. 187-190; *Construction of a Wall Advisory Opinion*, para. 87; UNSC Res 662 *UN Doc S/RES/662* (9 August 1990) (adopted unanimously): ‘Decides that annexation of Kuwait by Iraq under any form and whatever pretext has no legal validity, and is considered null and void’.

507 See, *Construction of a Wall Advisory Opinion*, para. 159 (‘the Court is of the view that all States are under an obligation not to recognize the illegal situation resulting from the construction of the wall’ (i.e., the de facto annexation of parts of the Occupied Palestinian Territory)); UNGA Friendly Relations Declaration; *ARSIWA*, Article 41(2) (‘No State shall recognize as lawful a situation created by a serious breach [by a State of an obligation arising under a peremptory norm], nor render aid or assistance in maintaining that situation’); R. Hofmann, ‘Annexation’, para. 20; P. Wrange, ‘Occupation/Annexation of a Territory: Respect for International Humanitarian Law and Human Rights and Consistent EU Policy’ (European Union, 2015) (‘Wrange, ‘Occupation/Annexation of a Territory’), pp. 21-22.

508 See e.g., UNSC Res 242 *UN Doc S/RES/242* (1967) (22 November 1967) (adopted unanimously) (‘Emphasizing the inadmissibility of the acquisition of territory by war’): UNSC Res 662 *UN Doc S/RES/662* (1990) (9 August 1990) (adopted unanimously) (‘Decides that annexation of Kuwait by Iraq under any form and whatever pretext has no legal validity, and is considered null and void’); UNSC Res 1244 *UN Doc S/RES/1244* (1999) (10 June 1999) (adopted with 14 in favour and China abstaining) (‘Reaffirming the commitment of all Member States to the sovereignty and territorial integrity of the Federal Republic of Yugoslavia and the other States of the region’). In relation to UNSC Res 662 condemning Iraq’s annexation of Kuwait, the Soviet Union, as it then was, stated that “[t]he Soviet approach to this question of principle remains a firm one. The sovereignty, national independence and territorial integrity of the State of Kuwait must be fully restored and protected. The Soviet Union is against reliance on force and against unilateral decisions” (see, UNSC Meeting Record *UN Doc S/PV.2934* (9 August 1990), p. 12).

509 According with International Law of the Unilateral Declaration of Independence by the Provisional Institutions of Self-Government of Kosovo (Request for advisory opinion), *Written Statement of the Russian Federation* (16 April 2009), paras. 77-78.
referendum could not form a legitimate basis for Crimea to unilaterally secede from Ukraine because it contravened Ukraine’s domestic law, international and regional standards, and international law.

3.4.2.1 Self-determination

Russia has sought to legitimise its assertion of sovereignty over Crimea in various ways, including by arguing that Russia “created conditions” to facilitate the Crimean people’s legitimate ability to exercise a right of self-determination.510 According to this logic, the Crimean population as a whole511 or the Russian-speaking population of Crimea512 lawfully exercised a right to self-determination by unilaterally seceding from Ukraine and then immediately acceding to the Russian Federation. In support of this, Russia has argued that:513

Crimea’s secession from Ukraine and its accession to Russia took place in extreme conditions of impossibility to implement the right to self-determination within the framework of Ukraine. These extreme conditions were exacerbated by the unlawful rise to power of those who do not represent the entire Ukrainian people.

The ICJ has described that “international law disfavors the fragmentation of existing States and seeks to protect their boundaries from foreign aggression and intervention.”514 Nevertheless, general international law does not contain an explicit denial of a right to unilateral secession.515 Exceptional circumstances may give rise to the right of a people to unilaterally secede from a State in the exercise of the right to self-determination.516

3.4.2.1.1 The Law

Self-determination is the right of all peoples to freely determine their political status and pursue their economic, social and cultural development.517 This right is granted only to ‘peoples’. While what constitutes ‘a people’ under international law has not been defined,518 some of the generally accepted characteristics of ‘a people’ include: a

\[\text{\footnotesize\textsuperscript{510}}\text{See e.g., President of Russia, 'Address by President of the Russian Federation' (18 March 2014); President of Russia, 'Direct Line with Vladimir Putin' (17 April 2014). In his 18 March 2014 address to the Kremlin, Putin stated 'we had to help create conditions so that the residents of Crimea for the first time in history were able to peacefully express their free will regarding their own future.' Putin also emphasised that '[a]s it declared independence and decided to hold a referendum, the Supreme Council of Crimea referred to the United Nations Charter, which speaks of the right of nations to self-determination.' Additionally, he noted that the Crimean authorities referred to the so-called precedent set by the ICJ in its Kosovo Advisory Opinion in which it held that there is no general prohibition of declarations of independence under international law. A month later, during the 17 April 2014 'Direct Line with Vladimir Putin', Putin stated that 'Russia did not annex Crimea by force. Russia created conditions – with the help of special armed groups and the Armed Forces, I will say it straight – but only for the free expression of the will of the people living in Crimea and Sevastopol.' He further indicated that 'when [...] Russians in Crimea were facing oppression, when they began raising the issue of self-determination – that's when we sat down to decide what to do.'\]

\[\text{\footnotesize\textsuperscript{511}}\text{See e.g., President of Russia, 'Direct Line with Vladimir Putin' (17 April 2014); Permanent Delegation of the Russian Federation to UNESCO, 'Legal arguments for Russia’s position on Crimea and Ukraine' (7 November 2014).}\]

\[\text{\footnotesize\textsuperscript{512}}\text{See e.g., President of Russia, 'Vladimir Putin answered journalists' questions on the situation in Ukraine' (4 March 2014); President of Russia, 'Address by President of the Russian Federation' (18 March 2018).}\]

\[\text{\footnotesize\textsuperscript{513}}\text{Permanent Delegation of the Russian Federation to UNESCO, 'Legal arguments for Russia's position on Crimea and Ukraine' (7 November 2014). See also, UNSC Meeting Record UN Doc S/PV.7125 (3 March 2014), p. 3; President of Russia, 'Address by the President of the Russian Federation' (18 March 2014).}\]

\[\text{\footnotesize\textsuperscript{514}}\text{Kosovo Advisory Opinion, Separate Opinion of Judge Yusuf, para. 7.}\]

\[\text{\footnotesize\textsuperscript{515}}\text{Reference re Secession of Quebec, [1998] 3 S.C.R. 217, para. 112. See also, Aaland Islands Case (1920) League of Nations Official Journal Spec Supp 3, 3 ('Aaland Islands Case'), p. 5 ('Positive International Law does not recognize the right of national groups, as such, to separate themselves from the State of which they form a part by the simple expression of a wish.'); D. Thürer and T. Burri, 'Secession' (OUP 2009), para. 14 ('Secession in the strict sense of the term is not explicitly forbidden. It is not illegal. But it runs counter to the principle of territorial integrity and the latter ultimately prevails'). Note that, outside the decolonisation context, Reference re Secession of Quebec is one of the most prominent cases concerning secession. In this case, the Supreme Court of Canada had to determine whether the province of Quebec, Canada had a right to secede. The Court considered this question under Canadian constitutional law as well as under the international law of self-determination. See, D. Thürer and T. Burri, ‘Secession’, para. 34.}\]

\[\text{\footnotesize\textsuperscript{516}}\text{See, Reference re Secession of Quebec, para. 112; Aaland Islands Case, pp. 5-10 (the International Committee of Jurists found there was no right to secede absent 'a manifest and continued abuse of sovereign power to the detriment of a section of population'); C. Tomuschat, 'Secession and Self-Determination' in M.G. Kohen (ed.), Secession: International Law Perspectives (CUP 2006) (‘Tomuschat, ‘Secession and Self-Determination’), pp. 34-35; D. Thürer and T. Burri, ‘Secession’, para. 17.}\]

\[\text{\footnotesize\textsuperscript{517}}\text{International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (‘ICCPR’), Article 1; International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3 (‘ICESCR’), art. 1. See also, UN Charter, Articles 1(2) and 55; UNGA Res 50/6 UN Doc A/Res/50/6 (9 November 1995) (‘UNGA 50th Anniversary Declaration’), p. 2; Vienna Declaration and Programme of Action (25 June 1993) A/CONF.157/24 (‘Vienna Declaration’), p. 2; Helsinki Final Act, Principle VIII; UNGA Friendly Relations Declaration ("By virtue of the principle of equal rights and self-determination of peoples enshrined in the Charter of the United Nations, all peoples have the right freely to determine, without external interference, their political status and to pursue their economic, social and cultural development, and every State has the duty to respect this right in accordance with the provisions of the Charter"); UNGA Res 1514 (XV) UN Doc A/Res/1514 (XV) (14 December 1960) (‘UNGA Declaration on the granting of independence to colonial countries and peoples’).}\]

defined territory, common language, common culture and ethnic ties. In addition, ‘peoples’ may include the population of a State as a whole, or in part. Populations of non-self-governing territories and those subject to alien subjugation, domination and exploitation, such as the populations of Palestine, Western Sahara or East Timor, are generally accepted examples of ‘peoples’ entitled to a right of self-determination under international law.

Nevertheless, the UN Human Rights Committee (‘HRC’) has confirmed that the principle of self-determination “applies to all peoples, and not merely to colonised peoples.” The right is normally fulfilled through internal self-determination, which involves “a people’s pursuit of its political, economic, social and cultural development within the framework of an existing state.” Accordingly, the right of self-determination operates as “a right of the entire population of [an existing] State to determine its own political, economic and social destiny and to choose a representative government; and, equally, as a right of a defined part of the population, which has distinctive characteristics on the basis of race or ethnicity, to participate in the political life of the State, to be represented in its government and not to be discriminated against.”

All ‘peoples’ are entitled to, inter alia, meaningful political participation, minority rights or structures enabling autonomy in accordance with the right to (internal) self-determination.

Some peoples may also have a right to external self-determination, which can be exercised through unilateral secession. This right “arises in only the most extreme of cases and, even then, under carefully defined circumstances.” The right is highly controversial, particularly outside the decolonisation process, because it threatens the territorial integrity of States.

A right to external self-determination is clearly recognised for those under colonial rule, and for those subject to alien subjugation, domination or exploitation outside the colonial context (i.e., foreign occupation). Beyond these two circumstances, it has been asserted that a right of external self-determination may arise, as a last resort, when human

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519 See, Commentary on the Additional Protocols, Article 1, para. 103; Reference re Secession of Quebec, para. 123; Aaland Islands Case, p. 6; Joseph, ICCPR: Cases, Materials and Commentary, p. 154; P. M. Taylor, Commentary on the ICCPR, p. 47 (“It was suggested that ‘peoples’ should apply to ‘large compact national groups’, to ‘ethnic, religious or linguistic minorities’, and to ‘whole populations inhabiting well-defined territories’; it should be understood in its most general sense and no definition was thought necessary”). Accordingly, “[t]he essential factor is a common sentiment of forming a people, and a political will to live together as such. Such a sentiment and will are the result of one or more of the criteria indicated, and are generally highlighted and reinforced by a common history”. See, Commentary on the Additional Protocols, Article 1, para. 103.

520 Reference re Secession of Quebec, para. 124.

521 Non-self-governing territories are defined under Chapter XI of the UN Charter as “territories whose peoples have not yet attained a full measure of self-government”.

522 See, UNGA Declaration on the granting of independence to colonial countries and peoples; Legal Consequences for South Africa, pp. 28-29; Western Sahara, ICI GL No 61, Advisory Opinion, 16 October 1975 (‘Western Sahara Advisory Opinion’), p. 12, para. 70; East Timor (Portugal v. Australia), [1995] ICI Rep 90, Judgement, 30 June 1995 (‘East Timor Judgement’), p. 90, para. 29; Construction of a Wall, para. 88; Kosovo Advisory Opinion, para. 79.

523 HRC ‘Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant’ UN doc. CCPR/C/79/Add.38 (3 August 1994), para. 6. It should be noted, however, that generally accepted examples of ‘peoples’ outside the decolonisation context are not readily available. Indeed, much of the contemporary jurisprudence on self-determination does not explicitly address the issue whether the subjects of those cases were ‘peoples’. For example, the ICJ in its Kosovo Advisory Opinion considered it was not necessary to resolve the question of the extent of the right of self-determination outside the decolonisation context, describing it as beyond the scope of the question posed to it by the UN General Assembly (see, Kosovo Advisory Opinion, para. 83). Similarly, the Canadian Supreme Court in Reference re Secession of Quebec held that “[w]hile much of the Quebec population certainly shares many of the characteristics (such as a common language and culture) that would be considered in determining whether a specific group is a ‘people’, as do other groups within Quebec and/or Canada, it was not necessary to explore [that] legal characterization [in that case]” (see, Reference re Secession of Quebec, para. 125).

524 Reference re Secession of Quebec, para. 126. See also, ICCPR, Article 1; ICESCR, Article 1; UNGA Friendly Relations Declaration; D. Thürer and T. Buri, ‘Secession’, para. 16 (“the most common reading of self-determination […] restricts the principle […] to an internal dimension [which] perhaps entitles a people to minority rights and structures enabling autonomy or similar arrangements, such as those in federal States, but does not give them a right to secession”); S. Joseph, ICCPR: Cases, Materials and Commentary, p. 160.


527 Reference re Secession of Quebec, para. 126. See also, UNGA Friendly Relations Declaration, which has defined external self-determination as: “[t]he establishment of a sovereign and independent State, the free association or integration with an independent State or the emergence into any other political status freely determined by a people constitute modes of implementing the right of self-determination by that people.


529 Reference re Secession of Quebec, paras. 131-133, citing A. Cassese, ‘Self-determination of peoples: A legal reappraisal?’ (CUP 1995) (‘Cassese, Self-determination of peoples’), p. 334. See also, UNGA Declaration on the granting of independence to colonial countries and peoples (“Immediate steps shall be taken, in […] territories which have not yet attained independence, to transfer all powers to the peoples of those territories […] in accordance with their freely expressed will and desire”); UNGA Res 1541 (XV) UN Doc A/RES/1541 (XV) (15 December 1960) (this resolution set out the criteria for non-self-governing territories, effectively outlining the process of decolonisation for these territories); UNGA Friendly Relations Declaration (“Every State has the duty to promote […] realization of the principle of equal rights and self-determination of peoples […] bearing in mind that subjection of peoples to alien subjugation, domination and exploitation constitutes a violation of the principle, as well as a denial of fundamental human rights, and is contrary to the [UN] Charter”).

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rights are seriously and persistently violated and the oppression of a people is extreme.”530 The underlying proposition is that “when a people is blocked from the meaningful exercise of its right to self-determination internally, it is entitled, as a last resort, to exercise it by secession.”531 In all cases where a right to external self-determination arises, the situation must be such that “the ability of a people to exercise its right to self-determination internally is somehow being totally frustrated.”532

In relation to the third situation which potentially grounds a right to unilateral secession on the basis of oppression, known as ‘remedial secession’, various United Nations declarations have emphasised that the principles of territorial integrity and national unity can only be departed from in instances where the government of the State concerned does not “represent the whole people belonging to the territory without distinction of any kind”533 This clause, known as the ‘safeguard clause’, suggests that an element of discrimination is required in order to satisfy the conditions for triggering the right to remedial secession.534 It has been described as conveying “the idea that exceptional circumstances are capable of sustaining a claim for secession – circumstances which may roughly be summarized as a grave and massive violation of the human rights of a specific group in a discriminatory fashion”, rather than mere lack of representativeness of a government.535 It should be noted, however, that “even where such exceptional circumstances exist”, a right of unilateral secession is not automatic.536 The right of remedial secession is a right of

530 See, D. Thürrer and T. Burri, ‘Secession’, para. 17; Kosovo Advisory Opinion, Separate Opinion of Judge Yusuf, paras. 11-12; Katangese Peoples’ Congress v. Zaire, Comm. No. 75/92, Judgement, 22 March 1995 (‘Katangese Peoples’ Congress v. Zaire’), para. 6 (“In the absence of concrete evidence of violations of human rights to the point that the territorial integrity of Zaire should be called to question and in the absence of evidence that the people of Katanga are denied the right to participate in Government as guaranteed by Article 13(1) of the African Charter, the Commission holds the view that Katanga is obliged to exercise a variant of self-determination that is compatible with the sovereignty and territorial integrity of Zaire”); A. Tancredi, ‘A normative “due process” in the creation of states through secession’ in M.G. Kohen (ed), ‘Secession: International law perspectives’ (CUP 2006) (“Tancredi, ‘A normative “due process” in the creation of states through secession’”), pp. 175-177.

531 Reference re Secession of Quebec, para. 134.


535 C. Tomuschat, ‘Secession and Self-Determination’, pp. 135-136, citing with approval the amicus curiae, which states: “The Quebec people is not the victim of attacks on its physical existence or integrity, or of a massive violation of its fundamental rights. The Quebec people is manifestly not, in the opinion of the amicus curiae, an oppressed people”; Kosovo Advisory Opinion, Separate Opinion of Judge Yusuf, paras 11-12; A. Tancredi, ‘A normative “due process” in the creation of states through secession’, pp. 175-177 (“This idea [of remedial secession] is today supported by a vast number of writers, who maintain that the traditional conflict between self-determination of peoples and the territorial integrity of States continues to be resolved in favour of State sovereignty, with one possible exception: the case in which infra-State groups with a particular identity (minorities, indigenous peoples) are victims of serious breaches of their fundamental civil and human rights.”).
‘last resort’. Hence, as noted by Judge Yusuf in the ICI’s Kosovo Advisory Opinion, “[a]ll possible remedies for the realization of internal self-determination must [first] be exhausted”. Indeed, even Russia has stated that the ['safeguard'] clause may be construed as authorizing secession under certain conditions [which] should be limited to truly extreme circumstances, such as an outright armed attack by the parent State, threatening the very existence of the people in question. Otherwise, all efforts should be taken in order to settle the tension between the parent State and the ethnic community concerned within the framework of the existing State.

Given this, in order to trigger a right to external self-determination outside of the colonial and foreign occupation contexts, and therefore a right of a people to unilaterally secede from their existing State, a high threshold of oppression of a specific group is required, in addition to the exhaustion of all possible remedies. This emphasises the rarity of the possibility of a lawful unilateral secession.

In fact, some international scholars argue that there is no right to remedial secession, even when faced with mass human rights violations. In particular, a number of scholars emphasise that the source of any ‘right’ to secession is based solely on soft law (i.e., UN General Assembly resolutions and declarations) rather than on treaties. Evidence of the acceptance in jurisprudence of any right to remedial secession is also lacking. For example, the Canadian Supreme Court in Reference re Secession of Quebec, a seminal case on secession, doubted the legitimacy of the concept of remedial secession, noting that “it remains unclear whether this third proposition actually reflects an established international law standard.” Consistent with this scepticism, the ICI, in its Kosovo Advisory Opinion, observed that the States taking part in the proceedings had expressed “radically different views” on the scope of the right to self-determination outside the decolonization context and, that “[s]imilar differences existed regarding whether international law provides for a right of ‘remedial secession’ and, if so, in what circumstances.” Unsurprisingly, it has been argued that the dearth of State practice precludes the theory that remedial secession could have crystallised into a norm of customary international law.

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537 See, D. Thü rer and T. Burri, ‘Secession’, paras. 20-21 (“It is clear that secessionist claims are born out of difficult, multi-faceted circumstances. In such circumstances, it seems that various options would be available to address the underlying issues and, in most cases, secession would only be one of these options. [...] The Supreme Court of Canada [...] held that Quebec’s [...] clear will to secede from Canada would entail an obligation to negotiate the separation bona fide, based on Canadian constitutional law. The Constitution would not prescribe the outcome of these negotiations.”), citing Reference re Secession of Quebec, para. 91; Aaland Islands Case, p. 24 (“The separation of a minority from the State of which it forms a part and its incorporation in another State can only be considered as an altogether exceptional solution, a last resort when the State lacks either the will or the power to enact and apply just and effective guarantees”); C. Tomuschat, ‘Secession and Self-Determination’, p. 41 (“secession [is] a measure of last resort after all other methods employed to bring about change have failed”); S. F. van den Driest, ‘Crimea’s Separation from Ukraine’, p. 341 (“proponents of a right to remedial secession commonly regard it as an ultimum remedium, a last resort remedy for such injustices. The exhaustion of peaceful remedies is therefore considered to be an additional prerequisite as well?”); C. Marxsen, ‘The Crimea Crisis from an International Law Perspective’, p. 30 (“external self-determination is interpreted as conditional, allowing secession only as an ultima ratio where internal self-determination has no chance of realization”).
538 Kosovo Advisory Opinion, Separate Opinion of Judge Yusuf, para. 16.
543 Reference re Secession of Quebec, para. 135.
544 Kosovo Advisory Opinion, para. 82. See also, S. F. van den Driest, ‘Crimea’s Separation from Ukraine’, pp. 343-344.
545 See e.g., S. F. van den Driest, ‘Crimea’s Separation from Ukraine’, pp. 344-349; D. Thü rer and T. Burri, ‘Secession’, para. 38; P. M. Taylor, Commentary on the ICCPR, p. 43; Committee on the Elimination of Racial Discrimination, ‘General recommendation 21: Self-determination’ (adopted at the 1147th meeting on 8 March 1996), para. 6 (“In the view of the Committee, international law has not recognized a general right of peoples unilaterally to declare secession from a state. In this respect, the Committee follows the views expressed in An Agenda for Peace [...] namely that a fragmentation of States may be detrimental to the protection of human rights as well as to the preservation of peace and security”); A. Tancredi, ‘A normative “due process” in the creation of states through secession’, p. 184. S. F. van den Driest evaluated the Bangladesh and Kosovo secessions in particular and noted that Bangladesh’s secession was only recognised by the international community and the UN following its recognition by Pakistan. In regard to Kosovo, Van den Driest noted that, following the declaration of independence, “[t]he records of the debates [in the UNSC and UNGA] demonstrate that UN Member States generally reflected a strong adherence to the traditional prerogatives of States, such as State sovereignty and territorial integrity, and/or emphasized the need for a negotiated solution with a view to regional peace and stability”. Only during the ICI advisory proceedings did some States attempt to signify support for the right to remedial secession; however, most States rejected the theory. Those that
In relation to the few cases of successful secessions in which the idea of remedial secession has been implicated due to preceding situations of severe oppression, such as the declarations of independence declared by Bangladesh from Pakistan in 1971 and Kosovo from Serbia in 2008, the idea that either involved the exercise of a right to external self-determination exercised through ‘remedial secession’ has been generally refuted in legal scholarship. Nevertheless, to the extent that these situations implicated a ‘right to exercise external self-determination through remedial secession’, they may be seen as demonstrative of the high level of oppression that would be required to give rise to such a right of remedial secession, if such a right is accepted to exist.

The cases of Bangladesh and Kosovo both involved grave and persistent human rights abuses. In relation to Bangladesh, the Pakistani government suspended Parliament, refused to recognise the national election results in which a Bangladesh-based party won with an overwhelming majority and introduced a period of martial rule, during which time the government committed gross human rights abuses (e.g., torture and indiscriminate killing), possibly amounting to genocide, and caused an estimated ten million Bengalis to seek refuge in India. With regard to Kosovo, the Serbian government suspended Kosovo’s autonomous status within the former Yugoslavia’s ‘Republic of Serbia’ in 1989 and, throughout the 1990s, imposed increasingly oppressive measures on the ethnic Kosovo Albanians (e.g., dismissal of Albanians from State positions and the prohibition of acquiring property). This culminated in the commission of gross violations of human rights, including a campaign of ethnic cleansing, conducted by the Serbian government against the ethnic Kosovo Albanians, which led to NATO military intervention.

3.4.2.1.2 Assessment

In line with the above, the validity of Russia’s argument that the purported secession of Crimea from Ukraine was a lawful exercise of self-determination is dependent upon the satisfaction of three cumulative conditions: 1) that the relevant population of Crimea may be classified as ‘a people’; 2) that this people’s right to internal self-determination was completely frustrated; and 3) that a right of external self-determination, through which secession may occur, arose and was exercised. As what constitutes ‘a people’ under international law has not been defined in jurisprudence and neither of the latter two necessary conditions are in any case met, the present Legal

supported the right rooted their arguments in the UN resolutions and declarations containing the ‘safeguard clause’, the Åland Islands case and Reference re Secession of Quebec, none claimed the right to remedial secession was derived from State practice (i.e., customary international law).

The implication arose from the instances of severe oppression that preceded these secessions.

In relation to Bangladesh, its independence is not seen as an exercise of ‘remedial secession’ largely due to the fact that it only became universally recognised after Pakistan had given consent to its independence. This ‘suggests that the international community did not see secession as an entitlement’. In relation to Kosovo, its independence is not seen as a precedent for the invocation of a right to ‘remedial secession’ given that one of the key components of remedial secession is that it is a right of last resort in the face of gross and persistent human rights abuses. However, while the human rights abuses (i.e., the ethnic cleansing perpetrated by the Serbian government against the Kosovar Albanians) came to an end in 1999 due to NATO’s military intervention, Kosovo did not declare independence until nine years later in 2008 when it no longer faced such abuses. See J. Vidmar, ‘Remedial Secession in International Law: Theory and (Lack of) Practice’ (6(1) St Antony’s International Review 37 (2010) (‘Vidmar, ‘Remedial Secession in International Law’), pp. 43 and 49. See also, J. Vidmar, ‘International Legal Responses to Kosovo’s Declaration of Independence’ (2009) 42(3) Vanderbilt Journal of Transnational Law 779 (‘Vidmar, ‘International Legal Responses to Kosovo’s Declaration of Independence’), p. 849; S. F. van den Driest, ‘Crimea’s Separation from Ukraine’, pp. 346-349; D. Thürer and T. Burri, ‘Secession’, paras. 33 and 38; S. Oreter, ‘The Kosovo Case – An Unfortunate Precedent’ (2015) 75 ZaRv 51, p. 63; A. Tancredi, ‘A normative “due process” in the creation of states through secession’, p. 184; G. Nolte, ‘Secession and external intervention’, in M. G. Kohen, ‘Secession: International Law Perspectives’ (CUP 2006), p. 91; R. Geis, ‘Russia’s Annexation of Crimea’, p. 43 at fn. 54; M. Milanovic, ‘A Footnote on Secession’ (EJIL:Talk!, 26 October 2017); A. George Jain, ‘Bangladesh and the right of remedial secession’, forthcoming in J. Vidmar, S. McGibbon and L. Raible (eds), ‘Research Handbook on Secession’ (Edward Elgar 2021), pp. 12-14. However, note that this is not a fully settled issue as some other scholars believe these cases can be classified as remedial secessions. See e.g., C. Tomuschat, ‘Secession and Self-Determination’, p. 42 (“the events leading to the establishment of Bangladesh and the events giving rise to Kosovo as an autonomous entity under international administration can both be classified as coming within the purview of remedial secession”).


ICCR, Article 1; Icescr, Article 1; Unga ‘Friendly Relations Declaration.


See, Reference re Secession of Quebec, para. 154; Commentary on the Additional Protocols, Article 1, para. 103; S. Joseph, ICCPR: Cases, Materials and Commentary, pp. 154-155.
Opinion will not venture into whether the population of Crimea qualifies as a ‘people’, whether in whole or in cumulative part. Instead, solely for the purpose of illuminating the remaining deficits to any claim of a right of a Crimean ‘people’ to external self-determination through secession, the following analysis will accept Russia’s premise that the Crimean population as a whole and/or the Russian-speaking population of Crimea qualifies as a ‘people’. As a ‘people’, the relevant population would be entitled to a right of internal self-determination and, arguably, under certain conditions, to a right of external self-determination. The right of the Crimean or Russian-speaking ‘people’ to internal self-determination, and the conditions of external self-determination and their lack of demonstration in Crimea, will be discussed in turn below.

### 3.4.2.1.2.1 Frustration of Internal Self-determination

In accordance with the principle of self-determination, any claim that the Crimean ‘people’ or Russian-speaking ‘people’ of Crimea (‘Russian-speaking people’) exercised a right to external self-determination must rest on the frustration of the relevant people’s right to internal self-determination. This may be established if either people were unable to pursue their civil, political, economic, social and cultural development within the framework of Ukraine.

In justification of Russia’s intervention in Ukraine’s Crimean Peninsula, Russian President Vladimir Putin indicated that when the “Russian-speaking people” in Crimea were facing threats and oppression, when they began raising the issue of self-determination – that’s when we sat down to decide what to do.” Putin then described the aim of the intervention as “creating conditions – with the help of special armed groups and the Armed Forces [...] for the free expression of the will of the people living in Crimea and Sevastopol.” These statements suggest that the right of the Crimean and Russian-speaking ‘peoples’ to internal self-determination had been frustrated by Ukraine. However, available evidence does not support either of these propositions to a clear and convincing standard. Indeed, it has not been possible to ascertain any evidence to support these Russian claims. This lack of evidence is reinforced by the reports of the UN human rights treaty bodies in the time period leading up to and directly following Russia’s use of force (‘intervention’) in Crimea. There is nothing in these reports to suggest that either the Crimean ‘people’ or the Russian-speaking ‘people’ were subject to structurally discriminatory treatment impacting on the right to self-determination within the framework of Ukraine. Notably, in its most recent concluding observations on Ukraine published prior to Russia’s intervention in Crimea, dated 2 August 2013, the HRC made several recommendations to Ukraine on areas in which it should strive to enhance its implementation of the International Covenant on Civil and Political Rights, none of which concerned violations of the right to self-determination. In a similar vein, neither did

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556 See e.g., President of Russia, ‘Vladimir Putin answered journalists’ questions on the situation in Ukraine’, 4 March 2014; President of Russia, ‘Address by President of the Russian Federation’, 18 March 2018.


558 See, Reference re Secession of Quebec, paras. 126; ICCPR, Article 1; ICESCR, Article 1; UNGA Friendly Relations Declaration; D. Thürer and T. Burri, ‘Secession’, para. 16; Joseph, ICCPR: Cases, Materials and Commentary, p. 160.

559 President of Russia, ‘Direct Line with Vladimir Putin’, 17 April 2014

560 President of Russia, ‘Direct Line with Vladimir Putin’, 17 April 2014.

561 JRC, ‘Concluding observations on the seventh periodic report of Ukraine’ UN Doc: CCPR/C/UKR/CO/7 (22 August 2013). The right to self-determination is codified in Article 1 of the ICCPR. Despite this, there were allegations of discrimination against the Crimean Tatars, a segment of the Crimean population. However, Ukraine was taking steps to ameliorate the situation and, in any case, following the referendum, spokespersons of the Crimean Tatars declared that their ethnic group had boycotted the referendum and indicated that the majority of the group would have preferred to remain within Ukraine. See, A. Brenner, ‘Tatar leader: referendum’s results predetermined’ (DW, 16 March 2014); Euromaidan Press, ‘Tatar leader says Crimean Tatars boycotted “referendum”’ (17 March 2014); A. Peters, ‘Sense and Nonsense of Territorial Referendums in Ukraine, and Why the 16 March Referendum in Crimea Does Not Justify Crimea’s Alteration of Territorial Status under International Law’ (EJIL-Talk!, 16 April 2014).
the most recent concluding observations of the Committee on Economic, Social and Cultural Rights prior to Russia’s intervention in Crimea, dated 13 June 2014, make any recommendations regarding the right to self-determination.\footnote{Committee on Economic, Social and Cultural Rights, ‘Concluding observations on the sixth periodic report of Ukraine’ UN Doc E/C.12/UKR/CO/6 (13 June 2014). As with the ICCPR, the right to self-determination is codified in Article 1 of the ICESCR. In regard to the Crimean Tatars, see the comment in the previous footnote.}

To the contrary, the evidence clearly shows that, at the time of the Russian invasion into Crimea, the right of the Crimean and Russian-speaking ‘peoples’ to self-determination was not frustrated. The right of the whole Crimean ‘people’, including the Russian-speaking ‘people’, to pursue civil, political, economic, social and cultural development objectives and thus to exercise their right to internal self-determination within the framework of Ukraine was enshrined in Ukraine’s Constitution,\footnote{Constitution of Ukraine, Chapter X.} and Ukraine’s respect for the right was borne out in policy and practice. Perhaps most illustrative is the level of political participation enjoyed by the Crimean and Russian-speaking ‘peoples’.\footnote{The right to internal self-determination has been described as a “manifestation of the totality of rights embodied in the [ICCPR]” including, in particular, “the rights guaranteed in articles 25 (right of political participation) and 27 (minority rights)”. Joseph, ICCPR: Cases, Materials and Commentary, p. 180, citing A. Cassese, Self-determination of peoples: A legal reappraisal (CUP 1995).}

Crimea is an autonomous region of Ukraine.\footnote{Constitution of Ukraine, Article 133.} It gained its autonomous status in the wake of the political, social and economic changes that were taking place immediately before the dissolution of the Soviet Union in December 1991. Specifically, on 20 January 1991, a local referendum in Crimea took place wherein 93% of the participants responded positively to the question: “Are you in favour of restoration of the Crimean Autonomous Soviet Socialist Republic as a member of the USSR and of the Soviet Agreement?”\footnote{Following the referendum, the Parliament of Soviet Ukraine adopted the law ‘On restoring the Crimean Autonomous Soviet Socialist Republic’ (‘Crimean ASSR’),\footnote{Decision of the Verkhovna Rada of the USSR No. 713-XII, ‘On enacting the Law of the Ukrainian SSR “On reinstating the Crimean Autonomous Soviet Socialist Republic” and on adding to the members of the Verkhovna Rada of the Crimean ASSR’ (12 February 1991).} but the Crimean ASSR was not restored to an autonomous republic of the Soviet Union (as it had existed prior to 1945).} Following the referendum, the Parliament of Soviet Ukraine adopted the law ‘On restoring the Crimean Autonomous Soviet Socialist Republic’ (‘Crimean ASSR’),\footnote{Order of the Presidium of the USSR Supreme Council ‘On transformation of the Crimean ASSR into the Crimean region within the RSFSR’ (30 June 1945).} but the Crimean ASSR was not restored to an autonomous republic of the Soviet Union (as it had existed prior to 1945).\footnote{Decision of the Verkhovna Rada of the USSR No. 713-XII, ‘On enacting the Law of the Ukrainian SSR “On reinstating the Crimean Autonomous Soviet Socialist Republic” and on adding to the members of the Verkhovna Rada of the Crimean ASSR’ (12 February 1991).} The initiative was blocked by the Soviet government in Moscow reportedly due to the fact that it would have granted extensive autonomy to the Crimean Tatars and deprived Russia of leverage in its negotiations with Ukraine.\footnote{See, Law of the USSR No. 712-XII, ‘On reinstating the Crimean Autonomous Soviet Socialist Republic’ (12 February 1991).}

However, Crimea was granted the status of an autonomous region by the Ukrainian Soviet Socialist Republic at the time,\footnote{Constitution of Ukraine, Article 134.} which did not change when Ukraine gained its independence a year later and recognised Crimea as an autonomous but inseparable part of Ukraine.\footnote{See also, Radio Svoboda, 'The city without a special status: What should Sevastopol expect after the possible amendments to the Constitution of Ukraine?' (18 December 2019).} The Crimean city of Sevastopol was also granted special status within Ukraine as a city under the direct authority of the Ukrainian government (as opposed to other cities which instead reported to regional councils).\footnote{Constitution of Ukraine, Articles 133. See also, Radio Svoboda, 'The city without a special status: What should Sevastopol expect after the possible amendments to the Constitution of Ukraine?' (18 December 2019).}

Ukraine’s Constitution empowered the ‘Autonomous Republic of Crimea’ to adopt its own Constitution and establish its own Parliamentary body (i.e., the Supreme Council of Crimea) and executive body (i.e., the Council of Ministers of Crimea). It provided Crimea full autonomy over key areas of local governance.\footnote{Constitution of Ukraine, Chapters IX and X, Articles 135, 138. See also, Constitution of Crimea; Law of Ukraine No. 350-XIV ‘On approval of the Constitution of the Autonomous Republic of Crimea’ (23 December 1998). The key areas of local governance over which Crimea had competence include: setting up elections of deputies to the Crimean Parliament and approving the composition of Crimea’s Election Commission; organising and holding local referendums; managing property belonging to Crimea; developing, approving and implementing the budget of Crimea on the basis of the budgetary policy of Ukraine; developing, approving and implementing programs on social, economic and cultural development, rational use of natural resources and protection of the environment; recognising the status of certain locations as tourism zones; participating in ensuring the rights and freedoms of citizens, national wellbeing, and assisting in promoting law and order and public safety; ensuring the functioning and development of state and national languages and cultures in Crimea, as well as the protection of historical monuments; participating in the development and implementation of state programs on the return of the deported peoples; and initiating the introduction of a state of emergency and establishing zones of ecological emergency in Crimea.}

Further, Ukraine’s Constitution vested...
the Crimean Parliament, within the bounds of Ukrainian law, with the authority to issue decisions and bylaws in relation to certain civil, political and cultural matters. Beyond its officially enshrined autonomous status within Ukraine, there is also clear and convincing evidence that Crimea did in fact enjoy significant political autonomy in Ukraine. By way of example, the Crimean Parliament adopted and enacted thousands of decisions and bylaws. These covered a range of issues, including Crimean social and economic development programmes.

Moreover, the Crimean Parliament regularly held local elections every five years under a mixed (majority and proportional) system, according to which half of its deputies were elected if their political parties received a majority of votes and the other half was elected if they personally received a majority of votes. The Head of the Crimean Parliament was vested with the authority to submit a candidate for the post of the Head of the Council of Ministers of Crimea (i.e., Prime Minister) who was then appointed to that position if he or she was approved by the President of Ukraine. In practice, the President (and before the 2010 constitutional reform in Ukraine, the Ukrainian Parliament) always approved Crimea’s candidates for Prime Minister.

The Crimean ‘people’, including the Russian-speaking ‘people’ of Crimea, enjoyed the right to political participation without obvious discrimination. In 2010, during Crimea’s last local election prior to the Russian occupation, 50 political parties participated. In accordance with the results of the election, Russian-leaning political parties won representation in the Crimean Parliament on a much greater scale than Crimean Tatar or Ukrainian-leaning parties. The Mejlis, the representative body of the indigenous, minority Crimean Tatars, took seats in Parliament as well, albeit few. Also, the Communist Party was represented, along with three seemingly Ukrainian-leaning parties. As such, at the time of Russia’s intervention in Crimea, the composition of the Crimean Parliament included representatives of all the main political groups and population segments of the Crimean ‘people’, including the ‘Russian-speaking’ ‘people’.

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574 Constitution of Ukraine, Article 135.
575 Constitution of Ukraine, Article 137. These decisions and bylaws could be issued in relation to the following matters: agriculture and forestry; reclamation and quarries; public works, crafts, trades and charity; urban planning and housing; tourism, hotel business and fairs; museums, libraries, theatres, other cultural institutions, historical and cultural reserves; public transportation, roads and water pipelines; hunting and fishing; and sanitary and hospital services.
576 See search results at LIGA Zakon ‘Regional legislation’.
581 See, e.g. Radio Svoboda, “President of Ukraine Leonid Kuchma agreed to resignation of the Prime Minister of Crimea, Serhiy Kiripov” (23 July 2001); Correspondent, “New Prime-Minister of Crimea was appointed” (23 September 2005); Gazeta.ua, “Viktor Plakida became the Prime-Minister of Crimea” (2 June 2006).
583 These parties represented the population of Crimea that was defined by its close political, social and cultural ties with Russia.
585 The Mejlis was established in 1991 to represent the indigenous Crimean Tatar people in discussions with the Government of Ukraine, international organisations and at all levels of government in Crimea before the Russian occupation. It is “the single supreme plenipotentiary representative and executive body of the Crimean Tatar people, between the sessions of Qurultay, elected by Qurultay among its delegates”. Qurultay is the highest representative body of the Crimean Tatar people. See, Mejlis of the Crimean Tatar People, ‘General information about Mejlis’; Resolution of the Verkhovna Rada of Ukraine No. 1140-VII, ‘On the Statement of the Verkhovna Rada of Ukraine on Guaranteeing the Rights of the Crimean Tatar People as a Part of the Ukrainian State’ (20 March 2014). Following the occupation, the Mejlis called off its members from the executive bodies of Crimea in July 2014 for fear of persecution. See, UCIPR, ‘Prohibition of the Mejlis of the Crimean Tatar people: Consequences and causes’; Publication № 20, 20 April 2016; Segodnya, Mejlis: “Chubarov’s participation threatens any Crimean Tatar”, 7 July 2014; DW, ‘The Mejlis of the Crimean Tatar people is a representative body of the Crimean Tatars’ (23 September 2021).
588 The population segments of Crimea may be defined as Ukrainian-sympathetic, Russian-sympathetic and Crimean Tatar.
It follows from the above that not only were the Crimean and Russian-speaking ‘peoples’ formally granted broad civil, political, economic, social and cultural rights under Ukrainian legislation, but that these rights were respected in practice. Despite that there existed room for Ukraine to engage in further, progressive realisation of these rights, the evidence refutes any suggestion of a complete frustration of the right of the Crimean ‘people’ or Russian-speaking ‘people’ to meaningfully exercise its right of internal self-determination within the framework of Ukraine. Furthermore, as will be demonstrated, the situation facing the ‘Crimean people’ and/or ‘Russian-speaking people of Crimea’ prior to the Russian intervention in Crimea did not meet the additional conditions required to support a claim to a right to external self-determination.

3.4.2.1.2.2 Trigger and Exercise of a Right to External Self-Determination

As the right of the Crimean people to the exercise of internal self-determination was not completely frustrated, any right to external self-determination, and unilateral self-determination, could not have arisen. This is compounded by the fact that the situation of the Crimean and Russian-speaking ‘peoples’ did not meet any other requirement for the triggering of a right to external self-determination, as will be described below.

A right to external self-determination could be triggered in the situation of a ‘colonial peoples’ or one subject to alien subjugation, domination or exploitation outside the colonial context if it had been found that the right to internal self-determination had been completely frustrated and all avenues for realising the right had been exhausted. There is no indication that the Crimean or Russian-speaking ‘peoples’ could be classified as a ‘colonial people’ and, therefore, this avenue will not be addressed. However, Russia does appear to have implied some form of alien subjugation, domination or exploitation by Ukraine over Crimea, and thus the Crimean ‘people’. On 18 March 2014, Russian President Putin justified Russia’s purported assertion of sovereignty over Crimea, describing that “in 1995, by a decision of the Verkhovnaya Rada of Ukraine [i.e., the Ukrainian Parliament] and the President of Ukraine, without the consent of the people of Crimea, the Constitution and the office of the President of Crimea were abolished. Thus, the status of Crimea as ... an independent state within Ukraine was replaced by the status of an Autonomous Republic as a territorial unit of the Ukrainian state.” This argument is easily refuted by clear and convincing evidence that Ukraine’s sovereignty over Crimea was universally accepted by the international community, including Russia itself. Therefore, it will not be further addressed.
As described further above, a right to external self-determination, arguably, could also be triggered by extreme oppression and serious and persistent violations of human rights in the event that the right to internal self-determination has been completely frustrated and all avenues for realising the right have been exhausted. Secession in this case would be dubbed ‘remedial secession’. Russia appears to have invoked this argument, claiming that its intervention in Crimea was justified because:

Ukraine has been swept by murders, massacres, torture, kidnappings, attacks on journalists and human rights activists, imprisonments for political reasons, and flagrant incidents with clearly racist overtones, including anti-Russian and anti-Semitic, organized by order or with a tacit consent of the Kiev authorities. Among other things, a group attempted to overthrow the legitimate authorities of Crimea. There are reasons to believe that this group was controlled by the illegitimate authorities of Kiev.

It has not been possible to locate any evidence in support of these Russian claims of serious human rights violations against, among others, the Russian-speaking ‘people’ of Crimea. Conversely, authoritative reporting by regional and international organisations immediately prior to, and during, Russia’s intervention in Crimea refute the veracity of these claims, as did the ECtHR in 

As noted by the ECtHR, Russia’s justifications for its intervention in the Peninsula “have not been corroborated by any convincing evidence”. In addition, according to the Special Rapporteur on minority issues, Rita Izák, the Russian minority representatives she consulted during her visit to Ukraine in April 2014 “acknowledged that, prior to the unrest [that began in February 2014], they did not face a repressive environment, widespread discrimination, exclusion, or violence based on their identity.”

The Deputy Director of the Atlantic Council’s Eurasia Center, Melinda Haring, also emphasised that “[b]efore annexation [...],

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597 See Section 3.4.2.1.1 The Law.
600 Permanent Delegation of the Russian Federation to UNESCO, ‘legal arguments for Russia’s position on Crimea and Ukraine’, 7 November 2014. See also, Russian MFA, ‘Statement by the Russian Ministry of Foreign Affairs regarding the events in Crimea’, 1 March 2014 (“On the night of the 1 March, unknown armed people sent from Kiev, attempted to occupy the building of the Ministry of the Interior of the Autonomous Republic of Crimea. There were victims as a result of this treacherous provocation”); UNSC Meeting Record UN Doc S/PV.7124 (1 March 2014), p. 5; UNSC Meeting Record UN Doc S/PV.7134 (13 March 2014), p. 15 (”It is clear that the achievement of the right to self-determination in the form of separation from an existing State is an extraordinary measure. However, in the case of Crimea, it obviously arose as a result of the legal vacuum created by the violent coup against the legitimate Government carried out by nationalist radicals in Kyiv, as well as by their direct threats to impose their order throughout the territory of Ukraine”).
601 See, Ukraine v. Russia (re Crimea), paras. 323-324; Parliamentary Assembly, ‘Recent developments in Ukraine: threats to the functioning of democratic institutions’, Resolution 1988 (2014), paras. 11 and 15 (“The Assembly takes note of the conclusions by the Advisory Committee of the Framework Convention for the Protection of National Minorities that visited Ukraine from 21 to 26 March 2014. It welcomes the fact that there is no immediate threat to the enjoyment of minority rights in the current situation in Ukraine. [...] In the view of the Assembly, none of the arguments used by the Russian Federation to justify its actions hold true to facts and evidence. There was no ultra-right wing takeover of the central government in Kyiv, nor was there any imminent threat to the rights of the ethnic Russian minority in the country, including, or especially, in Crimea”); Before Hearing the U.S. Commission on Security and Cooperation in Europe, ‘Life Under Occupation: The State of Human Rights in Crimea’ 116th Congress, Second Session, 28 January 2020 (Statement by Melinda Haring: “Before annexation, Crimea did not—or, Ukraine did not have a human rights problem with its minorities. Human rights were fine in Ukraine. The minority communities were flourishing”); OSCE, ‘Developing situation in Crimea alarming, says OSCE High Commissioner on National Minorities’, 6 March 2014 (“During her visit to Kyiv and Crimea, the [OSCE] High Commissioner [on National Minorities] found no evidence of violations or threats to the rights of Russian speakers”); Hofmann, ‘Annexion’, para. 41 (“Based on all the various reports of regional and (European) human rights treaty monitoring bodies, there is no evidence of such human rights violations; moreover, the Autonomous Republic of Crimea was vested, under the Constitution of Ukraine, with far-reaching powers of internal self-administration” emphasis added); R. Geffs, ‘Russia’s Annexation of Crimea’, p. 440 (“while breaches of human rights have clearly occurred in Crimea, there simply is no evidence of widespread and egregious human rights violations”), citing OHCHR ‘Report on the situation of human rights in Ukraine’ UN Doc A/HRC/27/75 (19 September 2014); OHCHR ‘UN Working Group on Arbitrary Detention concludes visit to Ukraine’, Press Release (51 May 2008) (“The Cooperation with the Government of Ukraine was excellent with the Working Group having unfettered access to all places where people are deprived of their liberty [...]. This is an example that other countries should follow. Only people who have courage and confidence will themselves lay open to public scrutiny”).
602 Ukraine v. Russia (re Crimea), paras. 323-324 (Russia’s justifications being, inter alia, to “assist the Crimean people in resisting attack by the Ukrainian armed forces”, to “ensure that Crimean population could make a democratic choice safely without fear of reprisal from the radicals” and to “ensure the normal expression of the will of the individuals living in Crimea”).
Ukraine did not have a human rights problem with its minorities. Human rights were fine in Ukraine. The minority communities were flourishing.⁶⁰⁴ With respect to the allegation that former President Viktor Yanukovych’s removal from office was the result of a ‘coup’ affecting the Crimean ‘people’ and carried out with support from Western nations,⁶⁰⁵ it has not been possible to locate evidence to confirm this either. However, evidence to the contrary has been found by other independent bodies. As concluded in a 2014 Resolution of the Council of Europe’s Parliamentary Assembly “none of the arguments used by the Russian Federation to justify its actions hold true to facts and evidence. There was no ultra-right wing takeover of the central government in Kyiv, nor was there any imminent threat to the rights of the ethnic Russian minority in the country, including, or especially, in Crimea”.⁶⁰⁶ In addition, according to a New York Times investigation into the final hours of Yanukovych’s rule – based on interviews with prominent players, including former commanders of the Berkut riot police and other security units, telephone records and other documents – “the president was not so much overthrown as cast adrift by his own allies, and […] Western officials were just as surprised by the meltdown as anyone else.”⁶⁰⁷ In addition, even if the change in government was considered illegal, “unconstitutional changes of government have never been viewed by the international community as a proper justification for secession”.⁶⁰⁸ Russia’s allegation of severe oppression of the Russian-speaking ‘people’ of Crimea also related to the Ukrainian Parliament’s adoption, on 23 February 2014, of a decision to cancel the Law on the Principles of State Language Policy.⁶⁰⁹ This cancellation would have removed the designation of Russian as an official ‘regional language’, thus making the Ukrainian language the sole official State language within Ukraine.⁶¹⁰ Russia framed this decision as an attempt “to deprive Russians of their historical memory” and as “a direct infringement on the rights of ethnic minorities”.⁶¹¹ While this decision led the Russian-speaking population of Ukraine, including in Crimea, to fear discrimination, this Ukrainian Parliamentary decision was not enacted or implemented.⁶¹² It should be noted as well that this decision would have also impacted the Crimean Tatars, another subset of the Crimean ‘people’ as a whole.⁶¹³

⁶⁰⁴ Hearing Before the U.S. Commission on Security and Cooperation in Europe, ‘Life Under Occupation: The State of Human Rights in Crimea’ (116th Congress, Second Session, 28 January 2020). See, however, footnote above, which notes that there were allegations of discrimination against the Crimean Tatars, but that Ukraine was taking steps to ameliorate the situation, and, in any case, the Crimean Tatars opposed the referendum and Crimea’s secession from Ukraine.

⁶⁰⁵ Permanent Delegation of the Russian Federation to UNESCO, ‘Legal arguments for Russia’s position on Crimea and Ukraine’, 7 November 2014 (“Proclamation of Independence by the Republic of Crimea and its accession to the Russian Federation are a legitimate form of the implementation of the right to self-determination by the people of Crimea in the situation when a coup accompanied by the use of force was carried out in Ukraine with an external support”). See also, UNSC Meeting Record UN Doc S/PV.7124 (1 March 2014), p. 5 (Statement by Russian Federation representative Mr. Churkin: “Mr. Yanukovych, whose removal from office, we believe, was illegal”); UNSC Meeting Record UN Doc S/PV.7125 (3 March 2014), p. 3 (Statement by Russian Federation representative Mr. Churkin: “The crisis provoked by the State coup in Kyiv as a result of the armed takeover by radical extremists continues to deteriorate and generate very serious threats to the future of [Ukraine]. […] A so-called Government of victors has been formed. The Parliament of Ukraine took a decision limiting the language rights of minorities […]. Demands have been made to limit or criminalize the use of the Russian language […]. The victors wish to exploit the fruits of their victory to trample the rights and basic freedoms of the people”); UNSC Meeting Record UN Doc S/PV.7134 (13 March 2014), p. 15 (“It is clear that the achievement of the right to self-determination in the form of separation from an existing State is an extraordinary measure. However, in the case of Crimea, it obviously arose as a result of the legal vacuum created by the violent coup against the legitimate Government carried out by nationalist radicals in Kyiv, as well as by their direct threats to impose their order throughout the territory of Ukraine”); President of Russia, ‘Address by President of the Russian Federation’, 18 March 2014 (“Those who opposed the coup were immediately threatened with repression. Naturally, the first in line here was Crimea, the Russian-speaking Crimea”); President of Russia, ‘Direct Line with Vladimir Putin’, 17 April 2014 (“We have always hoped, that all native Russians, the Russian-speaking people living in Ukraine, would live in a comfortable political environment, that they would not be threatened or oppressed. But when this situation changed, and Russians in Crimea were facing exactly that, when they began raising the issue of self-determination – that’s when we sat down to decide what to do”).


⁶¹¹ President of Russia, ‘Address by President of the Russian Federation’, 18 March 2014. See also, UNSC Meeting Record UN Doc S/PV.7125 (3 March 2014), p. 3 (Statement by Russian Federation representative Mr. Churkin: “The crisis provoked by the State coup in Kyiv as a result of the armed takeover by radical extremists continues to deteriorate and generate very serious threats to the future of [Ukraine]. […] A so-called Government of victors has been formed. The Parliament of Ukraine took a decision limiting the language rights of minorities […]. Demands have been made to limit or criminalize the use of the Russian language […]. The victors wish to exploit the fruits of their victory to trample the rights and basic freedoms of the people”).


In any event, as the requisite level of oppression needed to found a people’s right to external self-determination, exercised through remedial secession, is extremely high, this sole instance of systemic (potential) discrimination would not have reached that high threshold.\(^{614}\) Indeed, it is unclear whether this unimplemented change in language policy could be classified as a ‘human rights violation’ at all, even if it were to have been implemented. The ECHR has found in several cases in varied contexts that “linguistic freedom as such is not amongst the rights and freedoms governed by the [European Convention on Human Rights]”.\(^{615}\) Moreover, the violation of any such right would fall far short of the scale and gravity of violations that have been viewed, arguably, as justification for remedial secession.\(^{616}\)

There is an absence of clear and convincing evidence to suggest that the Crimean and/or Russian-speaking ‘peoples’ experienced human rights abuses rising to the requisite level of severity to justify the exercise of ‘remedial secession’ prior to the purported accession of Crimea to Russia on 18 March 2014.\(^{617}\) Moreover, even if there had been persistent gross human rights violations against one or both of these ‘peoples’, remedial secession, if available at all, would be a right of last resort.\(^{618}\) As such, it would have been necessary to exhaust all remedies prior to realising any right to external self-determination through secession. For example, according to the Venice Commission, the Council of Europe’s legal advisory body on constitutional matters,\(^{619}\) “[a]ny referendum on the status of a territory should [be] preceded by serious negotiations among all stakeholders”.\(^{620}\) The Commission determined that the stakeholders in

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\(^{614}\) See, Parliamentary Assembly, ‘Recent developments in Ukraine: threats to the functioning of democratic institutions’, Resolution 1988 (2014), paras. 11 and 15 (“The Assembly takes note of the conclusions by the Advisory Committee of the Framework Convention for the Protection of National Minorities that visited Ukraine from 21 to 26 March 2014. It welcomes the fact that there is no immediate threat to the enjoyment of human rights in the current situation in Ukraine. [...] In the view of the Assembly, none of the arguments used by the Russian Federation to justify its actions hold true to facts and evidence. There was no ultra-right wing takeover of the central government in Kyiv, nor was there any imminent threat to the rights of the ethnic Russian minority in the country, including, or especially, in Crimea”); OSCE, ‘Developing situation in Crimea alarming, says OSCE High Commissioner on National Minorities’, 6 March 2014 (“During her visit to Kyiv and Crimea, the OSCE High Commissioner on National Minorities found no evidence of violations or threats to the rights of Russian speakers”); R. Hofmann, ‘Annexation’, para. 41 (“Based on all the various reports of universal and regional (European) human rights treaty monitoring bodies, there is no evidence of such human rights violations; moreover, the Autonomous Republic of Crimea was vested, under the Constitution of Ukraine, with far-reaching powers of internal self-administration” (emphasis added)); R. Geis, ‘Russia’s Annexation of Crimea’, p. 440 (“while breaches of human rights have clearly occurred in Crimea, there is simply no evidence of widespread and egregious human rights violations”), citing OHCHR ‘Report on the situation of human rights in Ukraine’ UN Doc A/HRC/27/25 (9 December 2014); OHCHR ‘UN Working Group on Arbitrary Detention concludes visit to Ukraine’, Press Release (11 May 2008) (“The cooperation with the Government of Ukraine was excellent with the Working Group having unfettered access to all places where people are exercising their human rights”).


\(^{616}\) The role of the Venice Commission, or ‘the European Commission for Democracy through Law’, is to provide legal advice to its Member States and, in particular, to help States wishing to bring their legal and institutional structures in line with European standards and international experience in the fields of democracy, human rights and the rule of law (see, Venice Commission, ‘About us’ (Council of Europe, 2014).

3.4.2.1.3 CONCLUSION

In conclusion, even assuming that the Crimean population and Russian-speaking population of Crimea could be considered ‘peoples’ (distinct from the Ukrainian people), the available evidence shows that they were able to meaningfully exercise their right of internal self-determination within the existing political and legal framework of Ukraine. In all cases, there is no information to suggest a complete frustration of their exercise of this right. As such, neither people were entitled to any right of external self-determination, or to the exercise of such a right through unilateral secession. The lack of persistent and grave human rights violations further supports the nonexistence of a right of these ‘peoples’ to external self-determination. Furthermore, even if one or both of these ‘peoples’ had been entitled to such a right, they did not exhaust all remedies as a precondition to exercising it through secession. Accordingly, any claim of secession on this basis is invalid. It could not serve as the departure point for a valid accession of Crimea to Russia. Thus, Russia’s attempt to justify its assertion of sovereignty over the Peninsula on the basis of supporting a (non-existent) right of the Crimean people to external self-determination, has no merit. The purported justification cannot have any effect on the illegality of its action under international law.

3.4.2.2 DECLARATION OF INDEPENDENCE

In support of the legality of its assertion of sovereignty over Crimea, Russia has also argued that Crimea successfully attained independence from Ukraine through a “voluntary and free” referendum,622 before taking a lawful, sovereign decision to join the Russian Federation.623 Hence, Russia argues that it lawfully accepted the accession of an independent territory into the Federation.

As mentioned above, Crimea’s Parliament is the Autonomous Republic’s body vested with the authority to adopt laws and bylaws, but only in conformity with the Constitution and the laws of Ukraine.624 When Russian forces invaded Crimea on 27 February 2014, they took control over the Crimean Parliament.625 Following this, on 6 March 2014, deputies of the Russian-controlled626 Crimean Parliament called for an ‘all-Crimean’ referendum on the status of the Crimean Peninsula to be held on 16 March 2014.627

The referendum of 16 March posed two alternative questions: 1) “Are you in favour of the Autonomous Republic of Crimea reuniting with Russia as a constituent part of the Russian Federation?” or 2) “Are you in favour of restoring the Constitution of the Republic of Crimea of 1992 and of Crimean’s status as part of Ukraine?”628 According to the Crimean election commission (under Russian occupation), the referendum resulted in a reported turnout of over 81% of the Crimean population, where over 96% of voters allegedly supported Crimea joining the Russian Federation.629 It is not possible to verify this information due to the lack of international observers as explained below, but pro-Ukrainian activists and politicians argue that, with the Crimean Tatars – 13% of the Crimean population – boycotting the

621 Venice Commission, Opinion on Crimea Referendum, paras. 26 and 28.
624 Constitution of Ukraine, Chapter X, Articles 135, 136.
referendum, there could not have been such a high turnout. Nevertheless, the referendum purported to give effect to the unilateral declaration of independence adopted by the Crimean Parliament on 11 March 2014.

As noted above, international law does not explicitly provide for a right to unilateral secession. However, unilateral secession through declarations of independence is not strictly prohibited either. The right to unilateral secession pursuant to a declaration of independence may be granted under the laws of the State from which secession is sought. Thus, it must still be determined whether Crimea lawfully seceded from Ukraine in accordance with Ukraine’s domestic law, and lawfully acceded to the Russian Federation.

### 3.4.2.2.1 The Law in Ukraine

The Constitution of Ukraine provides that Ukraine is a sovereign and independent, democratic, social, law-based state; the territory of Ukraine within its present border is indivisible and inviolable; altering the territory of Ukraine is resolved exclusively by an ‘All-Ukrainian referendum’ (i.e., one that allows the entire population of Ukraine to vote); the Constitution of Ukraine shall not be amended, if the amendments are oriented toward the liquidation of the independence or violation of the territorial indivisibility of Ukraine; and the Autonomous Republic of Crimea is an inseparable constituent part of Ukraine and exercises its authority in relation to the issues ascribed to it, within the limits determined by the Constitution of Ukraine.

On 14 March 2014, the Constitutional Court of Ukraine determined that the decision to hold a referendum was unconstitutional and thus in violation of domestic law owing to the fact that the referendum would allow only the participation of the people of Crimea, as opposed to all Ukrainians, as required under the Constitution of Ukraine in the case of attempts to alter Ukrainian territory. In response, the Ukrainian Parliament terminated the powers of the Crimean Parliament on 15 March, pursuant to Article 85(28) of the Ukrainian Constitution, which provides for early termination of the authority of the Crimean Parliament “where the Constitutional Court of Ukraine finds that the [Parliament] of the Autonomous Republic of Crimea has violated the Constitution of Ukraine or laws of Ukraine.” By terminating the powers of Crimea’s Parliament, the Ukrainian Parliament removed the authority of the Crimean parliamentary body to hold a local referendum. Nevertheless, in the absence of authority to do so, the Crimean Parliament went forward with the referendum the following day.

The unconstitutionality of the Crimea referendum was affirmed in an independent inquiry by the Venice Commission, and accepted as such by the international community. The Venice Commission affirmed that “[t]he Constitution of Ukraine, [...] provides for the indivisibility of the country and does not allow the holding of any local referendum on...

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632 See, Reference re Secession of Quebec, para. 112; Kosovo Advisory Opinion, para. 84.
633 Committee on the Elimination of Racial Discriminations (‘CERD’), General Recommendation XXI (48) adopted at 1147th meeting on 8 March 1996, para. 6. See also, Venice Commission, Opinion on Crimea Referendum, para. 21 (“the first requirement for the validity of the referendum is that it may not contradict the provisions of the Constitution of Ukraine”).
634 Constitution of Ukraine, Articles 1, 2, 73, 134, 157.
636 Constitution of Ukraine, Article 73.
639 Constitution of Ukraine, Article 136(1).
secession from Ukraine.\textsuperscript{643} In this regard, the Venice Commission also indicated that this Constitutional provision “does not contradict European constitutional standards [as] it is typical for constitutions of Council of Europe member states not to allow secession.”\textsuperscript{644} The Venice Commission further indicated that “[h]olding a referendum which is unconstitutional [...] contradicts European standards.”\textsuperscript{645}

\subsection*{3.4.2.2.2 INTERNATIONAL LAW AND INTERNATIONAL AND REGIONAL STANDARDS}

The international community including, but not limited, to the UN General Assembly, OSCE, EU and NATO, also regarded the Crimean referendum as unlawful and illegitimate, on the basis that it breached Ukraine’s Constitution and international law, as well as regional and international election standards.\textsuperscript{646} Cited grounds included: that the Constitution of Ukraine provides for the indivisibility of the country and does not allow the holding of any local referendum on secession from Ukraine;\textsuperscript{647} holding an unconstitutional referendum breaches European democratic standards;\textsuperscript{648} there were no recognised international observers present;\textsuperscript{649} the presence of military and paramilitary forces was not conducive to democratic decision making;\textsuperscript{650} there were allegations of non-Ukrainian citizens participating in the referendum, as well as individuals voting numerous times in different locations;\textsuperscript{651} and the referendum question was not worded neutrally so as to allow voters to express the wish to maintain the current status of Crimea.\textsuperscript{652}

In addition, the referendum did not comport with the requirement that voting must be free, “without coercion or intimidation of the voters”.\textsuperscript{653} For example, the Venice Commission concluded, on the basis of, \textit{inter alia}, the massive

\textsuperscript{643} Venice Commission, \textit{Opinion on Crimea Referendum}, para. 27 (“This results in particular from Articles 1, 2, 73 and 157 of the Constitution. These provisions in conjunction with Chapter X of the Constitution show that this prohibition also applies to the Autonomous Republic of Crimea and the Constitution of Crimea does not allow the Supreme Soviet of Crimea to call such a referendum. Only a consultative referendum on increased autonomy could be permissible under the Ukrainian Constitution”). See also, \textit{Constitution of Ukraine}, Articles 1, 2, 73, 157 and Chapter X.

\textsuperscript{644} Venice Commission, \textit{Opinion on Crimea Referendum}, para. 17, citing Venice Commission, ‘A general legal reference framework to facilitate the settlement of ethno-political conflicts in Europe’ (CDL-INF(2000)16) (“The principle of territorial integrity commands very widespread recognition – whether express or tacit - in constitutional law. On the other hand, constitutional law just as comprehensively rules out secession or the redrawing of borders. This should come as no surprise since that branch of law is the very foundation of the state, which might be deprived of one of its constituent parts if such possibilities were provided for”).

\textsuperscript{645} Venice Commission, \textit{Opinion on Crimea Referendum}, para. 24, citing Venice Commission, ‘Code of Good Practice on Referendums’, Study No. 371 / 2006 (Venice, 16 December 2006) (“Venice Commission, ‘Code of Good Practice on Referendums’), p. 12 (“The use of referendums must comply with the legal system as a whole, and especially the procedural rules. In particular, referendums cannot be held if the Constitution or a statute in conformity with the Constitution does not provide for them”).


\textsuperscript{647} Venice Commission, \textit{Opinion on Crimea Referendum}, para. 27, citing Constitution of Ukraine, Articles 1, 2, 73, 157 and Chapter X.

\textsuperscript{648} Venice Commission, \textit{Opinion on Crimea Referendum}, para. 24, citing Venice Commission, ‘Code of Good Practice on Referendums’, p. 12 (“The use of referendums must comply with the legal system as a whole, and especially the procedural rules. In particular, referendums cannot be held if the Constitution or a statute in conformity with the Constitution does not provide for them”).

\textsuperscript{649} Y. Beigbeder, ‘Referendum’ in Max Planck Encyclopedia of International Law (OUP 2011) (‘Beigbeder, ‘Referendum’), para. 46. See e.g., A. Peters, ‘Sense and Nonsense of Territorial Referendums in Ukraine, and Why the 16 March Referendum in Crimea Does Not Justify Crimea's Alteration of Territorial Status under International Law’ (EJIL:Talk!), 16 April 2014). The Crimea parliament formally invited the OSCE to observe the referendum. However, because “the basic criteria for a decision in a constitutional framework were not met”, the OSCE ruled out the possibility of an OSCE observation of the referendum [see, OSCE, ‘OSCE Chair says Crimean referendum in its current form is illegal and calls for alternative ways to address the Crimean issue’ (11 March 2014); BBC, ‘Is Crimea’s referendum legal?’, (13 March 2014)]. Due to the widespread condemnation of the referendum as illegitimate, recognised international observers did not participate. Most of the observers were representatives of far-right and far-left parties and Kremlin-linked individuals, many of whom were paid (see, H. Covysh, ‘Myc, ‘Observers’ & victims of Russia’s fake Crimean referendum’ (KHPG, 16 March 2016)). See also, Venice Commission, ‘Code of Good Practice on Referendums’, p. 11.

\textsuperscript{650} Venice Commission, \textit{Opinion on Crimea Referendum}, para. 22; UNSC Meeting record UN Doc S/PV.7157 (16 April 2014), paras. 2-3 [At this UNSC meeting, Ivan Simonovich, then Assistant Secretary-General for Human Rights, briefed the UNSC on political developments in Ukraine, including the Crimean referendum. He also noted that “[t]here were credible allegations of harassment, arbitrary arrests and torture by those groups, which targeted activists and journalists who did not support the referendum”]; UN OHCHR, ‘Report on the human rights situation in Ukraine’ (15 April 2014), para. 86 (“According to reports, some individuals had their documents/ passports taken away before the poll by unidentified militias, and searches and identity checks were conducted by unauthorised or unidentified people, in the presence of regular police forces”); Parliamentary Assembly, ‘Recent developments in Ukraine: threats to the functioning of democratic institutions’, Resolution 1988 (2014), para. 16; NATO, “Statement by the North Atlantic Council on the so-called referendum in Crimea”, Press Release (17 March 2014); A. Klymenko, Human Rights Abuses in Russian-occupied Crimea, \textit{(Atlantic Council}, March 2015), p. 6.

\textsuperscript{651} Information on these allegations was obtained by then UN Assistant Secretary-General for Human Rights, Ivan Simonovich, during his mission to Crimea on 21 and 22 March 2014. See, UN OHCHR, ‘Report on the human rights situation in Ukraine’ (15 April 2014), para. 82.

\textsuperscript{652} Venice Commission, \textit{Opinion on Crimea Referendum}, para. 23. See also, Peters, ‘Sense and Nonsense of Referendums in Ukraine’. These include, inter alia, political equality of voters; the compilation of voter registers; the establishment and manning of polling stations; free voting without coercion or intimidation of the voters; the secret ballot must be guaranteed and enforced; and polling and tabulation of the votes must be controlled by independent officers, independent national and international observers, and media reporters. (Y. Beigbeder, ‘Referendum’, para. 46.) See also, ICCPR, Article 25; Venice
public presence of (para)military forces, concerns with respect to the freedom of expression and the short period of time between the decision to hold the referendum and the referendum itself, that “circumstances in Crimea did not allow for a referendum to be held in line with European democratic standards”. The UN Office of the High Commissioner for Human Rights (‘OHCHR’) similarly noted that “[t]he presence of paramilitary and so-called self-defence groups as well as soldiers without insignia, widely believed to be from the Russian Federation, was also not conducive to an environment in which the will of the voters could be exercised freely.” The OHCHR also reported that “some individuals had their documents/passports taken away before the poll by unidentified militias, and searches and identity checks were conducted by unauthorised or unidentified people, in the presence of regular police forces.” Moreover, in the weeks leading up to the referendum, Russia directed a mass propaganda campaign at the Peninsula that was characterised by a “massive release of falsified news about the deadly threat for all those who identify themselves with Russia by the forces that won on the Maidan.” This led Ivan Šimonović, then OHCHR Assistant Secretary-General for Human Rights, to describe that “media manipulation significantly contributed to a climate of fear and insecurity in the period preceding the referendum.”

As noted above, there were also reports of alleged cases of non-Ukrainian citizens participating in the referendum and of individuals voting numerous times in different locations, in violation of election standards on voting registers.

Furthermore, no independent international observers monitored the referendum, in defiance of international legal standards that require that “polling and tabulation of the votes must be controlled by independent observers, independent national and international observers, and media reporters.” Independent international observers did not participate either because their entry into Crimea was blocked by the Russian militants and/or so-called ‘self-
crimea referendum: early results indicate ‘landslide’ for secession

According to the Venice Commission, the fact that the referendum was not worded neutrally breached European referendum standards. Moreover, neither option reflected the maintenance of the status quo, as required by these same standards. This is because, at the time of the referendum, the 1998 Constitution of the Autonomous Republic of Crimea was in force, not the 1992 Constitution.

Furthermore, the reference to the 1992 Constitution was ambiguous because there were two separate versions of the Constitution in force in 1992 — one in May, followed by an amended version in September — and it is unclear to which the referendum was referring. The amended version further clarified that the Autonomous Republic was part of Ukraine. The Venice Commission held that this ambiguity breached its Code of Good Practice on Referendums, which requires that questions put to the vote must be clear and must not be misleading.

More than breaching international standards, Crimea’s unilateral declaration of independence failed as a matter of international law. This is because the unilateral declaration of independence was directly facilitated by Russia’s unlawful use of force against Ukraine in Crimea in February and March 2014. The ICJ has observed that the connection of a secession with an unlawful use of force or other violations of international law may be sufficient, in and of itself, to render declarations of independence unlawful. It is on this basis that the UN Security Council attached illegality to the unilateral declarations of independence in the cases of Southern Rhodesia and Northern
As indicated by the ICJ, the illegality attached to these declarations “stemmed not from the unilateral character of these declarations as such, but from the fact that they were, or would have been, connected with the unlawful use of force or other egregious violations of norms of general international law, in particular those of a peremptory character (jus cogens).”

Putin has admitted both Russia’s role and its intention as facilitator of Crimea’s purported secession from Ukraine, describing that “Russia created conditions [to assert sovereignty over Crimea] – with the help of special armed groups and the Armed Forces, I will say it straight – but only for the free expression of the will of the people living in Crimea and Sevastopol.” As shown above, Russia’s intervention in Ukraine amounted to an unlawful use of force and it is in connection with this unlawful use of force that the referendum and unilateral declaration of independence were effected. This suffices to render Crimea’s unilateral declaration of independence unlawful under international law.

In sum, the evidence is clear and convincing that Crimea’s unilateral declaration of independence contravened Ukraine’s domestic law and international and regional standards. Its connection to Russia’s unlawful use of force in Crimea also rendered it unlawful as a matter of international law. Consequently, the declaration was invalid and could not form a legitimate basis for Crimea to unilaterally secede from Ukraine.

### 3.4.3 Conclusion on Sovereignty over Crimea

As has been demonstrated, Russia’s arguments in support of a valid assertion of sovereignty over Crimea have not been established in law or on the facts. None of the alleged ‘peoples’ on the Peninsula had a right of self-determination that could be exercised through unilateral secession. Furthermore, Russia’s claim that it accepted the accession of an ‘independent State’ that seceded on the basis of a lawful declaration of independence is not satisfied due to the declaration’s breach of Ukrainian domestic law, regional and international standards and international law. Thus, Russia’s arguments that its assertion of sovereignty is legitimate on the basis of either the exercise of the right of self-determination or a declaration of independence must fail. Neither argument can preclude the finding that Russia unlawfully annexed Crimea, or negate the fact that Crimea remains occupied and Ukraine remains the displaced sovereign.

### 3.5 Applicable Law in Crimea

Having established that Crimea has been and remains occupied by Russia, the present section will provide an overview of the international obligations that attach to Russia, as the Occupying Power, and Ukraine, as the displaced sovereign.

The primary international legal frameworks that regulate situations of occupation are IHL and IHRL. Generally speaking, IHL regulates the obligations of warring parties during armed conflicts including situations of occupation, while IHRL regulates the responsibilities of States towards persons under their jurisdiction in times of peace. Nevertheless, it is now universally accepted that IHL and IHRL apply concurrently during armed conflict and

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677 Kosovo Advisory Opinion, para. 81. See also, R. Geis, ‘Russia’s Annexation of Crimea’, pp. 434-435; K. F. van den Driest, ‘Crimea’s Separation from Ukraine’, pp. 356, 358-359 ("Since the unlawful acts by the Russian Federation have clearly facilitated the issuing of Crimea’s unilateral declaration of independence, this constituted an illegal act in the terms of the Kosovo Advisory Opinion, as a consequence of which Crimea’s attempt at unilateral secession was prohibited under international law").
678 President of Russia, ‘Direct Line with Vladimir Putin’ (17 April 2014).
679 See Section 3.3 (Illegality of the Use of Force to Effect the Russian Occupation of Crimea.
The law of occupation is primarily enshrined in the Hague Regulations; the Fourth Geneva Convention; provisions of AP I, and customary IHL. These rules of IHL remain applicable until the end of occupation. It is these instruments and principles that primarily define the international obligations under IHL to which Russia must adhere in the context of its occupation of Crimea. The following section will provide a broad overview of some of the key obligations placed upon Russia by the law of occupation. Since obligations contained in the Fourth Geneva Convention apply only in respect of “protected persons” the section will begin by introducing the concept of ‘protected persons’ and the


Ukrainian and Russia are both parties to the 1949 Geneva Conventions and Additional Protocol I to the Geneva Conventions. See, States Parties to the Geneva Convention IV and States Parties to Additional Protocol I.


Article 47 of the Geneva Convention IV states that an Occupying Power cannot deprive protected persons of their benefits under the Convention through an alleged annexation. Article 4 of Additional Protocol I is clearer in stating that “[i]n neither the occupation of a territory nor the application of the Conventions and this Protocol shall affect the legal status of the territory in question”. This is considered an “uncontested principle of international law”.

In particular, Additional Protocol I, Article 3(b) and 4.

It is generally accepted that the rules of IHL remain applicable at least until the end of occupation. Although the Hague Regulations do not contain any articles determining the end of their application, the travaux préparatoires confirm that they continue to apply as long as the belligerent occupation, as defined by Article 42 of the Hague Regulations, continues to exist. Regarding the Geneva Conventions, Article 3(b) of Additional Protocol I has effectively revoked the time limit imposed by Article 64(3) of the Fourth Geneva Convention. The commentary to Additional Protocol I acknowledges that this provision replaced Article 6 and “its main effect is to extend the application in occupied territory beyond what is laid down in the fourth Convention”. See also, Construction of a Wall Advisory Opinion, Separate Opinion Judge Elaraby, p. 255. In its Armed Activities Judgment, the Court considered that Uganda was responsible for violations of IHL (including the Hague Regulations) until 2 June 2003, the date of the final withdrawal of the Ugandan forces from DRC territory. Pursuant to Article 3(b) of Additional Protocol I, which modified the Fourth Geneva Convention, the Geneva Conventions (and AP I) continue to apply even after the end of the occupation for persons “whose final release, repatriation or re-establishment takes place thereafter. These persons shall continue to benefit from the relevant provisions of the Conventions and of this Protocol until their final release, repatriation or re-establishment.” See, Armed Activities Judgment, paras. 167, 178–179 and 254.

See, Geneva Convention IV, Article 4; Y. Dinstein, Law of Belligerent Occupation, para. 196.
applicability of this status to persons in Crimea, particularly in light of a policy of Russian “naturalisation” of the population of Crimea.692

3.5.1.1.1 PROTECTED PERSONS UNDER THE FOURTH GENEVA CONVENTION

While the obligations contained in the Hague Regulations apply to the inhabitants of occupied territory,693 the provisions of the Fourth Geneva Convention apply only to ‘protected persons’.694 Pursuant to Article 4 of the Fourth Geneva Convention, ‘protected persons’ are defined, inter alia, as civilians “who, at a given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which they are not a national’.695 The notion of protected persons aims to ensure that a belligerent State (or an Occupying Power) upholds certain standards of treatment towards the nationals of the opposing State (or occupied State) that find themselves “in the hands” of the former.696

The decisive factor for determining the status of a protected person under the Fourth Geneva Convention is his or her allegiance to a Party to the conflict.697 Accordingly, the ‘nationality’ of the victims is not determined solely on the basis of formal national characterisations.698 Rather, the nationality of an individual is assessed on the basis of an individual’s “substantial relations […] and their bonds with the foreign intervening State.”699

Furthermore, the expression “in the hands of” has a broad meaning which exceeds situations where the Party in question exercises direct control over the individual (for instance, a situation of detention).700 Therefore, protected persons under the Fourth Geneva Convention go beyond the persons who find themselves under the physical control of the enemy.701 Simply being present in occupied territory, or territory in which an armed conflict is taking place, is sufficient to meet this requirement.702

Based on the foregoing, it can be concluded that Article 4 of the Fourth Geneva Convention generally applies to the ‘whole civilian population’ in occupied territory.703 This is supported by Article 1 of AP I, the Commentary to which notes, generally, that “the inhabitants of occupied territory become protected persons as they fall into the power of

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692 ‘Passportisation’ is the Russian policy whereby it issues Russian passports to foreign citizens and stateless persons from former Soviet States, thereby simplifying/facilitating the procedure for the acquisition of Russian citizenship. See e.g., Federal Law No. 62-FZ ‘On Russian Federation Citizenship’ (31 May 2002), Article 14; Ukraine Crisis Media Center, ‘Massive Russification: how Russia populates the occupied territories’ (30 July 2021); Vchasno News Agency, ‘“Threatened with dismissal and termination of payments” – in ORDO force to receive passports of the Russian Federation’ (9 April 2021); Y. Krechko, ‘There are more Russians in Donbas: how the population certification will affect the return of the occupied territories’ (3 March 2020); O. Güven and O. Ribbelink, ‘Protection of Nationals Abroad’ in C. Paulussen et al. (eds) Fundamental Rights in International and European Law (Springer 2016), pp. 55, 66.
693 Hague Regulations, Articles 44, 45, 46, 50, 52.
694 See, Geneva Convention IV, Article 4; Y. Dinstein, Law of Belligerent Occupation, para. 196.
695 Geneva Convention IV, Article 4 (emphasis added).
699 Delalić et al. Appeal Judgement, para. 84.
700 Commentary on the Geneva Convention IV, Article 4, p. 47.
701 Commentary on the Geneva Convention IV, Article 4, p. 47. See also, Prosecutor v. Tadić, IT-94-1-T, Opinion and Judgement, 7 May 1997 (‘Tadić Opinion and Judgement’), para. 579.
702 Prlić Trial Judgement, paras. 101; Noletić & Martinović Judgement, paras. 208; Katanga and Chui, Decision on the Confirmation of Charges, para. 289; Tadić Opinion and Judgement, para. 579; Commentary on the Geneva Convention IV, Article 4, p. 47. Additionally, Article 4 of the Geneva Convention IV stipulates that “nationals of a neutral State who find themselves in the territory of a belligerent State, and nationals of a co-belligerent State, shall not be regarded as protected persons while the State of which they are nationals has normal diplomatic representation in the State in whose hands they are.” The article also states that “nationals of a State which is not bound by the Convention are not protected by it.” Considering that the Geneva Conventions are universally ratified, the above sentence appears to be of limited practical significance.
703 Exceptions are ‘nationals’ of the Occupying Power, as well as nationals of neutral and co-belligerent States therein and persons protected under one of the three other Geneva Conventions. See, Commentary on the Geneva Convention IV, Article 4, pp. 46, 48.
the enemy.” Generally excluded, however, are ‘nationals’ of the Occupying Power, as well as nationals of neutral and co-belligerent States therein and persons protected under one of the three other Geneva Conventions. As such, Ukrainian nationals in occupied Crimea are generally considered ‘protected persons’ within the meaning of Article 4 of the Fourth Geneva Convention. This is because 1) they are nationals of Ukraine, i.e., the belligerent of Russia, the Occupying Power in Crimea; and 2) they have found themselves in the hands of Russia by virtue of their residence/presence in occupied Crimea and Donbas.

Nevertheless, Russia has engaged in a policy of Russian naturalisation of Crimeans through ‘passportisation’. This following section will assess the effect, if any, this nationalisation process has had on the status of ‘protected persons’ in Crimea.

### 3.5.1.1.1 The Effect of Russian Naturalisation on the Status of ‘Protected Persons’ in Crimea

Following the occupation of Crimea by Russia, Russia directly and/or indirectly imposed Russian nationality on Ukrainian nationals in Crimea. This was done through the ‘naturalisation’ of the population of Crimea pursuant to Article 5 of the Treaty on Accession of 18 March 2014. This Treaty automatically recognised all permanent residents of Crimea as Russian citizens, unless they undertook action to opt-out from the naturalisation process. Russia also enacted Federal Constitutional Law No. 6-FKZ on 21 March 2014, which recognised “the granting of Russian Federation citizenship to citizens of Ukraine and stateless persons permanently resident in Crimea and Sevastopol.”

In light of Russia’s conferral of Russian citizenship to the population of Crimea, it must be determined whether this affects their classification as ‘protected persons’ and thus their entitlement to protection under the Fourth Geneva Convention.

### 3.5.1.1.1.1 The Law

Article 8 of the Fourth Geneva Convention stipulates that “protected persons may in no circumstances renounce in part or in entirety the rights secured to them by the present Convention, and by the special agreements [...], if such there be.” This provision aims to ensure that “States party to the Convention [...] could not release themselves from their obligations towards protected persons, even if the latter showed expressly and of their free will that was what they desired.” Accordingly, the rights of protected persons under the Fourth Geneva Convention cannot be waived, meaning that the right-holder (i.e., the protected person) may not give up his or her rights and, by doing so, release the Occupying Power from its duty to respect his or her rights guaranteed under this Convention. Under this legal framework, any attempt to pressure or coerce protected persons to renounce their rights would be legally ineffectual.

Furthermore, Article 47 of the Fourth Geneva Convention states that “[p]rotected persons who are in occupied territory shall not be deprived, in any case or in any manner whatsoever, of the benefits of the present Convention by any change introduced, as the result of the occupation of a territory, into the institutions or government of the said territory.”
territory, nor by any agreement concluded between the authorities of the occupied territories and the Occupying Power, nor by any annexation by the latter of the whole or part of the occupied territory."\(^{715}\) While this provision mainly protects the rights of protected persons, it also "indirectly [and] objectively preserves the legal position of the displaced government."\(^{716}\) Indeed, the displaced government remains the sovereign of the occupied territory,\(^ {717}\) since "[i]n either the occupation of a territory nor the application of the Conventions and this Protocol shall affect the legal status of the territory in question."\(^{718}\)

Lastly, the Hague Regulations protect inhabitants of an occupied territory from being compelled to swear allegiance to the hostile Power.\(^ {719}\) Indeed, "allegiance to the displaced sovereign is not only retained but it cannot be altered by duress."\(^ {720}\) This is because the Occupying Power acts only as a 'temporary' or 'precarious' power in the occupying territory.\(^ {721}\)

3.5.1.1.1.2 ASSESSMENT

The opt-out procedure enshrined in Article 5 of the Treaty on Accession cannot be regarded as effectively ensuring that Ukrainian nationals could freely retain their Ukrainian citizenship. Indeed, the opt-out procedure under this provision has been considered to be complicated and fraught with procedural constraints.\(^ {722}\) According to a report by the OSCE Human Rights Assessment Mission in Crimea, persons who wished to refuse automatic Russian citizenship had to spend several days in queues, together with those who were seeking to obtain Russian passports, and were harassed and intimidated by these persons.\(^ {723}\) The lack of procedural safeguards and shortcomings in the implementation of the process "made it impossible to make an informed choice about whether to accept Russian citizenship [and] the majority of Crimeans did not even attempt to make a choice and acquired the status of Russian citizens 'by default' at the end of the [prescribed] period."\(^ {724}\) As stated in a report by the Open Society Foundation, "in an environment of intense uncertainty, political upheaval and physical insecurity, the circumstances were extremely dissuasive for anyone wishing to 'opt out' of Russian citizenship."\(^ {725}\)

Beyond these legislative and administrative barriers imposed on those seeking to retain their Ukrainian citizenship, some Ukrainian citizens were "subject to harassment and intimidation for not obtaining Russian citizenship."\(^ {726}\) Moreover, a choice to retain Ukrainian citizenship had dire consequences, potentially depriving the residents of Crimea of their employment,\(^ {727}\) access to social services (such as public healthcare and education),\(^ {728}\) and their

\(^{715}\) Geneva Convention IV, Article 49.


\(^{717}\) Y. Dinsein, Law of Belligerent Occupation, para. 163.

\(^{718}\) Additional Protocol I, Article 4.

\(^{719}\) Hague Regulations, Article 45.

\(^{712}\) V. Dinstein, Law of Belligerent Occupation, para. 176.

\(^{711}\) Y. Arai-Takahashi, Law of Occupation, p. 43.


\(^{726}\) This was achieved by: 1) an extraordinarily short grace period and the refusal to extend the deadline of 18 April 2014; 2) lack of publicly available information on the relevant procedure; 3) availability of only four hard-to-access offices where the opt out applications could be made; 4) inability to apply to opt-out outside the territory of Crimea; 5) this in-person requirement to opt-out made it almost impossible for prisoners, people with disabilities or others who could not meet such requirement to apply. See, Human Rights Watch, ‘Rights in Retreat: Abuses in Crimea’ (2014), pp. 27-31; See KHRPG, ‘Russian or Else: On How Russia is foisting its citizenship in Crimea’ (22 September 2014).


\(^{728}\) OSCE, ‘Report of the Human Rights Assessment Mission on Crimea’ (6–18 July 2015) (17 September 2015), para. 43; Euromaidan Press, ‘Ukrainians in Crimea: Six sanctions for refusing a Russian passport’ (13 February 2017); Human Rights Watch, ‘Crimea: “Not Our Home Anymore”’ (3 May 2017). In regard to health care specifically, NGO reports explain that, although medical assistance is generally provided to those with resident status free of charge, a number of caveats exist. Accordingly, to be eligible for such assistance (as well as for the purpose of employment, registration of a child in a kindergarten or school, etc.), residents must provide a health insurance card which is granted to all Russian citizens, refugees and foreigners who legally reside in the Russian Federation permanently or temporarily. Under the circumstances, Ukrainians who denounced Russian citizenship and did not obtain a residence permit, due to the limited number of permits that were granted or for other reasons, found themselves unable to access medical services. See, Crimea SOS, ‘Healthcare in the Occupied Crimea’ (2018), p. 11; Information provided by the Government of Ukraine.
fundamental human rights more generally, \textsuperscript{729} including by exposing them to the risk of deportation. \textsuperscript{730} For instance, since the commencement of Russia’s occupation of Crimea, residents of Crimea who have not obtained Russian nationality cannot own agricultural land\textsuperscript{731} or be employed in the public sector.\textsuperscript{732} Accordingly, through these legislative and administrative steps, the Russian authorities have not simply offered Russian citizenship to residents of Crimea; rather, they have “compelled residents to choose between Ukrainian and Russian citizenship while imposing adverse consequences, directly and indirectly, on those who chose to retain Ukrainian citizenship.”\textsuperscript{733}

3.5.1.1.1.3 CONCLUSION

The ‘naturalisation’ policy imposed on the residents of Crimea by Russia contravenes IHL and is, thus, legally void. As described by the OHCHR, “[i]mposing 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 [IHL]”.\textsuperscript{734} Hence, the imposition of Russian citizenship on protected persons in Crimea has done nothing to alter their status as protected persons.\textsuperscript{735}

Having determined this, the following section will briefly outline the IHL obligations that attach to Russia in Crimea under the law of occupation.

3.5.1.1.2 INTERNATIONAL OBLIGATIONS OF RUSSIA AS THE OCCUPYING POWER IN CRIMEA

An Occupying Power assumes a wide range of obligations upon occupying a foreign territory. Some of the key obligations that attach to an Occupying Power under the law of occupation include the following:\textsuperscript{736}

- Taking measures to restore and ensure public order, while respecting the laws in force in the occupied territory.\textsuperscript{737} This requires the Occupying Power to refrain from altering the legislation in force within the occupied territory and the institutions therein.\textsuperscript{738} A strict exception to this rule is introduced by Article 64 of the Fourth Geneva Convention, according to which “the penal laws of the occupied territory shall remain in force, with the exception that they may be repealed or suspended by the Occupying Power in cases where they constitute a threat to its security or an obstacle to the application of the present Convention.”\textsuperscript{739}

- Ensuring the provision of food and medical care to the civilian population subject to its control, as well as sufficient standards of hygiene and public health.\textsuperscript{740} In cases in which the civilian population is inadequately supplied, the Occupying Power must consent to relief operations carried out by impartial humanitarian organisations.\textsuperscript{741} The Occupying Power has “no latitude to withhold consent to humanitarian relief operations.”\textsuperscript{742}
Abiding by the prohibition of forcible deportations of protected persons from occupied territory. The above prohibition centres on the involuntary transfer of persons. Article 49 provides for the possibility of a permissible voluntary transfer; however, “the Conventions as a whole would seem to require a high threshold for the expression of valid consent to such a transfer.” Indeed, the voluntary displacement of individuals is permitted provided it is based on the personal consent/wish of the individual rather than the collective consent of a group or consent of the official authorities. This determination is made on a case-by-case basis by considering the prevailing situation and atmosphere as well as any relevant circumstances, including the transferred population’s vulnerability. Lastly, under certain strict conditions, and as a measure of last resort, the transfer of a population may be lawful if there is: 1) a need to protect the security of the population of the occupied territory; and 2) imperative military reasons (e.g., when the presence of protected persons in an area hampers military operations). Such displacement must be temporary and carried out in a manner to ensure that the displaced persons are returned to their homes as soon as the situation allows.

Abiding by the prohibition of collective punishment. Collective punishment has been defined as “[a] punishment imposed indiscriminately and collectively upon persons for acts they have not committed [with] the intent on the part of the perpetrator to indiscriminately and collectively punish the persons for acts which form the subject of the punishment.” Any form of punishment may qualify as collective punishment under this definition. Examples of practices that have been considered to constitute collective punishment include: unlawful killings; extermination; looting; burning of property; acts of physical violence and enslavement, as well as “house demolitions, prolonged curfews, closures of towns and villages, transfer of relatives and restrictions on electricity and water supplies.”

Abiding by the prohibition against the taking of hostages, which is absolute and unconditional. Hostage-taking has been defined as seizing, detaining or otherwise holding hostage one or more protected persons under a threat to kill, injure or continue to detain such person(s) with the intention to compel a State, an international organisation, a natural or legal person or a group of persons to act or refrain from acting as an explicit or implicit condition for the safety or the release of such a person(s)

Abiding by the prohibition of enlisting the civilian population of an occupied territory into the Occupying Power’s armed forces. This prohibition also encompasses “propaganda by the occupying power, which is intended to secure voluntary enlistment.”

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743 Geneva Convention IV, Article 49; Additional Protocol I, Article 85(4)(a); ICRC, Customary IHL Database, Rule 130 ‘Transfer of Own Civilian Population into Occupied Territory’.
744 Commentary on the Geneva Convention IV, Article 49, p. 279.
749 Blagojevic & Jokic Trial Judgement, para. 598; Commentary on the Geneva Convention IV, Article 49, p. 280.
750 Krstić Trial Judgement, para. 526; Commentary on the Geneva Convention IV, Article 49, 280.
752 Hague Regulations, Article 50; Geneva Convention IV, Article 33; Additional Protocol I, Article 42(2)(b); ICRC, Customary IHL Database, Rule 103 ‘Collective Punishments’.
754 Brima Trial Judgement, para. 682.
757 Geneva Convention IV, Articles 34, 147; ICRC, Customary IHL Database, Rule 96 ‘Hostage-Taking’.
758 Y. Dinstein, Law of Belligerent Occupation, Commentary on the Geneva Convention IV, Article 34, p. 231.
760 Geneva Convention IV, Article 51.
• Abiding by the prohibition of confiscation of private property. The Occupying Power has an obligation to respect private property. This means that an Occupying Power does not, through the act of occupation, acquire the right to dispose of property situated therein. According to Article 147 of the Fourth Geneva Convention, the “extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly” amounts to a grave breach of the Geneva Conventions. However, this rule is not absolute, and does not apply to appliances “adapted for the transmission of news, or for the transport of persons or things, […] depots of arms, and, generally, all kinds of munitions of war”, which “may be seized even if they belong to private individuals” provided they are restored and the owner is compensated.

• Administering immovable public property in accordance with the law of usufruct. While seizure and use of immovable public property (public buildings, real estate, forests, agricultural estates, other types of real estate and land) in an occupied territory by the Occupying Power is lawful, it may only be regarded as the temporary administrator and usufructuary of such property. The Occupying Power may not transfer the ownership of the property to itself. As the usufructuary, the Occupying Power must safeguard and maintain the integrity and capital of the property, subject to ordinary wear and tear, depending on the type of property. The use of such property must strictly be for the administration of the occupied territory rather than to meet the needs of the Occupying Power outside of the occupied territory.

• To respect cultural property, which is considered private property. Specifically, “[a]ll seizure of, destruction or willful damage done to institutions of this character, historic monuments, works of art and science, is forbidden, and should be made the subject of legal proceedings.” The violation of this provision is criminalised under the Rome Statute of the ICC.

Russia, as the Occupying Power in Crimea, is bound to comply with these rules in respect of its occupation of Crimea.

3.5.1.1.3 INTERNATIONAL OBLIGATIONS OF UKRAINE UNDER IHL, MORE GENERALLY

As described above, Russia’s status as an Occupying Power attracts responsibilities specific to Russia; however, this does not negate Ukraine’s general responsibilities under IHL. Ukraine, like Russia, remains obligated by IHL in the context of any hostilities during the occupation, by virtue of the law applicable to IAC. Generally speaking, this means that Ukraine must comply with norms that regulate the means and methods of warfare, such as the principle...
of distinction, the verification of military targets, control over the execution of attack and the humane treatment of protected persons. Ukraine must also comply with norms that ensure humanitarian relief, such as the obligation to allow and facilitate rapid and unimpeded passage of humanitarian relief for civilians in need, which is impartial in character and conducted without any adverse distinction, and to ensure the freedom of movement of authorised humanitarian relief personnel essential to the exercise of their functions. For more on the international obligations of Ukraine (and Russia) under the law of IAC, see Section 4.3 (Applicable Law in Donbas).

3.5.2 INTERNATIONAL HUMAN RIGHTS LAW

As mentioned previously, IHRL is also applicable in situations of occupation. IHRL protects individuals from abusive or arbitrary exercise of power by State authorities. States have three types of human rights obligations: 1) to respect: States must ensure their organs, agents and the structures of their law do not violate the human rights of those within their jurisdiction; 2) to protect: States have a duty to prevent other individuals or groups from breaching IHRL; and 3) to fulfill: States must take the necessary measures to ensure each person within their jurisdiction has the opportunity to obtain the rights recognized under IHRL.

The obligations stemming from IHRL apply only where a State has jurisdiction. Accordingly, to determine whether Russia carries human rights obligations in Crimea, which is outside of Russia’s territory, it must be established that these obligations apply extraterritorially. The following section will briefly outline the basis for extraterritorial application of IHRL, before assessing its applicability in the context of Russia’s occupation of Crimea. It will then provide a broad overview of the IHRL obligations that attach to Russia and Ukraine in this context.

3.5.2.1 RUSSIA’S OBLIGATIONS UNDER IHRL: EXTRATERRITORIAL APPLICATION

The extraterritorial application of human rights is widely accepted in international jurisprudence. The ICJ, in the Namibia Advisory Opinion, held that “physical control of a territory, and not sovereignty or legitimacy of title, is the basis of State liability for acts affecting other States.” Subsequent jurisprudence by the ICJ has confirmed that IHRL

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777 Additional Protocol I, Articles 48, 51(2) and 52(2).
778 Additional Protocol I, Article 57(2)(a).
779 Additional Protocol I, Article 57(2)(b).
780 Additional Protocol I, Article 75(1).
781 Additional Protocol I, Article 70(2); Geneva Convention IV, Article 23.
782 Additional Protocol I, Article 71(3).
786 See e.g., ICCPR, Article 2(1) (“Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant [...]”); Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended), ETS No.005, Opened for signature 4 November 1950 into force 3 September 1953 (‘ECHR’), Article 1 (“The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section 1 of this Convention”); Convention on the Rights of the Child (adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989 into force 2 September 1990, in accordance with article 49) 1577 UNTS 3 (‘CRC’), Article 2(1) (“States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination [...]”); Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted and opened for signature, ratification and accession by General Assembly resolution 39/46 of 10 December 1984 into force 26 June 1987, in accordance with article 27 (1)) 1465 UNTS 85 (‘CAT’), Article 2(1) (“Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction”).
787 See Section 3.4 Sovereignty over Crimea.
788 Emphasis is placed on some of the core human rights instruments ratified by Ukraine and Russia, i.e., ECHR, ICCPR and ICESCR. See, Council of Europe, 47 Member States; UN Treaty Body Database, Ratification Status for Russian Federation and Ukraine.
789 International human rights treaty bodies have also recognised the extraterritorial application of human rights based on the ‘effective control’ criterion. According to the UN Human Rights Committee (‘HRC’), Article 2(1) of the ICCPR requires States Parties to “respect and ensure the rights laid down in the Covenant to all persons who may be within their territory and to all persons subject to their jurisdiction.” This means that the obligation to respect and ensure civil and political rights applies to “anyone within the power or effective control of that State Party, even if not situated within the territory of the State Party”, including occupied territory. The UN Committee on Economic, Social and Cultural Rights (‘CESCR’) has also recognised the application of the ICESCR to “all territories and populations” under the ‘effective control’ of a State. See, HRC, General Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, UN Doc CCPR/C/21/Rev.1/Add.13 (26 May 2004) (“HRC, General Comment No. 31”), para. 10; CESCR, Concluding Observations: Israel UN Doc E/C.12/1/Add.24 (4 December 1998), para. 8. Similarly, the UN Committee Against Torture (‘UN CAT’) has stated “territory under [the State Party]’s jurisdiction”, as per Article 2(1) of the CAT, “includes all areas under the de facto effective control of the State Party, by whichever military or civil authorities such control is exercised.” UN CAT, UN Committee against Torture: Conclusions and Recommendations, UN Doc CAT/OP/UKR/CO/2 (25 July 2006), para. 15.
786 Legal Consequences for South Africa, para. 118.
instruments are applicable extraterritorially, particularly in occupied territories (i.e., territories under the effective control of a foreign State).  

For its part, the ECHR has repeatedly confirmed the extraterritorial application of the ECHR on the basis of, inter alia, ‘effective control’. Indeed, specifically in relation to Crimea, the Court has already affirmed the extraterritorial application of provisions of the ECHR with respect to Russia. The ECHR determined that between 27 February and 18 March 2014, Russia exercised effective control and, thus, jurisdiction over Crimea. Consequently, it concluded that Russia held extraterritorial human rights obligations for violations of the ECHR in Crimea. This finding was based on, inter alia, the strength of Russia’s military presence in Crimea and the active participation of its forces in the immobilisation of the Ukrainian forces. As to the legal validity of Russia’s assertion of sovereignty over Crimea from 18 March 2014, the Court considered this outside the scope of the issue placed before it, but proceeded on the basis that the jurisdiction of Russia over Crimea “is in the form or nature of ‘effective control over an area’ rather than in the form or nature of territorial jurisdiction,” the latter of which would accrue to a legal sovereign. This suggests that the Court rejected Russia’s sovereignty over the territory, and thus the legal validity of the purported annexation. Indeed, the Court noted in justification of proceeding on this basis that, it could not disregard the fact 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”.  

As demonstrated above, Russia has exercised effective control over the territory of Crimea from 27 February 2014 to present day. Considered alongside the findings of the ECHR, and the thresholds set out by the ICI and others, it is reasonable to assume the extraterritorial applicability of the whole body of IHRL to Russia in respect of Crimea. Consequently, Russia is obligated to ensure that the human rights of those residing within the territories it occupies are respected, protected and fulfilled.

3.5.2.1.1 THE SCOPE OF RUSSIA’S HUMAN RIGHTS OBLIGATIONS IN OCCUPIED CRIMEA

Having established that Russia is responsible for protecting and securing the human rights of the occupied populations in Crimea and Donbas, the next step is to consider the scope of Russia’s IHRL obligations with which it must comply.

Russia has ratified the major IHRL treaties, including the ECHR, International Convention on Civil and Political Rights (‘ICCPR’), International Convention on Economic, Social and Cultural Rights (‘ICESCR’), Convention Against Torture (‘CAT’), CERD, Convention on the Rights of the Child (‘CRC’) and Convention on the Elimination of All Forms of
Discrimination against Women ('CEDAW').\(^{803}\) Moreover, obligations that form part of customary international law, such as the right to life, freedom from arbitrary detention and the prohibition of torture, are binding upon Russia, regardless of its conventional obligations.\(^{804}\) Accordingly, Russia, as the Occupying Power, is bound by its own treaty obligations and customary human rights laws, which apply extraterritorially in occupied territories.\(^{805}\)

At the same time, the human rights obligations of the occupied State (i.e., Ukraine)\(^ {806}\) are also relevant to defining the scope of those of the Occupying Power (i.e., Russia).\(^ {807}\) This argument finds support both under the law of occupation and IHRL. Beginning with the IHL framework, Article 43 of the Hague Regulations stipulates that “[t]he authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country.”\(^ {808}\) Since IHL forms part of the legislation in force therein, a dynamic interpretation of this provision implies that the Occupying Power is required to respect and ensure respect for the full spectrum of IHRL in its administration of occupied territory.\(^ {809}\) Indeed, in the *Armed Activities* case, the ICJ considered that the obligation to secure respect for human rights applicable in Uganda’s occupation of the territory of the DRC formed part of the duty to respect the local legislation in force therein.\(^ {810}\)

In sum, the above analysis illustrates that Russia, as the Occupying Power, is bound by the human rights obligations enshrined in: 1) the IHRL treaties that it has ratified/acceded to, as they apply extraterritorially in the areas under its effective control; and 2) the IHRL treaties that have been ratified/acceded to by Ukraine pursuant to Russia’s obligation to respect the laws in force in occupied territory and the territorial nature of human rights protections, and 3) customary human rights laws.

### 3.5.2.2 Ukraine’s Continued Obligations Under IHRL

As with Russia, Ukraine has ratified most of the major IHRL treaties, including the ECHR, ICCPR, ICESCR, CAT, CERD, CRC and CEDAW,\(^{811}\) and is also bound by customary international law.\(^{812}\) In addition, Ukraine has also ratified the Optional Protocol to the ICCPR, the Optional Protocol to the CAT, the Optional Protocol to the CRC and the Optional Protocol to the Convention on the Rights of Persons with Disabilities.\(^{813}\) These Protocols allow the respective monitoring bodies to examine communications received from victims of alleged human rights violations.\(^ {814}\)

Ukraine is not fully relieved of or exonerated from its IHRL obligations in Crimea due to its lack of effective control over the respective territories. Under IHRL, as the ousted sovereign, Ukraine must still undertake all measures

803 See, UN Treaty Body Database, Ratification Status for *Russian Federation* and *Ukraine*.
805 N. Lubell, ‘Human rights obligations in military occupation’, pp. 334-335; HRC, General Comment No. 31, para. 10. The ICJ has confirmed the extraterritorial application of international human rights instruments by holding that Israel’s obligations under the ICCPR, ICESCR and CRC were applicable to its actions in the West Bank. See, *Construction of a Wall Advisory Opinion*, paras. 102–113.
806 The human rights obligations of Ukraine will be further developed in the next sub-section. See Section 3.5.1.2.3 Ukraine’s Continued Obligations Under IHRL.
808 Hague Regulations, Article 43. See also, Geneva Convention IV, Article 64 (“The penal laws of the occupied territory shall remain in force, with the exception that they may be repealed or suspended by the Occupying Power in cases where they constitute a threat to its security or an obstacle to the application of the present Convention”).
811 See, UN Treaty Body Database, Ratification Status for *Russian Federation* and *Ukraine*.
813 See UN Treaty Body Database, Ratification Status for *Ukraine*.
available to it to ensure that its population enjoys human rights to the maximum extent possible.\textsuperscript{815} The ECtHR has found that “where a Contracting State is prevented from exercising its authority over the whole of its territory by a constraining de facto situation, such as obtains when a separatist regime is set up, whether or not this is accompanied by military occupation by another State, it does not thereby cease to have jurisdiction within the meaning of Article 1 of the Convention over that part of its territory temporarily subject to a local authority sustained by rebel forces or by another State.”\textsuperscript{816} Although this finding concerned the ECtHR, it is likewise applicable to a broader scope of rights to which the population of the occupied territory is entitled under other international human rights instruments.\textsuperscript{817} Indeed, similar findings were made by the HRC and the CESCR regarding the residual obligations of States under the ICCPR and ICESCR in situations where they do not exercise effective control over parts of their territory.\textsuperscript{818}

Having lost effective control over the occupied territory, a State Party’s ability to fulfil its human rights obligations will inevitably be reduced. The ECtHR recognised this by holding that the ousted sovereign must only undertake the “measures in its power to take [that] are in accordance with international law, to secure to the applicants the rights guaranteed by the Convention.”\textsuperscript{819} The type of positive measures that are expected of an ousted sovereign include “diplomatic, economic, judicial or other measures that were in [the State’s] power to take and in accordance with international law.”\textsuperscript{820} This may include “endeavour[ing], with all the legal and diplomatic means available to it vis-à-vis foreign States and international organisations, to continue to guarantee the enjoyment of the rights and freedoms guaranteed by the Convention.”\textsuperscript{821}

Assessment of the sufficiency of these measures is approached on a case-by-case basis. When making a determination, “regard must be had to the fair balance that has to be struck between the general interest and the interests of the individual, the diversity of situations obtaining in Contracting States and the choices which must be made in terms of priorities and resources.”\textsuperscript{822} This is done by taking into account the prevailing circumstances on the ground, as well as “to what extent minimum effort was nevertheless possible and whether it should have been made.”\textsuperscript{823} For example, in relation to a complaint lodged against Moldova as the ousted sovereign in Transnistria, the ECtHR paid regard to the following measures taken by Moldova in assessing whether it had discharged its obligations under the ECHR: 1) complaining to the international community; 2) holding diplomatic negotiations; 3) applying for economic sanctions; 4) using its own courts to quash the unlawful decisions of the courts of the self-proclaimed ‘Moldovan Republic of Transdniestria’; 5) conducting criminal proceedings against the ‘judges’ of the ‘Supreme Court of Transnistria’; 6) declaring amnesty for persons convicted in occupied territories; 7) sending doctors from Moldova to examine the applicants detained in occupied territories; and 8) providing financial assistance to the applicants’ families and assisting with the arrangement of visits by the applicants in circumstances when their relatives were unlawfully imprisoned in a self-proclaimed republic.\textsuperscript{824} Different considerations may apply to any complaints arising from Crimea against Ukraine, depending on the particular circumstances of the claimants.

Similar to the approach taken by the ECtHR, the CESCR, in its concluding observations to Cyprus, “commended the efforts of the [Cyprus] Government in continuing to provide services, such as electricity supply and payment of pension benefits, to the population living in the part of the island that it does not control,” while recognising that the

\textsuperscript{815} Ilaşcu and others Judgement, paras. 330-333; Ivanţoc and others v. Moldova and Russia, Application No. 23687/05, Judgement of 15 November 2011 (4 June 2012), Grand Chamber, European Court of Human Rights (‘Ivanţoc and others Judgement’), para. 105; Mozer v. Moldova and Russia, Application No. 11138/10, Judgement of 23 February 2016, Grand Chamber, European Court of Human Rights (‘Mozer Judgement’), paras. 99-100; Catan and others Judgement, para. 109. See also, Report of the Secretary-General, ‘Situation of human rights in the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine’, UN Doc A/HRC/47/58 (27 May 2021), para. 50.

\textsuperscript{816} Ilaşcu and others Judgement, para. 333.


\textsuperscript{819} Ilaşcu and others Judgement, paras. 330-331 (emphasis added). See also, Catan and others Judgement, para. 109.

\textsuperscript{820} Ivanţoc and others Judgement, paras. 105-111. See also, Ilaşcu and others Judgement, para. 333.

\textsuperscript{821} Ilaşcu and others Judgement, para. 333.

\textsuperscript{822} Ilaşcu and others Judgement, para. 332.

\textsuperscript{823} Ilaşcu and others Judgement, para. 334.

\textsuperscript{824} Ilaşcu and others Judgement, paras. 336-352.
The derogation measures are not discriminatory (6) the State notifies the UN Secretary-General of its decision to derogate from obligations under the ICCPR and ECHR. Each notification state the following. Due to the annexation and temporary occupation by the Russian Federation of the integral part of Ukraine – the Autonomous Republic of Crimea and the city of Sevastopol – as a result of armed aggression against Ukraine, the Russian Federation is fully responsible for respect for human rights and implementation of the relevant treaties in annexed and temporary occupied territory of Ukraine.

Both the ICCPR and ECHR allow for derogation in circumstances that “threaten the life of the State”. Nevertheless, certain rights are non-derogable. The ICCPR provides that no derogation can be made from the following: the right to life; the right to be free from torture or cruel, inhuman or degrading treatment or punishment, and free from medical or scientific experimentation without consent; the prohibition of slavery, the slave trade and servitude; the prohibition of imprisonment on the ground of inability to fulfil a contractual obligation; the principle of legality in the field of criminal law; the recognition of everyone as a person before the law; and the freedom of thought, conscience and religion. The HRC included the following additional rights from which no derogation is permitted: the prohibition against the taking of hostages, abductions or unacknowledged detention; discrimination, deportation or forced transfer of minorities; and incitement to discrimination, hostility or violence through advocacy of national, racial or religious hatred.

In sum, despite Crimea’s occupation by Russia, Ukraine continues to hold, and must respect, its human rights obligations in relation to the Peninsula. In addition, Ukraine must demonstrate its willingness to fulfil its human rights obligations and to undertake all possible diplomatic, legislative, economic, judicial and other measures necessary to meet its human rights obligations. An exception may arise in the case of valid derogation from human rights obligations, as will be explored below.

3.5.2.2.1 DEROGATIONS

Under special circumstances, a State is permitted to derogate from (i.e., suspend) certain obligations contained in human rights treaties. In relation to Crimea, on 5 June 2015, Ukraine officially notified the UN Secretary-General and the Secretary General of the CoE of its decision to derogate from obligations under the ICCPR and ECHR. Each notification state the following. Due to the annexation and temporary occupation by the Russian Federation of the integral part of Ukraine – the Autonomous Republic of Crimea and the city of Sevastopol – as a result of armed aggression against Ukraine, the Russian Federation is fully responsible for respect for human rights and implementation of the relevant treaties in annexed and temporary occupied territory of Ukraine.

Both the ICCPR and ECHR allow for derogation in circumstances that “threaten the life of the State”. Nevertheless, certain rights are non-derogable. The ICCPR provides that no derogation can be made from the following: the right to life; the right to be free from torture or cruel, inhuman or degrading treatment or punishment, and free from medical or scientific experimentation without consent; the prohibition of slavery, the slave trade and servitude; the prohibition of imprisonment on the ground of inability to fulfil a contractual obligation; the principle of legality in the field of criminal law; the recognition of everyone as a person before the law; and the freedom of thought, conscience and religion. The HRC included the following additional rights from which no derogation is permitted: the prohibition against the taking of hostages, abductions or unacknowledged detention; discrimination, deportation or forced transfer of minorities; and incitement to discrimination, hostility or violence through advocacy of national, racial or religious hatred.

830 See, Declaration of the Verkhovna Rada of Ukraine on Derogation from Certain Obligations under the International Covenant on Civil and Political Rights and the Convention for the Protection of Human Rights and Fundamental Freedom; Derogation contained in a Note verbale from the Permanent Representation of Ukraine to the Secretariat General on 9 June 2015.
831 ECHR, Article 15. Under the ECHR, derogations may be made if the following requirements are met: 1) a war or public emergency exists; 2) such emergency threatens the life of the State; 3) the measures taken to derogate are strictly required by the exigencies of the situation; 4) the rights derogated from are derogable (i.e., the following are non-derogable: ICCPR, Articles 6, 7, 8 (1) and (2), 11, 15, 16 and 18); 6) the State notifies the UN Secretary-General of its derogations; 7) the derogation measures are consistent with the State’s other obligations under international law; and 8) the derogation measures are not discriminatory (i.e., must not be based solely on the grounds of race, colour, sex, language, religion or social origin).
832 ICCPR, Article 4. A State can make a valid derogation from the ICCPR if all of the following requirements are fulfilled: 1) a public emergency exists; 2) such emergency threatens the life of the State; 3) the existence of the emergency is proclaimed officially; 4) the measures taken by the State derogating from its obligations are strictly required by the exigencies of the situation (i.e., the measures taken must reflect the ‘principle of proportionality’ in that they must be appropriate to achieve their protective function) (see, HRC, General Comment No. 29: States of emergency, UN Doc CCPR/C/21/Rev.1/Add.11 (31 August 2001) (‘HRC, General Comment No. 29’), para. 4; OHCHR, ‘Topics in Focus: Emergency Measures and Covid-19’ (27 April 2020)); 5) the rights derogated from are derogable (i.e., the following are non-derogable: ICCPR, Articles 6, 7, 8 (1) and (2), 11, 15, 16 and 18); 6) the State notifies the UN Secretary-General of its derogations; 7) the derogation measures are consistent with the State’s other obligations under international law; and 8) the derogation measures are not discriminatory (i.e., must not be based solely on the grounds of race, colour, sex, language, religion or social origin).
833 This is in contrast to the ICESCR which does not contain a derogation provision; however, it nevertheless stipulates that a State need only undertake steps, to the maximum of its available resources, to achieve the ‘progressive’ realisation of the rights contained within. (ICESCR, Article 2(1)). This means that States only need to undertake, over a period of time, measures required to implement the rights contained within the ICESCR. (OHCHR, ‘Fact Sheet No. 33: Frequently Asked Questions on Economic, Social and Cultural Rights’.)
834 ICCPR, Articles 4(2), 6, 7, 8(1), 8(2), 11, 15, 16 and 18.
835 HRC, General Comment No. 29, para. 13.
The HRC has also noted that no derogation can be made from peremptory norms of international law (i.e., *jus cogens* norms).\(^{835}\) Moreover, it has stated that “if action conducted under the authority of a State constitutes a basis for individual criminal responsibility for a crime against humanity by the persons involved in that action, article 4 of the [ICCPR] cannot be used as justification that a state of emergency exempted the State in question from its responsibility in relation to the same conduct.”\(^{836}\)

Furthermore, the ECHR provides that certain of its provisions are non-derogable. These include: the right to life (except in relation to deaths resulting from lawful acts of war); the prohibition of torture or inhuman or degrading treatment or punishment; the prohibition of slavery and servitude; and the prohibition of the imposition of unlawful criminal punishment.\(^{837}\)

Ukraine’s attempt to derogate from the entire body of rights enshrined by the ICCPR and ECHR, including the non-derogable rights, therefore, cannot be considered valid. Furthermore, even in relation to derogable rights, Ukraine must take all measures available to it to ensure that the population of Crimea enjoy human rights to the maximum extent possible.\(^{838}\)

### 3.5.3 Reported IHL and IHRL Violations in Crimea

A detailed assessment of the IHL and IHRL obligations alleged to have been violated by Russia and/or Ukraine in Crimea since 2014 is beyond the scope of the present Legal Opinion. Nevertheless, this section will endeavour to provide a broad overview of conduct in potential violation of Russia’s obligations under IHL\(^ {839}\) and IHRL\(^ {840}\) on the basis of authoritative reporting by organisations including the OHCHR, OSCE, Human Rights Watch\(^ {843}\) and the ICC.\(^ {844}\)

Allegations of humanitarian and human rights violations have been rife since the beginning of Russia’s occupation of Crimea in February 2014.\(^ {845}\) For eight years, the occupying authorities are alleged to have intimidated and harrassed those who have opposed the Russian occupation and its associated regime in Crimea. Indeed, the ICC Office of the...
Prosecutor (‘OTP’) has found a reasonable basis to believe that, from 26 February 2014 onwards, Russia has committed numerous violations of its IHL and IHRL obligations “in the period leading up to, and/or in the context of the occupation of the territory of Crimea”. These include willful killing, torture, outrages on personal dignity, unlawful confinement, compelling protected persons to serve in the forces of the hostile power, deprivation of fair trial rights, transferring detainees in criminal proceedings and prisoners outside of occupied territory, and the seizure of enemy property not demanded by the necessities of war, as well as murder, transferring detainees in criminal proceedings and prisoners outside of occupied territory, imprisonment, torture, persecution and enforced disappearance.

Pro-Ukrainian activists, journalists and NGO workers are alleged to have become primary targets of Russian authorities, and have taken measures to restrict their ability to maintain Crimean Tatar language and culture. Additionally, authoritative reporting indicates that pro-Ukrainian and Crimean Tatar activists and media have been harassed by the Russian authorities on an ongoing basis. Some media outlets have been shut down while others have been threatened with the denial of operating licences under Russian legislation unless they changed their “anti-Russian editorial policies.” The Russian authorities are also accused of relying on vaguely worded and overly broad Russian anti-extremism laws to initiate criminal proceedings against individual activists and to issue warnings to leading Crimean Tatar media outlets, politically motivated or otherwise fabricated criminal cases are alleged to have been initiated against those who opposed the occupation publicly. Thus, at least 109 Ukrainian citizens detained in

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846 IHRL considered only insofar as the violations amount to international crimes.
848 Rome Statute, Articles 8(2)(a)(ii) (willful killing); 8(2)(a)(iii) (torture); 8(2)(b)(xxi) (outrages upon personal dignity); 8(2)(a)(vii) (unlawful confinement); 8(2)(a)(v) (compelling protected persons to serve in the forces of a hostile Power); 8(2)(a)(vi) (willfully depriving protected persons of the rights of fair and regular trial); 8(2)(b)(viii) (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)); and 8(2)(b)(xii) (seizing the enemy’s property that is not imperatively demanded by the necessities of war, with regard to private and cultural property).
849 Rome Statute, Articles 71(1)(a) (murther); 71(1)(d) (deportation or forcible transfer of population (with regard to the transfer of detainees in criminal proceedings and prisoners)); 71(e) (imprisonment or other severe deprivation of physical liberty); 71(f)(i) (torture); 71(h)(i) (persecution against any identifiable group or collective on political grounds); and 71(h)(ii) (enforced disappearance of persons).
Crimea or in the Russian Federation are considered political prisoners who are often denied access to health care and otherwise kept under inhumane conditions.  

Furthermore, ill-treatment is alleged to have been used by the Russian law enforcement forces as an instrument to obtain false confessions or to punish suspects in detention, and to pressure the population of Crimea into cooperation with the occupying authorities. Human rights NGOs observing the human rights situation in the occupied Crimea recorded 290 instances of ill-treatment between 20 February 2014 and 31 December 2018. Moreover, 44 pro-Ukrainian activists, journalists, Crimean Tatars, former and active Ukrainian servicemen are alleged to have become victims of enforced disappearances, at least 21 of them in a single month of March 2014. Reportedly, these persons have been arrested or abducted by the Russian authorities, held incommunicado and subjected to physical and psychological abuse. Even in instances where the alleged perpetrators of ill-treatment were identified, the Russian authorities reportedly have failed to investigate and prosecute these violations effectively.

Moreover, as described above, the Russian authorities have forced Russian citizenship upon the inhabitants of the occupied Crimea as a whole. Those wishing to opt-out from obtaining Russian citizenship and retain their Ukrainian nationality appear to have been coerced into refraining from doing so through the implied consequences of opting out or outright harassment.

Additionally, there are clear and convincing allegations that Russia has implemented other policies which are contrary to its obligations as Occupying Power under IHL. For example, authoritative reporting indicates that Russia has engaged in illegal population transfers, by deporting Crimean residents from the Peninsula and by facilitating the transfer of its own population into the Peninsula. Through the imposition of Russian legislation and citizenship and gross human rights abuses, the Russian authorities appear to have created a coercive environment aimed at forcing the inhabitants of the occupied Crimea opposing the Russian occupation into submission. Those who have refused to submit reportedly have been forcibly transferred or deported from the Peninsula. Reliable estimates indicate that 100,000 Crimeans were forced out of occupied Crimea by mid-2016.

According to the Report of the UN Secretary-
General, as of 5 January 2021, 47,897 registered IDPs from Crimea were located in other parts of Ukraine.\footnote{867} As reported by the OSCE Human Rights Assessment Mission to Crimea, a “surge was observed of youths fleeing forced conscription notices from de facto authorities, as many parents reportedly encouraged their children to flee to mainland Ukraine to avoid conscription.”\footnote{868} At the same time, official Russian statistics indicate that roughly 247,000 Russians have been transferred to Occupied Crimea – a figure which, in reality, may be much higher.\footnote{869} Furthermore, the de facto Crimean authorities have undertaken large-scale nationalisation in the interests of Russia which has resulted in mass forced appropriation and unlawful destruction of Ukraine owned State property, key public infrastructure, cultural heritage sites and natural resources as well as private property owned by individuals and legal entities in Crimea.\footnote{870}

Reporting by the OHCHR and Human Rights Watch suggests Ukraine may have also breached its IHRL obligations with regard to the individuals located in Crimea.\footnote{871} For example, in order for Crimean residents to obtain valid Ukrainian death or birth certificates or passports, they must submit applications to courts or state institutions in mainland Ukraine.\footnote{872} This is often a strenuous, costly and time-consuming process that may contravene the IHRL requirement that everyone is entitled to equal protection of the law without discrimination on any ground such as national origin, birth, or other status.\footnote{873}

3.5.4 Conclusion on Applicable Law in Crimea

If these allegations against Russia and/or Ukraine can be established, then they could potentially trigger the international responsibility of Russia and/or Ukraine for violations of their obligations under IHL and/or IHRL, in accordance with the law of State responsibility. This determination would rest on the attributability of the relevant conduct to the State. In addition to the conduct of a State’s legislative, executive and judicial organs, among others, the acts or omissions of a State’s armed forces, including individual soldiers and officers, are considered acts of that State for the purposes of attribution.\footnote{874}

\begin{footnotesize}
\begin{enumerate}
\item \footnote{867} Report of the Secretary-General, ‘Situation of human rights in the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine’, UN Doc A/76/260 (2 August 2021), para. 41.
\item \footnote{869} RFE/RL, ‘Shifting Loyalty: Moscow Accused Of Reshaping Annexed Crimea’s Demographics’, (31 May 2018).
\item \footnote{870} See, Crimean Precedent, ‘Crimea beyond rules. Issue №6 Occupied property’ (12 July 2021), p. 42 (“An analysis of the decisions of the occupation administrations and courts in Crimea, adopted during 2014-2021, shows that the appropriation of state and private property in Crimea is carried out mainly in the following ways: 1) nationalisation, i.e. the adoption of acts on the automatic transfer of state or private property to the ownership of the so-called ‘Republic of Crimea’ or ‘the federal city of Sevastopol’ as subjects of the Russian Federation; 2) withdrawal of property on the basis of court decisions; 3) compulsory redemption of property on the basis of acts of the occupation authorities; 4) forcible seizure of the property of ‘Self-Defence of Crimea’”).
\item \footnote{872} OHCHR, ‘Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol, Ukraine’ (10 September 2018), paras. 82 and 84.
\item \footnote{873} ICCPR, Article 26; ICESCR, Article 3(2); ECHR, Article 14. See also, OHCHR, ‘Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol, Ukraine’ (10 September 2018), para. 85.
\item \footnote{874} Armed Activities Judgement, para. 213. See also, Hague Regulations, Article 3; Additional Protocol I, Article 91; J. Crawford, Brownlie’s Principles, p. 529.
\end{enumerate}
\end{footnotesize}
4. The Situation in Donbas

4.1 Classification of the Armed Conflict

4.2 Occupation by Proxy: Is Donbas Occupied?

4.3 Applicable Law in Donbas
Timeline of Key Events – Donbas

13 April 2014
Bezler’s group fights and takes control over police station in Horlivka. Bezler pledges allegiance to Girkin.

17 April 2014
First civilian casualties occur in Donbas.

29 April 2014
Army of the South-East operates as an organised armed group in Luhansk region.

3 May 2014
Luhansk Cossack National Guard operates as an organised armed group in the Luhansk region. Under the command of their ataman, Mykola Kozitsyn, Guard takes control over Antratsyt, and establishes headquarters.

11 May 2014
‘D/LPR’ holds unconstitutional ‘referendum’ on the sovereignty of Donetsk and Luhansk oblasts, in which the majority of voters allegedly vote in favour of independence.

26 May 2014
Oplot Battalion operates as an organised armed group in Donetsk region.

12 April 2014
Girkin’s group fights and takes control over Sloviansk (Donetsk region).

14 April 2014
Interim President Turchynov officially launches ATO. By this time, non-state armed group(s) operating in Donetsk show sufficient organisation, and hostilities reach sufficient level of intensity, to establish NIAC.

28 April 2014
People’s Militia of Luhansk (Prizrak Battalion) fights and takes control over Stanytsia Luhanska, Luhansk region.

30 April 2014
Ukraine announces Kyiv government has effectively lost control over Luhansk and Donetsk. By this time, non-state armed group(s) operating in Luhansk show sufficient organisation, and hostilities reach sufficient level of intensity, to establish NIAC.

9 May 2014
Patriotic Forces of Donbas (Vostok Battalion) operate as an organised armed group in Donetsk region.

22 May 2014
Dryomov’s group operates as an organised armed group in Luhansk region.

July 2014
The D/LPR attempt to formalise the armed groups into a single command structure under D/LPR authorities. 
Russia’s influence over the military and political activities of D/LPR armed groups amounts to overall control, internationalising the conflict in Donbas.
Timeline of Key Events – Donbas

11 July 2014
Russia directly intervenes on the territory of Ukraine in support of D/LPR armed groups.

11 August 2014
Russian troops participate in combat operations taking place around the Ukrainian city of Ilovaisk, which last until 24 August 2014.

5 September 2014
Minsk-I agreement is signed by representatives of Russia, Ukraine, OSCE, and Aleksandr Zakharchenko (then head of the DPR) and Ihor Plotnitskii (then head of the LPR). The D/LPR gains effective control of territory in Ukraine’s Donetsk and Luhansk oblasts. Russia, through its overall control over the D/LPR, occupies these territories by proxy.

14 January 2015
Russian forces commence a large-scale military offensive aimed at taking the strategic railway hub of Debaltseve, in support of the D/LPR armed groups operating there.

12 February 2015
Minsk-II agreement signed by Ukraine, Russia, Germany and France, as well as by D/LPR leadership.

13 February 2022
End of period under examination. The Russian proxy occupation of Donbas continues to date.

17 July 2014
Malaysian passenger jet flight MH17 shot down by Russian BUK anti-aircraft missile, reportedly brought to Ukraine by 53rd Anti-Aircraft Missile Brigade of RFAF.

September 2014
D/LPR armed groups organise into 1st and 2nd Army Corps. Russia formalises deployment of RFAF officers and servicemen to D/LPR through the 12th RC, later known as the 8th Army, of the Southern Military District.

28 September 2014
Russian forces commence the fight to overtake Donetsk airport (outside the city of Donetsk), which lasts until 21 January 2015.

24 January 2015
Russian military, including high-ranking officers, instruct and supervise the shelling of Mariupol.

18 February 2015
Battle of Debaltseve ends. The area occupied by Russia in Donbas expands to include Debaltseve.

End of period under examination. The Russian proxy occupation of Donbas continues to date.
4. THE SITUATION IN DONBAS

From November 2013 to February 2014, mass protests, known as ‘Euromaidan’, took place in Ukraine. These protests were initially provoked by the refusal of the then President of Ukraine, Viktor Yanukovych, to sign an Association Agreement with the European Union (‘EU’). However, they subsequently developed into a broader protest movement against, *inter alia*: alleged human rights abuses committed by law enforcement agencies; corruption, a lack of judicial independence; and a lack of accountability. After deadly clashes between security forces and protesters occurred from 18 to 20 February 2014, Yanukovych fled Ukraine for Russia and a new interim Ukrainian government was established.

Shortly after Euromaidan and the commencement of Russia’s occupation of Crimea, the situation in eastern Ukraine began to destabilise. In the Donetsk and Luhansk oblasts (part of the Donbas region of Ukraine), pro-Russian groups began to protest what they termed the ‘coup’ in Kyiv, and declared their desire for closer ties with Russia. According to reports, in April 2014, hostilities broke out between armed groups that formed in Donbas (allegedly supported by Russia) and Ukrainian law enforcement agencies.

On 11 May 2014, the armed groups organised a ‘referendum’ on the sovereignty of the Donetsk and Luhansk oblasts. According to the leadership of the armed groups, the voter turnout in the Donetsk oblast was 75% and in the Luhansk oblast it was 81%. The referendum purportedly resulted in 89.07% and 96.20% of the population, respectively, voting “in favour” of independence. These referendums were held in violation of the Ukrainian Constitution, did not have legal effect under international law, and were deemed illegal by the Government of Ukraine.

Shortly thereafter, despite the legal invalidity of both referendums, the armed groups declared that certain areas of Donetsk and Luhansk were to become the ‘Donetsk People’s Republic’ (‘DPR’) and the ‘Luhansk People’s Republic’...
(‘LPR’), respectively (collectively, the ‘D/LPR’). Throughout this process, the occurrence of violent clashes between the D/LPR armed groups, on the one side, and the Ukrainian authorities, on the other, continued.  

Throughout the summer of 2014, hostilities intensified. The UAF were initially able to maintain a steady advance into the D/LPR controlled territories.  

However, this advance was interrupted in late August 2014, purportedly due to the direct involvement of Russian regular troops in the conflict. At this point, large-scale hostilities erupted, lasting until late February 2015. Since then, hostilities have largely been confined to the contact line, which was established by the Minsk Agreements and divides the territory of Donbas between that under government-control and that under the control of the D/LPR.  

While the intensity of the hostilities declined from 2018 onwards, as of 2022, the situation in the region remains unstable.

The following sections will evaluate: 1) whether there existed a non-international armed conflict (‘NIAC’) during Euromaidan; 2) the classification of the armed conflict in eastern Ukraine, examining if, and when, a NIAC and/or an international armed conflict (‘IAC’) came into existence; and 3) whether Russia is occupying parts of Donetsk and Luhansk through ‘occupation by proxy’.

### 4.1 Classification of the Armed Conflict

The classification of the conflict in Ukraine is integral to a determination of the applicable law and, accordingly, the obligations of the parties to the conflict. It must be assessed whether the events during Euromaidan constituted an armed conflict, whether international or non-international, so as to trigger the application of IHL. Further, the conflict in Donbas must be classified as either a NIAC or IAC in order to identify the applicable IHL rules.

This section will consider whether a NIAC and/or an IAC exists in eastern Ukraine.
4.1.1 OVERVIEW OF THE LAW

A NIAC occurs where there is protracted armed violence between governmental authorities and organised armed groups or between such groups within a State.897 The IHL rules applicable to NIACs are Common Article 3 to the Geneva Conventions (‘CA 3’), Additional Protocol II (‘AP II’), and customary IHL. On the other hand, an IAC exists whenever there is “resort to armed force between States”.898 The law applicable to IACs is set out in the Hague Regulations of 1907, the four Geneva Conventions, AP I, and customary IHL.

Notwithstanding the fact that customary IHL appears to be increasingly blurring the divide between each type of armed conflict,899 fundamental differences in the applicable law, depending on whether the situation is a NIAC or IAC, persist.900 In particular, while CA3 may provide some minimum protections for those not participating in hostilities, it contains no rules regulating the conduct of hostilities.901 It remains unclear whether certain rules regulating the means and methods of warfare are applicable to NIACs under customary IHL.902 A significant discrepancy between the two is the lack of ‘combatant’ status in NIACs,903 meaning those captured by the adversary in a NIAC are not entitled to the protections afforded to prisoners of war (‘POWs’) in IACs.904 Moreover, in contrast to IACs, the IHL applicable in NIACs fails to provide procedural safeguards for interned civilians.905 The distinction is also highly relevant to international criminal law, as different war crimes are applicable in IACs (Rome Statute, Articles 8(2)(a) and (b)) and NIACs (Rome Statute, Articles 8(2)(c) and (e)).906 For these reasons, it remains essential to classify a situation as either an IAC or NIAC in order to determine, with accuracy, the applicable law.

The following sections will provide an overview of the law relevant to establishing the existence of a NIAC or an IAC.

4.1.1.1 NON- INTERNATIONAL ARMED CONFLICT (‘NIAC’)

NIACs are defined under CA3 and Article 1 of Additional Protocol II. The starting point for defining NIACs is CA3 which defines NIACs as “armed conflicts not of an international character occurring in the territory of one of the High Contracting Parties.”907 ICL jurisprudence has confirmed the relevance of CA3 in defining a NIAC.908 In line with this jurisprudence, the Rome Statute defines NIACs as taking “place in the territory of a State where there is protracted armed conflict between governmental authorities and organised armed groups or between such groups”.909

It is now widely accepted that two elements must be satisfied to establish that a NIAC exists: (i) the non-state armed group(s) that are involved in the conflict must be sufficiently organised; and (ii) the hostilities must have reached a

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897 Prosecutor v. Duško Tadić, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction (Interlocutory Appeal), Case No IT-94-1, 2 October 1995 (‘Tadić Decision on Interlocutory Appeal’), para. 70.
898 Tadić Decision on Interlocutory Appeal, para. 70; ICRC 2020 Commentary to Common Article 2, para. 252. Cf. ICRC 1958 Commentary to Common Article 2, p. 20, offering a narrow interpretation of an IAC that excludes unilateral use of force by one State against another: “[a]ny difference arising between two States and leading to the intervention of members of the armed forces” [emphasis added]. See also, Y. Dinstein, The Conduct of Hostilities under the Law of International Armed Conflict, 3rd edition (CUP 2016), p. 1: “The threshold of an international armed conflict (IAC) is crossed automatically once two or more States wage hostilities against each other, irrespective of the intensity or the length of the fighting”.
899 Tadić Decision on Interlocutory Appeal, para. 127. See also, the 2005 ICRC Customary IHL Study, in which the majority of the identified rules are applicable to both IACs and NIACs: J. M. Henckaerts and L. Doswald-Beck, Customary International Humanitarian Law (CUP 2005), Introduction.
900 Tadić Decision on Interlocutory Appeal, para. 126: “this extension has not taken place in the form of a full and mechanical transplant of [the rules of IAC] to internal conflicts, rather, the general essence of thoses rules, and not the detailed regulation they may contain, has become applicable to internal conflicts”. See also, M. Sassoli, International Humanitarian Law, Rules, Controversies, and Solutions to Problems Arising in Warfare (Edward Elgar 2019), p. 18.
902 See e.g., ICRC Customary IHL Study, Rules 52 and 53 regarding the prohibition of the improper use of military flags, uniforms, and emblems of the adversary, which are applicable to IACs but not NIACs. See D. Fleck, The Handbook of International Humanitarian Law (4th edn, OUP 2021), pp. 59-60.
904 AP I, Article 44(1); D. Fleck, The Handbook of International Humanitarian Law (4th edn, OUP 2021), pp. 59-60.
certain level of intensity."\(^{910}\) These requirements distinguish NIACs from situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence which are not subject to IHL.\(^ {911}\) The determination of these criteria are factual matters to be decided on a case-by-case basis.\(^ {912}\)

### 4.1.1.1.1 ORGANISED ARMED GROUPS

The first criteria that must be established to prove the existence of a NIAC is the presence of a non-State armed group (or groups) that possesses a sufficient degree of organisation.\(^ {913}\) The following indicia may assist in determining whether the armed group(s) satisfy this threshold. These indicators are not individually determinative, meaning that a group may be considered sufficiently organised if only some of the following indicia are met:\(^ {914}\)

- the existence of a command structure and headquarters, the issuing of political statements, and the use of official spokespersons;
- military (operational) capability of the armed group, indicated, for example, by its ability to define a unified military strategy, the use of military tactics, the ability to carry out (large scale or coordinated) operations, the control of territory, and having a division of territory into zones of responsibility;
- logistical capacity of the armed group, indicated by, for example, the existence of a supply chain for military equipment, as well as by the group’s ability to move troops around and to recruit and train personnel;
- the existence of an internal disciplinary system and an ability to implement IHL; and
- the ability of the group to speak with one voice, indicated, for example, by the capacity of the leadership to act on behalf of its members in political negotiations and to conclude agreements, such as cease-fire or peace agreements.\(^ {915}\)

It is also important to note that it is not necessary for armed groups to be as organised as armed forces of a state and many will be “decentralised with less clearly delineated roles and responsibilities or fractious and divided with shifting alliances.”\(^ {916}\) Consequently, as long as the non-State armed groups have sufficient structure to function over time, they may still meet the requisite criterion of organisation.\(^ {917}\) Further, since such groups often operate secretly, their

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\(^{912}\) Limaj Judgement, para. 84. See also Boškoski Trial Judgement, para. 175, Prosecutor v. Rutaganda, ICTR-96-3-T, Judgement, 6 December 1999 ("Rutaganda Trial Judgement"), para. 92.

\(^{913}\) Bemba Trial Judgement, para. 134; Katanga Trial Judgement, para. 1186; Lubanga Trial Judgement, para. 535; Prosecutor v. Jean-Pierre Bemba Gombo, ICC-01/05-01/08, Pre-Trial Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor against Jean-Pierre Bemba Gombo, 15 June 2009 ("Bemba Pre-Trial Decision"), para. 234.

\(^{914}\) Katanga Trial Judgement, para. 705; Katanga Trial Judgement, para. 1186.

\(^{915}\) Prosecutor v. Ongwen, ICC-02-04-01/15, Trial Judgement, 4 February 2021 ("Ongwen Trial Judgement"), para. 2685; Ntaganda Trial Judgement, para. 704; Lubanga Trial Judgement, para. 537; Katanga Trial Judgement, para. 1186; Bemba Trial Judgement, para. 134; Haradinaj Trial Judgement, para. 60. See, Boškoski and Tarčulovski, ICTY-04-82-A, Appeal Judgement, 19 May 2010 ("Boškoski and Tarčulovski Appeal Judgement"), para. 19-24; Boškoski and Tarčulovski Trial Judgement, paras. 199-203, Limaj Judgement, paras. 94–134. Some of these elements have also been applied by the ICC; see Lubanga Trial Judgement, para. 537, Katanga Trial Judgement, 2014, para. 1186, and Bemba Trial Judgement, paras. 134–136.

\(^{916}\) RULAC Geneva Academy, ‘Non-international armed conflict’ (last updated 11 September 2017).

\(^{917}\) RULAC Geneva Academy, ‘Non-international armed conflict’ (last updated 11 September 2017).
exact composition may not be known. Also, while at the outset of an insurgency the above-mentioned criteria may not be fulfilled, they may develop over time.\textsuperscript{918}

\subsection{INTENSITY}

Armed hostilities must reach a level of intensity that goes beyond internal disturbances or tensions to be considered as a NIAC under international law.\textsuperscript{919} Isolated and sporadic acts of violence will not satisfy this threshold,\textsuperscript{920} including acts of banditry, unorganised and short-lived insurrections, and terrorist activities.\textsuperscript{921} Nevertheless, the violence need not be continuous or uninterrupted.\textsuperscript{922} The indicia of intensity are discussed below in Section 4.1.2.2.2 (Intensity).

It is important to note that, traditionally, in situations where there were multiple non-State armed groups fighting against the government’s armed forces, these were considered to be multiple potential NIACs occurring at once, with each requiring separate assessments of intensity.\textsuperscript{923} However, it is now recognised in these situations, that the non-State armed groups can, if certain criteria are met, be considered cumulatively for purposes of assessing intensity, i.e., the actions of all the armed groups can be considered together when assessing whether the intensity criteria has been met. This approach is supported by ICL jurisprudence,\textsuperscript{924} the ICRC\textsuperscript{925} and legal scholarship.\textsuperscript{926}

At the ICC, although the cumulative approach has never been adopted explicitly by the Court, it is clear from an analysis of the jurisprudence that judicial practice has adopted this approach in multiple cases. For example, in the \textit{Katanga} Trial Judgement, the Chamber considered that the intensity requirement was satisfied in respect of violence in the Ituri region of the Democratic Republic of Congo owing to “its duration and the volume of attacks perpetrated throughout the territory of Ituri from January 2002 to May 2003.”\textsuperscript{927} Notably, these attacks were conducted by multiple armed groups and the Chamber appears to have considered them cumulatively for the purposes of the intensity requirement.\textsuperscript{928} Similarly, in the \textit{Bemba} case, there was an armed conflict between the CAR authorities, supported by forces including the MLC (an organised group) and the organised group of General Bozize.\textsuperscript{929} When considering the intensity requirement, it appears that the Trial Chamber took a cumulative approach when assessing the “the forces supporting President Parasse, including the MLC.”\textsuperscript{930} In addition, the ICC OTP as well as various other organisations appear to have taken a cumulative approach when assessing the conflict in Ukraine.\textsuperscript{931} Nonetheless, while the practice of the ICC and other organisations supports the application of the cumulative approach, it does not

\begin{footnotesize}
\begin{enumerate}
\item \textsuperscript{918} RULAC Geneva Academy, ‘Non-international armed conflict’ (last updated 11 September 2017); S. Sivakumaran, \textit{The Law of Non-International Armed Conflict} (OUP 2012), p. 172ff.
\item \textsuperscript{919} \textit{Lubanga} Trial Judgement, para. 538; \textit{Bemba} Decision on the Confirmation of Charges, para. 231; \textit{Katanga} Decision on the Confirmation of Charges, para. 173; \textit{Dordević} Trial Judgement, para. 1522; \textit{Boškoski} Trial Judgement, para. 185.
\item \textsuperscript{920} \textit{Bemba} Trial Judgement, para. 140.
\item \textsuperscript{921} \textit{Lubanga} Trial Judgement, para. 538; \textit{Bemba} Decision on the Confirmation of Charges, para. 231; \textit{Katanga} Decision on the Confirmation of Charges, para. 173; \textit{Dordević} Trial Judgement, para. 1522; \textit{Boškoski and Tarčulovski} Trial Judgement, para. 185.
\item \textsuperscript{922} \textit{Bemba} Trial Judgement, para. 140.
\item \textsuperscript{924} See \textit{Katanga} Trial Judgement, paras. 1212-1217; \textit{Bemba} Trial Judgement, paras. 661-662. However, see, contra: \textit{Lubanga} Trial Judgement, para. 543: “there were a number of simultaneous armed conflicts in Ituri and in surrounding areas within the DRC, involving various different groups. Some of these armed conflicts, which included the UPC, involved protracted violence”.
\item \textsuperscript{925} ICRC, ‘Syria: ICRC and Syrian Arab Red Crescent Maintain Aid Effort amid Increased Fighting’ (17 July 2012).
\item \textsuperscript{927} \textit{Katanga} Trial Judgement, para. 1217.
\item \textsuperscript{928} \textit{Katanga} Trial Judgement, paras. 1217, 464, 466, 467.
\item \textsuperscript{929} \textit{Bemba} Trial Judgement, para. 661.
\item \textsuperscript{930} \textit{Bemba} Trial Judgement, para. 662.
\item \textsuperscript{931} ICC Office of the Prosecutor, ‘Report on Preliminary Examination Activities (2016)’ (2016), para. 168: in determining the existence of a NIAC, the OTP did not distinguish between the different armed groups operating in Eastern Ukraine, stating: Based on the information available it seems that by 30 April 2014 the level of intensity of hostilities between Ukrainian government forces and antigovernment armed elements in eastern Ukraine reached a level that would trigger the application of the law of armed conflict. This preliminary analysis is based on information that both sides used of military weaponry, resources of the armed forces including airplanes and helicopters were deployed by the Ukrainian Government, and there were casualties to military personnel, nongovernment armed elements and civilians. Furthermore, information available indicates that the level of organisation of armed groups operating in eastern Ukraine, including the “LPR” and “DPR”, had by the same time reached a degree sufficient for them to be parties to a non-international armed conflict.”; See also, RULAC Geneva Academy, ‘Non-international armed conflict’ (last updated 11 September 2017); Human Rights Watch, ‘Eastern Ukraine: Questions and Answers about the Laws of War’ (11 September 2014).
\end{enumerate}
\end{footnotesize}
provide clear guidance about when and how this approach should be applied.\textsuperscript{932} The ICRC and academic literature outline various approaches for determining when to adopt a cumulative approach to the assessment of intensity. In the absence of ICL jurisprudence on the matter, these discussions are instructive.

First, to ensure the proper application of the cumulative approach, the ICRC suggests that there must be evidence of “coordination and cooperation” between the groups.\textsuperscript{933} Indeed, it has been suggested that “when several organised armed groups display a form of coordination and cooperation, it might be more realistic to examine the intensity criterion by considering the sum of the military actions carried out by all of them fighting together”.\textsuperscript{934} The ICRC has suggested that this occurs when there are “‘alliances’ or ‘coalitions’ of distinct non-State armed groups that appear to be fighting against a State or a non-State actor”.\textsuperscript{935} This approach has the benefit of establishing a link between the armed groups which is “strong enough to justify connecting the acts of violence that the two are involved in against another party.”\textsuperscript{936} The criteria to assess whether the groups acted in coalition are not set in law, but have been considered within the academic literature.\textsuperscript{937} These are discussed in detail in Section 4.1.2.2.2.1 (Did the Groups Act as a Coalition?), below.

This approach has, however, been critiqued as potentially difficult to apply in practice due to a lack of legal definition of ‘coalition’ in international law, and the fact that coalitions are often inherently fluid and unstable.\textsuperscript{938} Alternatively, it has been suggested that to apply the cumulative approach it should be demonstrated that “the acts of violence by several organised armed groups occur on a geographical and temporal continuum”.\textsuperscript{939} In this respect, it is suggested that the Katanga Trial Judgement, which analysed cumulatively the actions of various armed groups operating in Ituri between January 2002 to May 2003,\textsuperscript{940} “may be indicative of how this approach can be applied.”\textsuperscript{941} Nonetheless, this approach which looks solely at the geographical and temporal nature of the acts of violence could excessively relax the intensity requirement.\textsuperscript{942} Finally, a third approach has been offered where the non-State armed groups are “fighting in the same area and at the same time, against a common enemy, even if they are not party to the same coalition.”\textsuperscript{943}

Considering the above, there is persuasive and authoritative support for utilising a cumulative approach when assessing the intensity requirement in situations involving multiple armed groups. For the purposes of the present Legal Opinion, the ICRC’s approach requirement of a ‘coalition’ to assess the intensity of the actions of numerous shared groups cumulatively will be followed. It is assessed that this is the most persuasive standard to follow in the absence of guidance from ICL jurisprudence.

\textsuperscript{940} Katanga Trial Judgement, para. 1217.
4.1.1.2 INTERNATIONAL ARMED CONFLICT (‘IAC’)

As described more fully above, an IAC exists wherever there is a “resort to armed force between States” The reason for the use of armed force is irrelevant for purposes of classification of an IAC, and an IAC may exist even if one of the Parties to the conflict denies its existence.

4.1.1.2.1 INTERNATIONALISING A NIAC

In addition to the situation where an international armed conflict occurs between two or more States, a NIAC may become international (or, depending on the circumstances, be international in character alongside an internal armed conflict) if: 1) another State intervenes in that conflict through its troops (i.e., direct intervention); or 2) some of the participants in the internal armed conflict act on behalf of that other State (i.e., indirect intervention). These situations are examined in turn below.

4.1.1.2.1.1 DIRECT INTERVENTION IN SUPPORT OF NON-STATE ARMED GROUPS

Where a State intervenes using their armed forces on the territory of another State in support of one or more non-state armed groups against the local government, the nature of the armed confrontation between the intervening State and the territorial State is international (notwithstanding the fact that the NIAC continues to exist between the local government and the armed group(s)). In such situations, the original armed conflict between the non-state armed group and the State remains non-international in character, while a parallel IAC exists between the intervening State and the territorial State.

4.1.1.2.1.2 INDIRECT INTERVENTION: PARTICIPANTS IN THE INTERNAL ARMED CONFLICT ACT ON BEHALF OF THE STATE (‘OVERALL CONTROL’)

When the participants in the NIAC (i.e., the non-state armed group) act on behalf of the intervening State, this will internationalise an internal armed conflict. In such a situation, there will not be parallel non-international and international armed conflicts, but only an IAC between the intervening State and the territorial State, even though one of them is acting through a non-state armed group.

The level of control needed in this situation has been subject to discussion and diverging views. As set out in detail below, the ICI requires the non-state armed group to be ‘completely dependent’ on the State in question or the

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944 See Section 3.1 Classification of the Armed Conflict.
947 ICRC Commentary to Geneva Convention III 2020, Common Article 2, paras. 236, 269, 276. See, H.-P. Gasser, ‘International Humanitarian Law: An Introduction’, in H. Haug (ed.), Humanity for All: The International Red Cross and Red Crescent Movement (Paul Haupt Publishers 1993), pp. 510-511: “any use of armed force by one State against the territory of another, triggers the applicability of the Geneva Conventions between the two States. [...] It is also of no concern whether or not the party attacked resists. [...] As soon as the armed forces of one State find themselves with wounded or surrendering members of the armed forces or civilians of another State on their hands, as soon as they detain prisoners or have actual control over a part of the territory of the enemy State, then they must comply with the relevant convention”. See also, Y. Dinstein, The Conduct of Hostilities under the Law of International Armed Conflict (3rd ed, CUP 2016), p. 1: “The threshold of an international armed conflict (IAC) is crossed automatically once two or more States wage hostilities against each other, irrespective of the intensity or the length of the fighting”. For an opposing view according to which an IAC must meet a certain threshold of intensity, see International Law Association, “Final Report on the Meaning of Armed Conflict in International Law” (2010).
948 Prosecutor v. Tadić, Appeal Judgement, Case No IT-94-1, 15 July 1999 (“Tadić Appeal Judgement”), para. 84; Ntaganda Trial Judgement, para. 726; Ongwen Trial Judgement, para. 2686; Lubanga Trial Judgement, para. 541; Katanga Trial Judgement, para. 1177; Lubanga Decision on the Confirmation of the Charges, para. 209.
950 ICRC Commentary to Common Article 3, para. 438. Note, this only occurs where the State intervenes on the side of the non-state armed forces against the territorial State. Where the State intervenes in support of the territorial State against the non-state armed groups, the conflict remains non-international in character. See also, Ongwen Trial Judgement, para. 2686.
953 See Section 4.3 Applicable Law in Donbas.
State to exercise 'effective control' over the non-state forces in order for the State to incur responsibility for their actions. The latter approach requires that the State not only provide military, financial or other types of assistance, but also supervise the group’s activities, provide specific instructions or directly guide the operations of the group. In contrast, the International Criminal Tribunal for the former Yugoslavia (‘ICTY’) and the ICC utilise the ‘overall control’ test to determine whether an armed conflict not of an international character may have become internationalised due to the involvement of armed forces acting on behalf of another State. Indeed, while the ICTY continues to reject the overall control test as the appropriate test for State responsibility, it has suggested that “[i]nsofar as the ‘overall control’ test is employed to determine whether or not an armed conflict is international [...], it may well be that the test is applicable and suitable”. Consequently, the ‘overall control’ test appears to have become the favoured test when examining whether a NIAC has become internationalised. Indeed, the International Committee of the Red Cross (‘ICRC’) has concluded that “[i]n order to classify a situation under humanitarian law involving a close relationship, if not a relationship of subordination, between a non-State armed group and a third state, the overall control test is appropriate”. The ICC’s Office of the Prosecutor (‘OTP’) has relied on the same concept when examining whether the ‘Russian Federation has exercised overall control over armed groups in Eastern Ukraine’. Accordingly, the present analysis will utilise the ‘overall control’ test as the most persuasive test to determine whether an IAC exists in eastern Ukraine.

The overall control test helps prevent States from evading responsibility in relation to the acts of armed groups that are under their de facto control by “resorting to a superficial restructuring of such forces or by a facile declaration that the reconstituted forces are henceforth independent of their erstwhile sponsors”. It is applicable in respect of organised and hierarchically structured armed groups, including military units, armed bands of irregulars and rebel groups. To be considered under a State’s overall control, the armed group must have in place an organisational structure, a functioning chain of command and a set of internal rules and regulations, as well as outward symbols of authority. When under the overall control of a particular State, such a group would “perforce engage the responsibility of that State for its activities, whether or not each of them was specifically imposed, requested or directed by the State”.

The overall control test requires that the “[controlling] State wields overall control over the group, not only by equipping and financing the group, but also by coordinating or helping in the general planning of its military

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957 Lubanga Trial Judgement, para. 541. See also, Lubanga Decision on the Confirmation of the Charges, para. 211; Katanga Trial Judgement, para. 1178; Prosecutor v. Jean-Pierre Bemba Gombo, Judgement pursuant to Article 74 of the Statute, Case No ICC-01/05-01/08, 21 March 2016 (‘Bemba Trial Judgement’), para. 130; Ongwen Trial Judgement, para. 2687.
959 See e.g., Lubanga Trial Judgement, para. 541: “As regards the necessary degree of control of another State over an armed group, acting on its behalf, the Trial Chamber has concluded that the ‘overall control’ test is the correct approach. See also, Katanga Trial Judgement, para. 1178; Bemba Trial Judgement, para. 130; Ongwen Trial Judgement, para. 2687; Tadić Appeal Judgement, paras. 97, 145; Blaškić Trial Judgement, paras. 100-101; Aleksovski Appeals Judgement, para. 134; Delalić et al. Appeals Judgement, paras. 20; Prlić et al. Appeal Judgement, Vol. 1, para. 238.
960 ICRC 2020 Commentary to Common Article 3, para. 443.
962 Tadić Appeals Judgement, para. 154.
963 Tadić Appeals Judgement, paras. 120, 122, 123, 131, 137; Prlić et al. Appeals Judgement, Vol. 1, para. 322. It should be noted that a different test applies private individuals or a group of private individuals (namely, the State exercises control over the individuals: see Tadić Appeal Judgement, paras. 117, 118).
964 Tadić Appeals Judgement, para. 120.
965 Tadić Appeals Judgement, para. 122.
activity”. This goes beyond mere provision of financial assistance or military equipment or training or coordination of political or military activities that would normally occur between allies, which would not suffice to meet this test. Rather, the requisite threshold of control would be met if the State “has a role in organising, coordinating or planning the military actions of the military group, in addition to financing, training and equipping or providing operational support to that group”. That being said, to establish overall control, it is not required for the State in question to give specific orders or instructions or to direct the military operations conducted by the group. Thus, the threshold of control that must be met under the ‘overall control’ test is less stringent than the ‘effective control’ test.

The question as to whether the required degree of control under the overall control test is met is assessed considering all the elements of control taken as a whole. The following is a non-exhaustive list of elements of control that may be indicative of a State’s overall control over an armed group:

- The State’s direct intervention in territory that is controlled by the armed group;
- Shared goals between the State and the armed group;
- Transfer of officers from the State to the non-state armed forces (i.e., personnel sharing);
- The State’s direction and supervision of the armed group;
- Similarities between the military ranks and structures of the State and the armed group;
- Financial assistance, particularly if the State pays the wages of the members of the armed group;
- Logistical support (including supply of arms and materiel, intelligence sharing, and building roads and infrastructure); and
- Training the members of the armed group.

4.1.2 ASSESSMENT

The following sections will consider whether a NIAC and/or an IAC has occurred on the territory of Ukraine since November 2013. In particular, the sections will assess: 1) whether there was an armed conflict (either NIAC or IAC) during the Euromaidan protests between November 2013 and February 2014; 2) whether there was a NIAC between the non-state armed groups and Ukraine in eastern Ukraine and when it commenced or ended, if applicable; and 3) if, and when, the armed conflict in eastern Ukraine became international on account of either: a) Russia’s direct intervention, or b) Russia’s indirect intervention through its overall control over the non-state armed groups.
4.1.2.1 (IN-)EXISTENCE OF ARMED CONFLICT IN EUROMAIDAN

The ICC OTP has concluded that “[t]here is no information suggesting the existence of an armed conflict in Ukraine during the period from 21 November to 22 February 2014.” 980 This conclusion is non-controversial and no information has surfaced to place this conclusion in doubt. Accordingly, the question of whether an armed conflict existed during the Euromaidan events will not be considered in detail. Nonetheless, the following will outline the primary factors that underpin the decision not to proceed further in this Legal Opinion with a detailed analysis of whether the Euromaidan protests amounted to an armed conflict.

In relation to whether there was a NIAC, there is insufficient indication that the requirements of organisation or intensity could be met. The anti-government protesters cannot be described as an organised armed group. They did not have a hierarchical command structure, nor the ability to define a unified military strategy or implement IHL. 981

Second, the violent acts and armed clashes were relatively low in number and occurred in a sporadic and isolated fashion over four months (between November 2013 and February 2014). 982 The Ukrainian government did not employ its military units to fight off the protesters, which indicates that it regarded the protests as a matter of law enforcement rather than an armed conflict. 983 Neither the civilian protestors, nor the police units used any high-grade military

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981 Shmorgunov and Others v. Ukraine, App no 15367/14, [ECH, 21 January 2021], para. 12; N. Shapovalova, ‘From the Square to Politics After Ukraine’s Euromaidan Protests’ (Carnegie Europe 2019); Euromaidan Press, “A timeline of the Euromaidan revolution” (19 February 2016).
982 The first clashes with the police took place during the pro-EU protest on 24 November 2013. Several hundred protesters who went in the direction of the Ukraine’s government building to demand the resignation of the authorities clashed with police officers. On 30 November 2013, several hundred activists who remained on Maidan square were forcefully dispersed by the special police unit ‘Berkut’ (‘Berkut’), which beat the protesters with batons, chased them, sprayed teargas and threw light-and-noise grenades. A month and a half later, on 19 January 2014, the protesters clashed with Berkut police officers using Molotov cocktails, sets and wooden sticks. On 22 January 2014, two Euromaidan protesters were killed during the clashes. Several other protesters died later in a hospital. During this period the protesters in mostly western Ukrainian regions began seizing or blocking administrative buildings. The next wave of clashes took place in the second half of February 2014. On 18 February 2014, the protesters marched towards the parliament building – that day the Parliament was planning to vote on the restoration of the Constitution of 2004 (which was abolished by Yanukovych’s regime in 2010). There were clashes between the protesters and the police force as well as titушки stationed in a park nearby. By midday three protesters and one employee of the Party of Regions’ office (not involved in the protest) died as a result of clashes. By 5 p.m. the police managed to push the protesters to the Independent ‘Maidan’ square and surround them. Police notified that two of its officers were killed and 18 received firearms wounds. By 8 p.m. the storming of Maidan square commenced. During the night of 18-19 February 2014, the opposition leaders held negotiations with Yanukovych. No agreement was reached. At 6 a.m. the Kyiv authorities notified that as a result of clashes 25 individuals were dead and 241 hospitalised. In the morning of 20 February 2014, the fighting resumed. The Ministry of Internal Affairs notified that its 23 officers were injured by snipers located in the Conservatory building (close to Maidan). The Euromaidan activists also claimed to have been fired at from the Conservatory building. The Maidan representatives stated that more than 60 protesters were killed that day. During the night from 20 to 21 February 2014, negotiations between the Ukrainian President and the Ukrainian opposition with the mediators from the EU and Russia were conducted. As a result, an Agreement on settlement of the political crisis in Ukraine was signed on 21 February 2014. In the evening of 21 February 2014, information appeared that the representatives of power including Viktor Yanukovych were fleeing Kyiv. On 22 February 2014 in the absence of Yanukovych in Kyiv, the Ukrainian Parliament adopted a resolution dismissing Viktor Yanukovych from power, and appointed Oleksandr Turchinov, a member of the opposition party, an acting President. See, Shmorgunov and Others v. Ukraine, App no 15367/14, [ECH, 21 January 2021], para. 16; Ukrainian Institute of National Memory, ‘Information materials commemorating the Heavenly Hundred Heroes Day’ (20 February 2020); L. Khreuska, “Five years after Maidan killings: How far is the investigation?” (Dw, 19 February 2019); D. Korol, “The History of Euromaidan” (Insider); P. Vyshyba, “between slavery and independence. 18-22 February 2014” (istorychno Prouda, 18 February 2015); V. Chervonenko, “What the “anti-terrorist operation” is” (BBC News, 19 February 2014); Texty, “The reconstruction of 20 February 2014 Maidan shootings. 45 protesters and 2 policemen killed” (VIDEO) (20 February 2017); Decision of the Verkhovna Rada of Ukraine No. 740-VII ‘On condemnation of the violence resulting in the deaths’ (20 February 2014); OSCE-OHDHR, ‘Opinion on 16 January amendments’ (10 February 2014), p. 4; Euromaidan Press, ‘A timeline of the Euromaidan revolution’ (19 February 2016); T. Bohodanova and T. Lokot, ‘Ukraine’s new law cracks down on free speech, protests and the Internet’ (The World, 18 January 2014).
983 If with 747 attacks and provocations (including 259 attacks against civilians and 488 against police forces) carried out by Maydan activists between 18 January 2014 and 22 February 2014, information appeared that the representatives of power including Viktor Yanukovych were fleeing Kyiv. On 22 February 2014 in the absence of Yanukovych in Kyiv, the Ukrainian Parliament adopted a resolution dismissing Viktor Yanukovych from power, and appointed Oleksandr Turchinov, a member of the opposition party, an acting President. C.F. with 747 attacks and provocations (including 259 attacks against civilians and 488 against police forces) carried out by Maydan activists between 18 January 2014 and 22 February 2014, information appeared that the representatives of power including Viktor Yanukovych were fleeing Kyiv. On 22 February 2014 in the absence of Yanukovych in Kyiv, the Ukrainian Parliament adopted a resolution dismissing Viktor Yanukovych from power, and appointed Oleksandr Turchinov, a member of the opposition party, an acting President. See, Shmorgunov and Others v. Ukraine, App no 15367/14, [ECH, 21 January 2021], para. 16; Ukrainian Institute of National Memory, ‘Information materials commemorating the Heavenly Hundred Heroes Day’ (20 February 2020); L. Khreuska, “Five years after Maidan killings: How far is the investigation?” (Dw, 19 February 2019); D. Korol, “The History of Euromaidan” (Insider); P. Vyshyba, “between slavery and independence. 18-22 February 2014” (istorychno Prouda, 18 February 2015); V. Chervonenko, “What the “anti-terrorist operation” is” (BBC News, 19 February 2014); Texty, “The reconstruction of 20 February 2014 Maidan shootings. 45 protesters and 2 policemen killed” (VIDEO) (20 February 2017); Decision of the Verkhovna Rada of Ukraine No. 740-VII ‘On condemnation of the violence resulting in the deaths’ (20 February 2014); OSCE-OHDHR, ‘Opinion on 16 January amendments’ (10 February 2014), p. 4; Euromaidan Press, ‘A timeline of the Euromaidan revolution’ (19 February 2016); T. Bohodanova and T. Lokot, ‘Ukraine’s new law cracks down on free speech, protests and the Internet’ (The World, 18 January 2014).
984 C.F. with 747 attacks and provocations (including 259 attacks against civilians and 488 against police forces) carried out by an armed group over a period of five months. Prosecutor v. Milutinović et al., IT-05-87-T, Judgement, 26 February 2009 ([Milutinović et al. Trial Judgement], para. 818, fn. 2140; C.F. also with the Haradinaj et al. Trial Judgement, paras. 98-99). C.F. 985 with 747 attacks and provocations (including 259 attacks against civilians and 488 against police forces) carried out by an armed group over a period of five months. Prosecutor v. Milutinović et al., IT-05-87-T, Judgement, 26 February 2009 ([Milutinović et al. Trial Judgement], para. 818, fn. 2140; C.F. also with the Haradinaj et al. Trial Judgement, paras. 98-99). C.F. 985 with 747 attacks and provocations (including 259 attacks against civilians and 488 against police forces) carried out by an armed group over a period of five months. Prosecutor v. Milutinović et al., IT-05-87-T, Judgement, 26 February 2009 ([Milutinović et al. Trial Judgement], para. 818, fn. 2140; C.F. also with the Haradinaj et al. Trial Judgement, paras. 98-99).
equipment, weaponry or munitions during the clashes.\textsuperscript{984} As neither the organisational or intensity requirements of a NIAC have been met, the protests did not evolve beyond situations of internal disturbances and tensions.\textsuperscript{985}

In relation to whether there was an IAC, the information is insufficient to indicate a resort to armed force between States. While some claim that the Russian Special Forces were involved in the planning and coordination of the Euromaidan protests,\textsuperscript{986} these claims cannot be substantiated and consequently cannot establish the Russian Federation’s military involvement in the events. Moreover, any involvement of RF AF or its agents, if indeed proven, appears to have occurred with the consent of (part of) the government at the time (i.e., Yanukovych’s government).\textsuperscript{987}

Indeed, available evidence suggests that Ukrainian authorities met with their Russian counterparts, accommodated them in Kyiv, received aid in the form of necessary equipment and consulted with them on matters concerning Euromaidan and the shooting of civilians.\textsuperscript{988} Consequently, there is insufficient evidence to establish the existence of an IAC because: a) there is insufficient clear and convincing evidence to prove that Russia used their armed forces on the territory of Ukraine, and b) regardless, there is evidence that Ukraine consented to, or requested, Russia’s involvement in this period, meaning an IAC would not exist, provided the intervention stayed within the limits delineated by Ukraine and its consent was not withdrawn.

\textsuperscript{984} C.I. Boškoski, Trial Judgement, paras. 19-24, 185, 243; Limaj et al., Trial Judgement, para. 164; Haradinaj, Trial Judgement, para. 1522; Rome Statute, Article 8(2)(f); Lubanga, Trial Judgement, paras. 534-536, 538; Bembé, Decision on the Confirmation of Charges, para. 231; Lubanga Decision on the Confirmation of Charges, para. 173.

\textsuperscript{985} Tadić, Trial Judgement, para. 562; Haradinaj, Trial Judgement, para. 38; Dordević, Trial Judgement, para. 1522; Boškoski, Trial Judgement, para. 185; Lubanga, Trial Judgement, para. 538; Bembé Decision on the Confirmation of Charges, para. 231; Lubanga Decision on the Confirmation of Charges, para. 173; ICC Office of the Prosecutor, “Report on Preliminary Examination Activities” (12 November 2015), para. 89.

\textsuperscript{986} BBC News, “Kyiv: last year Maidan shootings were governed from Moscow” (20 February 2015); NikVesti, “Orders on Maidan shootings were issued by Yanukovych, Tymoshenko” (21 February 2015); Interfax-Ukraine, “Turchynov: Ukraine has the materials the FSB involvement to the Maidan shootings” (20 February 2015); BBC News, “Maidan killings: the law enforcement officers state the FSB trail” (3 April 2014); LB, “FSB of RF participated in the Maidan mapping-up special operation blueprint, - SSU (video)” (3 April 2014); BBC News, “SSU: ‘Russian interference started from the Maidan’” (4 April 2014); Y. Havrylov, “Russian military interference started on Maidan. - the SSU Head spoke on the FSB’s sabotage” (SSU, 5 April 2015); D. Tymchuk, “Dmytry Tymchuk: FSB presence in Ukraine on February 20–23” (Voices of Ukraine, 5 April 2014); V. Roschchyna, “The FSB officers are involved to the Maidan shootings – Nalyvaichenko” (Hromadske, 7 February 2018).

\textsuperscript{987} The main theories regarding Russia’s participation related to its role in the armed assault on protesters on 18-20 February 2014. The alleged forms as degree of Russia’s involvement vary. Former Ukrainian president stated that Ukrainian ‘Alpha’ officers testified that the then advisor to the Russian President, Vladislav Surkov, who had visited Ukraine on several occasions that winter, had personally commanded the foreign groups of snipers on Maidan and that Viktor Yanukovych planned the shooting on Maidan together with the representatives of the Russian special services. Former Ukrainian Head of the National Security and Defence Council Oleksandr Turchynov stated that the order [to open fire at protesters] was factually given by Yanukovych through the Minister of Internal Affairs and the Head of the SSU, and that the senior FSB RF officers consulted them on the matter.

Another allegation was expressed by the then Head of the SSU Valentyn Nalyvaichenko. He stated that in December 2013, as well as January and February 2014, command posts for Russian generals were deployed in Ukraine on the SSU training grounds. The Russians came in two groups: the first group consisted of 26 Russian security officers, and the second - of 6. Yakimenko, the head of the SSU during Yanukovych’s presidency, reported to them several times. Moreover, the Russian colonel-general Beseda who was present on the territory of Ukraine on 20-21 February 2014 had repeatedly summoned the then SSU Head Oleksandr Yakimenko for a report. According to another source, during his trip to Ukraine on 20 February 2014, Beseda who headed the ‘Intelligence’ Fifth Service of the FSB was accompanied in Kyiv by Vladislav Surkov and around 30 FSB, GRU and General Staff of Armed Forces officers. According to the same source, in Kyiv airport Beseda was met by a SSU representative. According to Nalyvaichenko’s testimonies in the criminal case against Yanukovych, there were three FSB groups (1st group – 30 individuals; 2nd group – 6 individuals; 3rd group – 7 individuals). Moreover, according to him, representatives of the Russian FSB were present on Maidan. They allegedly gathered near Zhitomir Palace and covered Russian chevrons with Ukrainian ones. The representative of the General-Prosecutor’s office mentioned in his interview that Russia delivered to Ukraine a ‘humanitarian aid’ in the form of light and noise grenades, tear gas and other similar equipment. This statement was corroborated by Nalyvaichenko. Ukrainian politician and the then member of Parliament Hennadiy Moskal claimed that the assistance in the preparation of an operation of the Ministry of Internal Affairs and the SSU against the protesters was provided by the former first deputy of the GRU of the Russian Federation, who lived in the Kyiv hotel (his accommodation and meals were paid for by the SSU). See BBC News, “Kyiv: last year Maidan shootings were governed from Moscow” (20 February 2015); BBC News, “Maidan killings: the law enforcement officers state the FSB trail” (3 April 2014); Y. Havrylov, “Ukraine wants to interrogate the FSB General present in Ukraine on 20-21 February” (ZN, 4 April 2014); Y. Antonova, “Poroshenko accused Surkov in Maidan snipers coordination” (RBC, 20 February 2015); Current Time, “Poroshenko: Surkov coordinated the Maidan snipers” (20 February 2015); Interfax-Ukraine, “Turchynov: Ukraine has the materials the FSB involvement to the Maidan shootings.” (20 February 2015); Interfax-Ukraine, “Yanukovych and former heads of SSU and MIA must explain the presence of FSB officials in Ukraine during the interrogation, - Nalyvaichenko” (5 April 2014); Insider, “Nalyvaichenko: the law enforcement officials have the sanction to arrest Yakymenko” (4 April 2014); LB, “FSB of RF participated in the Maidan mapping-up special operation blueprint, - SSU” (3 April 2014); BBC News, “SSU: ‘Russian interference started from the Maidan’” (4 April 2014); Y. Havrylov, “Russian interference started on Maidan, - the SSU Head spoke on the FSB’s sabotage” (SSU, 5 April 2015); Hromadske, “During the Yanukovych regime the FSB officers came to Ukraine three times, - Nalyvaichenko” (7 February 2018); Revolution of Dignity Museum, “Information materials commemorating the Heavenly Hundred Heroes Day” (20 February 2016), p. 26.

The above claims lack more detailed information as to the role of the Russian state agents in an offensive against Ukrainian citizens as well as the basis for their involvement in Ukrainian events. At the same time, it appears that whatever tasks the Russian representatives performed in Ukraine, the then Ukrainian authorities were fully aware of and participated in the Russian agents’ activities. In particular, according to all the above versions of events the Russian representatives acted in cooperation with the Ukrainian top authorities who met with them, accommodated them in Kyiv, received aid in the form of the necessary equipment from them and consulted with them on matters concerning Euromaidan and the shooting of civilians. In such a case, the alleged participation of Russia in crimes against Ukrainian citizens on Maidan cannot amount to IAC since military assistance on request of official authorities cannot be qualified as IAC.

\textsuperscript{988} BBC News, “Kyiv: last year Maidan shootings were governed from Moscow” (20 February 2015); BBC News, “Maidan killings: the law enforcement officers state the FSB trail” (3 April 2014); LB, “FSB of RF participated in the Maidan mapping-up special operation blueprint, - SSU” (3 April 2014); BBC News, “SSU: ‘Russian interference started from the Maidan’” (4 April 2014); Revolution of Dignity Museum, “Information materials commemorating the Heavenly Hundred Heroes Day” (20 February 2016), p. 26; Ukrainka Pravda, “The names and plans of organisers those involved in killings were published” (24 February 2014).
Accordingly, the existence clearly points away from the existence of a NIAC or IAC during the Euromaidan protests between November 2013 and February 2014 and will not be considered further. The following sections will consider whether there was a NIAC or IAC in eastern Ukraine between February 2014 and the present day.

4.1.2.2 EXISTENCE OF A NON-INTERNATIONAL ARMED CONFLICT IN EASTERN UKRAINE

The following sections will consider: (i) if, and when, the non-state armed group(s) operating in Ukraine are sufficiently organised; and (ii) if, and when, the hostilities reached a sufficient level of intensity to trigger a NIAC.

4.1.2.2.1 ORGANISATION

The process of the D/LPR protest groups formalising into organised armed groups took many months. Over the course of the protests and hostilities, the groups developed from unorganised protest groups, into armed groups with decentralized roles and responsibilities, and then into a formalised army with a clear command structure. Nonetheless, due to their designation as ‘terrorist groups’ by Ukraine and the inaccessibility of the territory to Ukraine and others, these groups were shrouded in secrecy, making their exact composition difficult to assess. Consequently, as the following sections will show, the armed groups’ military capacity, including their ability to conduct significant military activities and control territory from around mid-April in Donetsk and the end of April in Luhansk, is more instructive when assessing their organisation. Moreover, the ability of the armed groups to conduct significant military activities and control territory over time is underpinned by other indicators of organisation including developing command structures, the ability to recruit and train personnel, and the supply and use of increasingly sophisticated weaponry.

The following sections will analyse: 1) the creation and/or arrival of separate armed groups in the Donetsk and Luhansk oblasts, which operated between March and June 2014; and 2) the formalisation of a single command structure from July 2014 onwards.

4.1.2.2.1.1 THE CREATION OF ARMED GROUPS IN THE DONBAS: MARCH TO JUNE 2014

4.1.2.2.1.1 DONETSK REGION

From early-April 2014, the main groups operating in the region of Donetsk: Girkin’s Group (between April and August 2014); the Bezler Group (between April and October 2014); the Vostok Battalion (previously known as the Patriotic Forces of Donbas) (between March and July 2014); and Battalion ‘Oplot’ (between April 2014 and winter 2014-2015). These groups were collectively referred to as D/LPR’s army or ‘People’s Militia of Donbas’. Each will be considered in turn below.

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990 RULAC Geneva Academy, ‘Non-international armed conflict’ (last updated 11 September 2017).

991 Information provided by the Government of Ukraine; Battle for Ukraine YouTube Channel, ‘Girkin in Slavyansk. Russian saboteurs began to seize the cities of Donbas - April 12, 2014’ (4 May 2019); V. Khrypun, ‘Donbas militant groups: Who is fighting against whom’ (Insider, 3 July 2014).

992 Information provided by the Government of Ukraine; V. Khrypun, ‘Donbas militant groups: Who is fighting against whom’ (Insider, 3 July 2014); N. Medvedeva, ‘Tortured and killed people: The leader of Russian militants Bezler will be tried in absentia’ (Liga News, 2 August 2021).

993 Information provided by the Government of Ukraine; V. Khrypun, ‘Donbas militant groups: Who is fighting against whom’ (Insider, 3 July 2014); Y. Shevalier, ‘What is the Vostok battalion and to whom is it subordinate?’ (Argumenty i Fakty, 10 July 2014).


995 For example, on 12 April 2014, Girkin’s Group was referred to as the ‘People’s Militia of Donbas’: Vesti, ‘Protests in the South-East of Ukraine: law enforcement switches sides to join people’ (12 April 2014); Korrespondent, ‘Everything is under control. Geography of Donbas capture’ (15 April 2014). On 14 April 2014, the groups operating in Horlivka, Kramatorsk and Mariupol were also described as the ‘People’s Militia of Donbas’: S. Reyier, I. Petrov et al., ‘Slavyansk Uprising: where did the “militia” come from in south-eastern Ukraine’ (RBC, 14 April 2014).
It is recognised that there were other smaller and less organised groups that operated during this period, including the ‘the People’s Militia of Donbas’ led by Pavlo Hubaryov,996 the Kalmius brigade,997 and the Russian Orthodox Army.998 However, due to a lack of information pertaining to their organisation, these groups will not be considered further.999

4.1.2.2.1.1.1 Girkīn’s Group

‘Girkīn’s group’ was created in early 2014 in Crimea by Igor Girkīn (also known as Strelok),1000 who was alleged to be a retired Russian FSB officer.1001 The group first arrived in Donbas at night on 11-12 April 2014.1002

From 12 April 2014, Girkīn’s group had sufficient military capacity to overtake and control territory. Their first takeover occurred on 12 April 2014, when approximately 52 men under Girkīn’s command seized control over Sloviansk.1003 It remained under their control until 5 July 2014.1004 A witness to the events in Sloviansk recalled that Girkīn’s group was “obviously an organised group of people which already knew that there would be an actual seizure”.1005 In April-May 2014, Girkīn’s group also seized control over Druzhkivka, Kramatorsk, Kostyantynivka, Lyman, Bakhmut.1006

Girkīn’s group also participated in significant military operations against the Ukrainian forces, displaying an ability to formulate and implement military strategies. For example, on 13 April 2014, a group of about 30 militants from Girkīn’s group attacked the State Security Service of Ukraine (‘SSU’) and UAF forces.1007 An intercepted phone conversation from 13 April 2014 provides evidence of Girkīn giving orders to a subordinate, named ‘Agat’, to establish surveillance on each of the five roads which could be used by the Ukrainian side to attack Girkīn’s group.1008 After Agat complained that he did not have enough men for the task, Girkīn responded that he would send reinforcements.1009 From the

996 Radio Svoboda, ‘In Donetsk, the People’s Militia issued an ultimatum to local authorities’ (28 February 2014); BBC News, ‘Slavyansk’s “militia” showed the released Hubaryov’ (8 May 2014).
997 Stopterror, “Separate Kalmius Artillery Brigade, military unit 08802” (24 October 2015); M. Bushuev, ‘To Donbas for 150 euros: the story of a mercenary from Germany’ (DW, 7 November 2019); Defence Intelligence of the Ministry of Defence of Ukraine, ‘Russia’s armed aggression against Ukraine. Features of the deployment and activities of Russian occupation forces in eastern Ukraine’; Octrov, ‘The Russian deputy reported the death of “Commander” Kalmius. The militant became famous for shelling Donbas’ (9 September 2016).
998 V. Malshev, ‘Novorossiya Liberation Brigade’ (Novaya Gazeta, 2 July 2014); RFI, ‘The “Russian Orthodox Army” of the DPR holds the priest hostage’ (8 July 2014); L. Kupriyanova, ‘In the footsteps of Donbas terrorists: who is fighting on the side of the DPR?’ (DW, 17 July 2014).
999 Information provided by the Government of Ukraine; Stopterror, ‘The Russian Orthodox Army of the so-called Donetsk People’s Republic’ (17 November 2015). See e.g., Krym.Realii, ‘Killed, freed and “consultants”: leaders of the “Russian Spring” in Donbas’ (5 September 2018); LB, ‘A DPR field commander was shot dead in Donetsk’ (27 March 2015).
1000 See Section 4.1.2.3.2.4.2 Igor Girkīn.
1001 G. Aleksandrov, ‘Five years ago, the bloodiest war in Europe of the 21st century began in Donbas. Medusa tells how it ended for the separatist leaders’ (Medusa, 26 May 2019); Zavtra, ‘Who are you, Strelok?’ (20 November 2014); S. Loiko, ‘The Unraveling Of Moscow’s ‘Novorossia’ Dream’ (RF/E/R, 1 June 2016).
1002 O. Pylypenko, ‘Strelok told in detail how he secretly crossed the border to capture Sloviansk’ (6262.com.ua, 19 February 2016); DonPress, “‘Understood that they will not pass further’: Surkov told how Girkīn found himself in Sloviansk” (8 July 2021); DonPress, “‘There would be no war’: Kazansky published Girkīn’s confessions about the capture of Sloviansk” (12 April 2021).
1003 See Section 4.1.2.2.2.1.1 Serious and Frequent Armed Clashes and Control of Territory in Donetsk.
1004 C. Miller, S. Dobrynin and M. Krutov, ‘Executioners of Slavyansk’ (Radio Svoboda, 23 July 2020); T. Yarmoschuk, “‘When we went to Slavyansk, we were covered by Crimean euphoria’ – Girkīn’ (Krym.Realii, 21 January 2016); Ukrainska Pravda, ‘Strelok told why he came to Slavyansk’ (11 November 2014).
1005 Information provided by Vostok SOS; Ukrainska Pravda, ‘Strelok told why he came to Slavyansk’ (11 November 2014); N. Tyden, ‘Girkīn spoke about the plan for the occupation of Donbas and the role of Russia in it’ (ZN, 11 November 2014); A. Ponomarev, ‘Strelok explained the impossibility of his return to Donbas’ (Republic, 11 November 2014).
1006 Information provided by the Government of Ukraine; Y. Pavlik, ‘The city from which the war began. The leading role goes to…’ (UHHRU) (2019), pp. 11-14; O. Harbar and others, Armed Conflict in Ukraine: Military Support of Illegal Armed Formations ‘OMER’ and ‘LPR’ by Russian Federation’ (UHHRU) (2018), p. 8; Information provided by Vostok SOS; A. Majorova (ed.), Donbas in Flames: Prometheus 2017, p. 35; Ukrainian Institute of National Memory, ‘To the 5th anniversary of the beginning of the armed aggression of the Russian Federation against Ukraine’ (27 February 2019); C. Miller, S. Dobrynin and M. Krutov, ‘Executioners of Slavyansk’ (Radio Svoboda, 23 July 2020); BBC News, ‘Ukraine gunmen seize buildings in Slovyansk’ (12 April 2014); BBC News, ‘Ukraine crisis: Casualties in Slovyansk gun battles’ (13 April 2014); LB, ‘Geography and chronicle of the separatists’ capturing Donbas’ (12 April 2014); Zavtra, ‘“Who are you, Strelok?” (20 November 2014); V. Khrypun, ‘Donbas militant groups: who is fighting against whom’ (Insider, 3 July 2014); Soi Donbaski YouTube Channel, ‘Strelok: I: why Artymovsk and the weapons depots in Soledar (ArtynomSol) were not captured’ (10 September 2015); O. Bilinsky and Y. Pilsky, ‘Mayor of Artemivsk: “During the DPR times, we loaded tanks for the Armed Forces of Ukraine.”’ (L.B, 7 August 2015); H. Avakian, ‘7 years of Bakhmut’s freedom’ (Svisti.City, 7 July 2021); Justice for Peace in Donbas Coalition, ‘Prisons and torture rooms in Konstantinovsky: Basement of the City Council’ (3 March 2016).
1007 Ukrainska Pravda, ‘SSU found out everything about the assistant of “Strelok”. Preparing to arrest’ (2 May 2014); N. Dym, “At first I thought it was airsoft.” Three years of war in Donbas: the first fight, violated the law, the loss’ (Novynarnia, 13 April 2017).
1008 SSU YouTube Channel, ‘CIA Slavyansk 14 04 14’ (14 April 2014), starting at 2:12.
1009 SSU YouTube Channel, ‘CIA Slavyansk 14 04 14’ (14 April 2014), starting from 2:12.
official beginning of the Ukrainian Anti-Terrorist Operation (ATO) on 14 April 2014. Girkin’s group was engaged in fighting with the UAF in the Sloviansk-Kramatorsk area.

The organisation had a rudimentary command structure, with Girkin serving as the overall commander and a Russian citizen nicknamed ‘Abver’ as Girkin’s right-hand man. Girkin established his staff in the SSU building in Sloviansk, which began operating as the group’s headquarters and was also used to detain Ukrainians suspected by Girkin of pro-Ukrainian sentiments. From 16 May until his removal to Russia on 14 August 2014, Girkin was the DPR’s Minister of Defence. As Minister of Defence, Girkin testified that he was responsible for coordinating the actions of the DPR armed forces, military operations, and the formation of the headquarters and administration of the DPR Ministry of Defence. After the appointment of Girkin, Borodai (DPR’s then prime minister) stated that Girkin was “the chief commanding officer” and that a “strict chain of command [would] be established in all armed units”. From summer 2014, the State Security Service of Ukraine (‘SSU’) allege that FSB Colonel ‘Elbrus’ acted as Girkin’s deputy. There is some evidence that Girkin maintained strict discipline with internal disciplinary measures in place.

Girkin’s group also had the logistical capacity to recruit and train personnel, including many from Russia. Vyachalsév Ponomaryov, the ‘self-proclaimed major’ of Sloviansk, claimed that in April 2014, Girkin already had up to 1,200 fighters that had joined from five towns (Sloviansk, Kostyantynivka, Lyman, Druzhkivka, Kramatorsk). By July 2014, Girkin had approximately 3,000-3,500 fighters under his command. According to Girkin, many fighters in his group had combat experience and evidence from a volunteer militant suggests that Girkin’s and Bezler’s personnel

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1010 See Section 4.1.2.2.2.1.1 Serious and Frequent Armed Clashes and Control of Territory in Donetsk.
1013 Ukrainian Pravda, ‘SSU found out everything about the assistant of “Strelko. Preparing to arrest’ (2 May 2014); P. Zayats, ‘SSU identified ‘Abver’, one of the key saboteurs of the Strelkov group’ (DN 2 May 2014).
1014 C. Miller, S. Dobrynin and M. Kruto, ‘Executioners of Slavyansk’ (Radio Svoboda, 23 July 2020); S. Horbatenko, ‘“This shame is in our heads.” How the Russians captured Slavyansk’ (Krym.Realii, 12 April 2021).
1015 P. Kanygin, ‘We were wrong. They promised us… But they themselves luxuriate’ (Novaya Gazeta, 7 July 2014); S. Horbatenko, ‘“This shame is in our heads.” How the Russians captured Slavyansk’ (Krym.Realii, 12 April 2021).
1016 According to Girkin, he left the leadership of the DPR as a result of pressure from the Kremlin stating that he “was threatened that the supplies from Russia would be stopped, and no fight is possible without the supplies”; The Nemtsov Report (2019), p. 8.
1017 See Section 4.1.2.2.4.4.2 Igor Girkin. See also, Y. Polukhina, ‘Inglorious hybrids’ (Novaya Gazeta, 17 July 2020); Interfax, ‘IFI found replacement for Defense Minister Strelok’ (14 August 2014).
1019 M. Tsetsevskih, ‘After Slaviansk’s fall, splits open in Ukraine rebel ranks’ (Reuters, 8 July 2014); V. Degrachov, “It was pointless to hold Slaviansk” (Gazeta.ru, 7 July 2014).
1020 SSU, ‘New details in the “Shaitanov case”: his recruiter from the FSB led terrorists in Donbas’ (9 July 2020), starting at 1:11.
1021 S. Walker, ‘Russia’s “valiant hero” in Ukraine turns his fire on Vladimir Putin’ (Guardian, 5 June 2016); Yugopolis, ‘Strelkov denied rumors about the shooting of the former “people’s mayor” of Slavyansk’ (17 July 2014); Ukrainska Pravda, ‘Strelkov ordered to shoot two of his accomplices - media’ (26 May 2014).
1024 O. Harobar and others, ‘Armed Conflict in Ukraine: Military Support of Illegal Armed Formations ‘DPR’ and ‘LPR’ by Russian Federation’ (UHHRU 2018), p. 40. Other sources indicate that Girkin had around 1,500 fighters, see V. Khrypun, ‘Groups of militants of Donbas: who is at war with whom’ (Insider, 3 July 2014); A. Nikonovsky, ‘Alexey Nikonovsky: Why the Ukrainian army stormed Slaviansk for two months’ (Vedomosti, 8 June 2014).
1025 Information provided by the Government of Ukraine; Komsomolskaya Pravda YouTube Channel, ‘Exclusive ‘KP’: Commander of Slaviansk’s self-defense detachment Igor Strelkov opened his face today’ (26 April 2014).
1026 See Section 4.1.2.2.1.1.2 Bezler’s Group.
underwent military training in Syvatohirsk and Sloviansk. According to Oleksandr Mozhovyi, Girkin's men underwent training at the People’s Militia camp prior to being sent to Sloviansk.

In addition, other groups became subsumed under Girkin’s command from May onwards. For instance, after talking to Girkin, Sergey Dubinsky went to Sloviansk where he created an intelligence service (with at least 1,000 members) which reported to Girkin. Dubinsky subsequently headed the intelligence service, with Oleg Putilov as the deputy head.

There is evidence, primarily from Girkin himself, that the group lacked sufficient weaponry throughout April 2014. This evidence is not convincing. To the contrary, photographic evidence confirms that already on 12 April 2014, Girkin’s group was well-equipped and armed with significant quantities of weaponry. Moreover, on 14 April, during operations against the UAF in Sloviansk, Girkin’s group seized six units of armoured vehicles, as well as other heavy weaponry. In May 2014, they obtained rocket-propelled grenade launchers. A witness testifying before the MH17 trial suggested that between May and August 2014, Girkin obtained weaponry from the Russian GRU which was divided between Girkin and Bezler. By July 2014, Girkin’s group had several tanks which were used in attacks against the UAF.

Finally, there is evidence that Girkin’s group was able to issue political statements and speak with one voice. Statements made on behalf of Girkin’s group were released by Girkin himself and Viacheslav Ponomaryov, who often spoke on behalf of Girkin’s group.

At various points in April 2014, Ponomaryov commented on military developments and the preparation of the militants, the situation with detained journalist Simon Ostrovsky, and the detention of OSCE representatives and Ukrainian officers. Girkin made his first official appearance on 26 April.

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1028 See Section 4.1.2.2.1.1.2.2 The People’s Militia of Luhansk (later the Prizrak Battalion).


1030 See Section 4.1.2.2.4.3.4 Sergey Dubinsky.


1033 Donetskie Vesti, “Girkin told where the gun came from the militants in Slavyansk” (30 October 2015); M. Zhirokhov, “Five storms of Artemov’s base” (Liga, 2016); Text of speeches (S/PV.7165, UNSC 29 April 2014), p. 3.

1034 Y. Pavlik, Report on Slaviansk. The city from which the war began (UHHRU 2019), pp. 12, 24, 26, 28; BBC News, “Ukraine gunmen seize buildings in Sloviansk” (12 April 2014); Gordon, “Girkin said that he received weapons and money for the war in Ukraine in the occupied Crimea” (20 July 2017).

1035 D. Putliza, A. Karbivnychiy and V. Rudzyka, “It is getting hot in Slavyansk” (Military.ru, 12 April 2020); G. Baczynska and T. Grove, “Separatists take armoured vehicles, humiliating Ukraine forces” (Reuters, 17 April 2014).

1036 A. Kots and D. Stekhn, “Self-Defense Commander of Slaviansky Igor Strelkov: Detained observers are regular scouts” (Komsomolskaya Pravda, 26 April 2014); Russkiy Monitor, “There is a fight again in Slaviansk. Results of the battles for Slaviansk and Kramatorsk on May 18” (19 May 2014); Donetskie Vesti, “Girkin told where the gun came from the militants in Slaviansk” (30 October 2015).

1037 Donetskie Vesti, “Girkin told where the gun came from the militants in Slaviansk” (30 October 2015); V. Khrupyn, “Separatism weapons” (Insider, 30 July 2014); Komsomolskaya Pravda YouTube Channel, “Exclusive “KP”: Commander of Slaviansk’s self-defense detachment Igor Strelkov opened his face today” (26 April 2014), starting at 01:57; O. Pavlov, “SBU discovered a cache of “Girkin’s weapons”” (Korrespondent, 7 June 2021); Text of speeches (S/PV.7165, UNSC 29 April 2014), p. 3.

1038 For more information on supplies from Russia, see Section 4.1.2.3.2.7 Supply and Provision of Logistic Support by the Russian Federation. See also, T. Kozak and A. Naumliuk, “The case of the murder of passengers on Flight MH17 of Malaysian Airlines in Donbas. Investigative materials – evidence of the involvement of the accused”. MH17 trial hearings (Graty, 9 June 2014); Gordon, “Girkin said that he received weapons and money for the war in Ukraine in the occupied Crimea” (20 July 2017).

1039 N. Dym, “The blood of Sloviansk” (Novynarnia, 5 July 2020); Ukrainian Institute of National Memory, “June 26, 2014 - the first tank attack by Russian terrorists in the Donbas” (26 June 2019); NGU, “Soldiers killed in the first tank attack were honored in Donetsk region” (27 June 2021); Ukrainska Pravda, “The movement of tanks was noticed near Semenivka, Donetsk region” (27 June 2014); S. Romashenko, “Sloviansk came under the control of the Ukrainian authorities” (DZV, 5 July 2014); M. Tischenko, “Capture of Slaviansk. The militias retreated to Kramatorsk and Donetsk” (Lenta, 5 July 2014); I. Maksymov, “How Slaviansk and Kramatorsk were liberated: Eyewitnesses about Strelkov’s exit” (Depo Donbas, 5 July 2015); A. Pavlov, “Media reports about the breakthrough of the militia from Slaviansk” (Kommersant, 5 July 2014).

1040 Y. Pavlik, “Report on Slaviansk. The city from which the war began” (UHHRU 2019), pp. 30-31; BBC News, “Strelkov is going to fight the fifth column in Russia” (11 September 2014); M. Bondarenko “Strelkov took responsibility for the military conflict in Ukraine” (RBC, 20 November 2014).

1041 BBC News, “Slaviansk: journalist Ostrovsky spoke about his capture” (24 April 2014); BBC News, “Captured OSCE observers talk to journalists” (27 April 2014); S. Gorbatenko, “This shame is in our heads”: the capture of Slaviansk on April 12, 2014 in three stories of local (Radio Svoboda, 12 April 2021).

1042 A. Sabytova, “In Slaviansk, the people’s militia was raised on alarm” (Kommersant, 20 April 2014).


1044 BBC News, “Captured OSCE observers talk to journalists” (27 April 2014).
2014, when he gave an interview with the Russian media organisation ‘Komsomolskaya Pravda’, and presented himself as the commander of the Sloviansk armed group.\textsuperscript{1045} He gave another interview to Russian journalists from Russia Today on 29 April 2014 in which he discussed the detention of OSCE representatives.\textsuperscript{1046}

In sum, there is clear and convincing evidence that from 12 April 2014, Girkin’s group was sufficiently organised to conduct military operations and seize territory, as well as to function over time. The group exhibited all of indicators of organisation, including the existence of a command structure and headquarters, military capacity, logistical capacity, internal discipline, and an ability to speak with one voice. After Girkin left Donbas in August 2014, his fighters created separate armed groups including the Sparta and Somali battalions, commanded by Zakharchenko, who replaced Girkin as Minister of Defence.\textsuperscript{1047} Subsequently, between September 2014 and February 2015 the battalions were absorbed by the 1st Army Corps of the DPR.\textsuperscript{1048}

4.1.2.2.1.11.2 BEZLER’s GROUP

According to Girkin, Bezler’s group was created on 14 April 2014 by Igor Bezler (allegedly a retired Russian colonel),\textsuperscript{1049} who came to Donetsk on the direction of Girkin.\textsuperscript{1050} On 14 April 2014, Bezler recruited 11 men who joined him in Horlivka and seized the police office,\textsuperscript{1051} at which point Bezler pledged allegiance to Girkin.\textsuperscript{1052} At that point, Girkin sent another 40 of his fighters to join Bezler in Horlivka and help put the town under control.\textsuperscript{1053} According to witness testimonies, after 20 April, around 100 Chechen individuals in full gear arrived and joined Bezler’s group to help seize control of Horlivka.\textsuperscript{1054} As of June 2014, Bezler reportedly had between 400 to 700 fighters under his command.\textsuperscript{1055}

Bezler’s group had a basic command structure, with Bezler as the leader and ‘Botsmann’ (identified as Sergey Povalyaev and alleged to be a GRU officer) as his deputy.\textsuperscript{1056} The group established its headquarters in the UBOP (organized crime department) building in Horlivka after seizing it approximately between 30 April to 3 May 2014.\textsuperscript{1057} There is evidence that Bezler issued orders to his subordinates relating to military activities and strategy.\textsuperscript{1058}

Gradually, other military commanders came under the overall command of Bezler, including Valery Aleksandrovich Stelmakh (‘Naemnik’), ‘Batya’ who was the military commander in Toretsk until 21 July 2014,\textsuperscript{1059} and Igor Ivanovich Ukrainets (‘Minyor’), who was the commander of an infantry unit known as the “Minyor Unit”.\textsuperscript{1060} Bezler’s group acted

\begin{itemize}
\item \textsuperscript{1045}Komsomolskaya Pravda YouTube Channel, ‘Exclusive “KP”: Commander of Slavyansk’s self-defense detachment Igor Streletkov opened his face today’ (26 April 2014), starting at 00:12.
\item \textsuperscript{1046} RT YouTube Channel, ‘Self-defense commander of Sloviansk: Ukrainian side refuses to negotiate’ (29 April 2014), starting at 1:54.
\item \textsuperscript{1047} Lenta, ‘Motorola’s successor predicted the seizure of Slavyansk and Kramatorsk by militias’ (22 March 2017); P. Kanygin, ‘“The Last Hero of Givi” (Novaya Gazeta, 8 February 2017); International Crisis Group, ‘Rebels without a Cause: Russia’s Proxies in Eastern Ukraine’ (2019).
\item \textsuperscript{1048} See Section 4.1.2.2.1.2 The Formalisation of Groups into a Single Command: July 2014 – February 2015. See also, P. Lychmanov, ‘DPR declared readiness to liberate Slavyansk and Kramatorsk’ (Rossiyskaya Gazeta, 22 March 2017); Ukraine Crisis Media Center, ‘Army Corps’ reorganized illegal armed groups into ‘operational and tactical associations’, updated the command staff - according to the study “StopTerror” (11 August 2016); M. Solopov, ‘Militias surrender their weapons: how to eliminate independent field commanders’ (RBC, 8 April 2015).
\item \textsuperscript{1049} See Section 4.1.2.3.2.4.4.4 Igor Bezler.
\item \textsuperscript{1050} Igor Streletkov’s Novorossiya Movement, ‘Questions to Igor Streletkov (on events in Novorossiya)” (7 March 2016).
\item \textsuperscript{1051} DonPress, “Out of control”: Girkin announced the details of the capture of Gorlovka by Bezler” (29 February 2020); M. Stepovvyk, ‘Police station seized in Gorlovka’ (DW, 14 April 2014); V. Zhychko, ‘In Horlivka, separatists seized the city council and all three regional police departments’ (Fakty, 30 April 2014); RT YouTube Channel, ‘City police department seized in Gorlovka’ (14 April 2014).
\item \textsuperscript{1052} Igor Streletkov’s Novorossiya Movement, ‘Questions to Igor Streletkov (on events in Novorossiya)” (7 March 2016). On the Internet forum dedicated to ‘Novorossia’ and Igor Streletkov, an administrator of the website ‘Стрелков И. И. [Streletkov I. I.]’ responded to some questions about Bezler. DonPress, ‘“Out of control”: Girkin announced the details of the capture of Gorlovka by Bezler” (29 February 2020). DonPress, “Out of control”: Girkin announced the details of the capture of Gorlovka by Bezler” (29 February 2020); Igor Streletkov’s Novorossiya Movement, ‘Questions to Igor Streletkov (on events in Novorossiya)” (7 March 2016).
\item \textsuperscript{1053} Information provided by the Government of Ukraine; BBC News, ‘Commander of the DNR troops: the separatists are divided’ (27 May 2014); K Kyrylova, ‘The Serbs continued their war with the Croats in Gorlovka’ (Radio Svoboda, 21 July 2015).
\item \textsuperscript{1054} S UA, “People Went Out Of The Cellars And Screamed “Glory To Ukraine!”: How The APU Released The Gorlovsky Direction From The Occupants And Why Here Are The Bees” (20 July 2021); V. Khrypun, ‘Groups of militants of Donbas: who is at war with whom’ (Insider, 3 July 2014).
\item \textsuperscript{1055} P. van Huis, “A Birdie is Flying Towards You: Identifying the Separatists Linked to the Downing of MH17” (Bellingcat 2019), pp. 81-85.
\item \textsuperscript{1056} Information provided by the Government of Ukraine; O. Dzhemali, ‘Visiting Bes: a report from the rebellious Gorlovka’ (Forbes, 4 July 2014); Svoi.City, ‘About Girkin’s column, the role of Akhmetov and attempts to knock out the “Bes” from Gorlovka - in 4 quotes by Arsen Avakov’ (21 March 2019); Y. Gerieva and A. Shunina, ‘In Horlivka and Donetsk administrative buildings were seized’ (Kommersant, 30 April 2014); A. Tytorova, ‘In Horlivka, terrorists seized the OCCD building’ (ZN, 3 May 2014); Insider, ‘Horlivka, terrorists seized the building of the OCCD” (3 May 2014).
\item \textsuperscript{1057} P. van Huis, “A Birdie is Flying Towards You” Identifying the Separatists Linked to the Downing of MH17” (Bellingcat 2019), p. 9.
\item \textsuperscript{1058} P. van Huis, “A Birdie is Flying Towards You” Identifying the Separatists Linked to the Downing of MH17” (Bellingcat 2019), pp. 7-8.
\item \textsuperscript{1059} P. van Huis, “A Birdie is Flying Towards You” Identifying the Separatists Linked to the Downing of MH17” (Bellingcat 2019), pp. 11-15.
The military and operational capacity of Bezler’s group is demonstrated by their ability to take control of territory and engage in operations against the Ukrainian armed forces from 14 April 2014. As mentioned above, by approximately 14 May 2014 the town of Horlivka came under the sole control of Bezler’s group. Bezler’s group was involved in numerous military operations throughout the spring and summer 2014. Particularly notable is the operation near Volnovakha on 22 May 2014 which left 17 Ukrainian servicemen dead and 31 wounded, and the operation near Horlivka (in Karlivka) on 23 May 2014. By May 2014, Bezler’s group was assessed by Kostyantyn Mashovets, an expert of the Kyiv Centre for Military-Political Studies, as having an ‘academic’ approach to organising and conducting combat operations. Similarly, a Ukrainian officer described Bezler as ‘very well organised’, while Russian Forbes described him as ‘the most effective field commander of the militia’. By at least June 2014, in addition to Horlivka, Bezler’s group also controlled Makivka and Yanukiev, which were seized without fighting.

During the takeover of Horlivka in April, a witness testified that the group was armed with Kalashnikovs and rocket-propelled grenade launchers. The weaponry used during the takeover of Horlivka was alleged to be supplied by Girkin’s group somet time after the takeover of Horlivka, Bezler reportedly found his own sources of weaponry from the Russian GRU via Borodai, receiving the weapons alongside Girkin. During an attack on 22 May 2014, Bezler’s group used small arms, anti-tank grenade launchers, machine guns, and mortars. In July 2014, journalists described Bezler’s fighters as ‘heavily armed men’ and there is evidence they had tanks, infantry fighting vehicles, armoured personnel carriers, anti-aircraft guns and machine guns.

There is also evidence that men from Bezler’s group had previously attended a training camp in Rostov, Russia. For example, a militant from Bezler’s group detained by the SBU testified that he had undergone combat military training in a field camp in Rostov, Russia, together with conscripts from Russia where Igor Bezler was an instructor. He testified independently according to its own command, and in June-July 2014 had conflicts with other armed groups in the DPR.
that 150 were trained at the camp while he was there.\footnote{Evidence from another volunteer suggests that Girkin’s and Bezler’s militants underwent military training in Syvatohirsk.\footnote{Russussia's Involvement in Crimea and Donbas}} In sum, by 14 April 2014 Bezler’s Group was sufficiently organised to conduct military operations and to take territory. Although the group did not immediately display all the criteria of organisation, these developed over the following months and the group had sufficient structure to operate over time. From the end of October to the beginning of November 2014, Bezler’s group transformed into the Berkut Brigade, which formed part of the of DPR’s 1st Army Corps.\footnote{In November 2014, Bezler left Donbas and resided in Crimea.\footnote{4.1.2.1.1.3 The Patriotic Forces of Donbas (Later the Vostok Battalion)\footnote{The Patriotic Forces of Donbas were created by Oleksandr Khodakovsky, a former commander of the SSU Alfa unit in the Donetsk oblast, who participated in the dispersal of Euromaidan protesters in Kyiv.\footnote{After Euromaidan, Khodakovsky returned to Donetsk where he united former members of the Ukrainian special police units ‘Berkut’ and ‘Alpha’,\footnote{along with locals and some mercenaries, into the Patriotic Forces of Donbas.\footnote{While the Patriotic Forces did not participate in any armed clashes or seizures of administrative buildings in March/April 2014,\footnote{there is evidence that they began to form combat groups and acquire weaponry.\footnote{There is a lack of clear and convincing evidence that the Patriotic Forces of Donbas displayed sufficient criteria of organisation during this period.}}}}}}}}}}}}\footnote{In May 2014, the Patriotic Forces transformed into the Vostok Battalion (later known as Vostok Brigade).\footnote{After its transformation into the Vostok Battalion, Khodakovsky remained the organisation’s commander,\footnote{and his deputy was Oleksandr Semyonov aka ‘Sanich’, who was also the DNR’s ‘Deputy Prime Minister for Economy’.\footnote{While details of the command structure of the Vostok Battalion suggest it was rudimentary, the evidence demonstrates that Khodakovsky was able to issue commands which were followed by the Battalion. For example, prior to the departure of two groups from the Vostok Battalion to Mariupol between 10 May and 13 June 2014, Khodakovsky personally}}}}}}}}}}\footnote{Ukraine: “Vostok” battalion in Donetsk identified as “Russia’s characteristic weapon”\footnote{12}}

4.1.2.1.1.3 THE PATRIOTIC FORCES OF DONBAS (LATER THE VOSTOK BATTALION)

The Patriotic Forces of Donbas were created by Oleksandr Khodakovsky, a former commander of the SSU Alfa unit in the Donetsk oblast, who participated in the dispersal of Euromaidan protesters in Kyiv.\footnote{After Euromaidan, Khodakovsky returned to Donetsk where he united former members of the Ukrainian special police units ‘Berkut’ and ‘Alpha’, along with locals and some mercenaries, into the Patriotic Forces of Donbas. While the Patriotic Forces did not participate in any armed clashes or seizures of administrative buildings in March/April 2014, there is evidence that they began to form combat groups and acquire weaponry. There is a lack of clear and convincing evidence that the Patriotic Forces of Donbas displayed sufficient criteria of organisation during this period.}} In May 2014, the Patriotic Forces transformed into the Vostok Battalion (later known as Vostok Brigade).\footnote{After its transformation into the Vostok Battalion, Khodakovsky remained the organisation’s commander, and his deputy was Oleksandr Semyonov aka ‘Sanich’, who was also the DNR’s ‘Deputy Prime Minister for Economy’. While details of the command structure of the Vostok Battalion suggest it was rudimentary, the evidence demonstrates that Khodakovsky was able to issue commands which were followed by the Battalion. For example, prior to the departure of two groups from the Vostok Battalion to Mariupol between 10 May and 13 June 2014, Khodakovsky personally}}}}}}}}\footnote{Ukraine: “Vostok” battalion in Donetsk identified as “Russia’s characteristic weapon”\footnote{12}}

instructed the recruits at the Donetsk SSU building. As discussed below, evidence of a functioning command structure is supported by other evidence showing the group’s development from an unorganised protest group into an organised armed group with substantial military capacity.

To begin with, the Vostok Battalion exhibited significant logistical capacity, including the ability to recruit and train personnel. Between April and May 2014, former Ukrainian special services and police officers, Afghan war veterans, and numerous Chechen individuals were recruited to join the Patriotic Forces and then the Vostok Battalion. On 23 May 2014, according to the testimony of a Ukrainian border guard, five trucks with militants and machine guns, crossed the Russian border into Ukraine where they went to Donetsk and joined the Vostok Battalion. By 1 June 2014, Khodakovsky claimed to have 1,000 men in his unit and more ‘volunteers’ arriving imminently with experience in the state security structures or the army. According to a source from the Ukrainian special services, by the end of June, the Vostok Battalion consisted of around 2,500 militants. There is also evidence that the personnel were trained including: a video on 1 June 2014 showing the Vostok Battalion training on the former base of the Ukrainian National Guard (‘NGU’) as well as on some unknown locations; a report from 2 June 2014 that describes military training occurring close to Donetsk conducted by the Vostok Battalion; and testimony from a member of the Vostok battalion who claimed some members were sent to training grounds in Russia.

The Vostok Battalion increased its supply of weapons, which it had begun to amass in April 2014, from May onwards. This is established by numerous reports of the use of heavy weaponry during fighting around the Donetsk airport in May 2014, including machine guns, anti-tank rocket launchers, man-portable air defence systems and grenade launchers. On 5 June 2014, video footage shows the Vostok Battalion attacked positions of the Ukrainian Border Guard at Marynivka crossing point (Dmytrivka) using a BTR-80 (an armoured personnel carrier), as well as Kamaz and Ural vehicles. The Vostok Battalion’s possession of significant heavy weaponry (including grenade launchers, machine-gun installations, assault rifles, anti-aircraft guns, and anti-tank missile systems) between May and June is corroborated by numerous journalist reports.

Further, from around May 2014, the Vostok Battalion had increasing military capacity. The Vostok battalion fought against the Ukrainian forces in the Donetsk oblast during spring-summer 2014, including fighting against the Ukrainian forces in Mariupol (9 May 2014), creating an ambush near Karlivka (23 May 2014, organised together

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1094 O. Ishchina, “Chechens in eastern Ukraine: BBC investigation” (BBC, 29 May 2014); K. Sergatskova, “in the camp of the battalion “East”” (Ukrainska Pravda, 2 June 2014); G. Baczynska, “More foreign fighters break cover among Ukraine separatists” (Reuters, 1 June 2014).
1095 Information provided by the Government of Ukraine; Randy Mandy YouTube Channel, ‘Kadyrovites in Donetsk’ (CNN, 05/26/14)” (25 May 2014), starting at 00:06; I. Barabanov, “Russia still had to send troops.” Russian writers about the war in Donbas” (BBC News, 17 April 2019).
1096 G. Baczynska, “More foreign fighters break cover among Ukraine separatists” (Reuters, 1 June 2014).
1098 Kommomolskaya Pravda YouTube Channel, “Battalion “Vostok” prepares for the defence of Donetsk” (1 June 2014), starting at 00:25; D. Steshyn, “Donetsk army now has something to shoot down enemy planes” (Kommomolskaya Pravda, 1 June 2014).
1099 E. Sergatskova, “In the camp of the Vostok battalion” (Ukrainska Pravda, 2 June 2014).
1100 Information provided by the Government of Ukraine.
1102 Information provided by the Government of Ukraine; Military Video of Ukraine YouTube Channel, “Battle for the Marinovka crossing point ATO. June 2014” (4 June 2021); D Putyata, “Battle for Marynivka on June 5, 2014”, (Censor, 10 October 2019).
1103 E. Sergatskova, “In the camp of the Vostok battalion” (Ukrainska Pravda, 2 June 2014); M. Blinov, “Vostok battalion commander: Kyiv considered that the region was lost for him” (Ria Novosti, 6 April 2014); D. Steshyn, “Donetsk army now has something to shoot down enemy planes” (Kommomolskaya Pravda, 1 June 2014).
1104 Expert, “Battalion “Vostok” reported 35 dead in Donetsk” (27 May 2014); E. Sergatskova, “In the camp of the Vostok battalion” (Ukrainska Pravda, 2 June 2014); I. Kupriyanova “In the footsteps of the Donbas separatists: who is fighting on the side of the DPR?” (DW, 17 July 2014); E. Holodenko, “Donetsk prisoners” (Radio Svoboda, 23 October 2020).
1105 Information provided by the Government of Ukraine; UkrInform, “In Mariupol, six years ago, Ukraine repulsed Russian terrorists” (9 May 2020).
with Bezler’s group);\textsuperscript{1106} fighting for Donetsk airport (26 May 2014);\textsuperscript{1107} an attack on Marynivka crossing point (5 June 2014);\textsuperscript{1108} the defence of Pisky and Travnove villages against UAF offensives in the area (July 2014);\textsuperscript{1109} and the shelling of Yasynuvata (August 2014).\textsuperscript{1110} In July 2014, Borodai (the DPR’s then-prime minister) referred to the Battalion as ‘the largest and strongest [military] unit’ in the DPR.\textsuperscript{1111}

In sum, while the Patriotic Forces of Donbas were present during the pro-Russian protests in Donetsk in March and April 2014, they did not display sufficient organisation until they transformed into the Vostok battalion in May 2014. By at least 9 May 2014, the Vostok Battalion exhibited numerous indicators of organisation and sufficient structure to operate over time including a command structure and significant logistical and military capacity. On 9 July 2014, the Battalion split and part of its members joined Girkin’s group.\textsuperscript{1112} Later, the Battalion was transformed into the 11\textsuperscript{th} separate motorised rifle regiment of the DPR’s 1\textsuperscript{st} Army Corps.\textsuperscript{1113}

4.1.2.2.1.1.4 Battallion ‘Oplot’

Prior to the events in Donbas, Oleksandr Zakharchenko ran the Donetsk unit of the Oplot organisation, which was a (non-military) fighting group in Kharkiv.\textsuperscript{1114} The first mention of Oplot’s participation in the hostilities occurred on 16 April 2014 in relation to the seizure of the Donetsk city council,\textsuperscript{1115} where the group entered the city council building without any resistance.\textsuperscript{1116} It was reported that they were armed with machine guns and bats.\textsuperscript{1117} Moreover, it was reported that after negotiations with some officials from the Donetsk city council, during which the Oplot Battalion demanded the organisation of a referendum on the status of Donetsk, it was agreed that they would not impede the work of, or access to, the City Council.\textsuperscript{1118} There is no information on any other activities conducted by the Oplot Battalion between 16 April and the end of May 2014.

According to the available information, the Oplot Battalion took part in their first military operation on 26 May 2014. During this operation, the Oplot Battalion, together with the Vostok Battalion, fought against the UAF in the vicinity of the Donetsk airport.\textsuperscript{1119} According to some uncorroborated information, it also participated in fighting between 23 June and at least 24 August 2014 in the area along the border with the Russian Federation.\textsuperscript{1120} The battalion

\textsuperscript{1106} Censor, ‘On May 23, 2014, the Donbas Battalion entered its first battle in Karlivka’ (24 May 2021); M. Voskresensky, ‘(‘gory (Res) Bezler: Let’s start the offensive when the enemy runs out of steam’ (Ria Novosti, 16 July 2014); UNIAN, ‘Details of the battle between “Donbas” and “Vostok” near Karlovka have become known’ (26 May 2014).

\textsuperscript{1107} Information provided by the Government of Ukraine; E. Sergatskova, ‘In the camp of the Vostok battalion’ (Ukrainska Pravda, 2 June 2014); The Netnemosv Report, p. 27. A. C. Fox, ‘Cyborgs at Little Stalingrad: A Brief History of the Battles of the Donetsk Airport’ (Institute of Land Warfare, May 2019), p. 3.

\textsuperscript{1108} Information provided by the Government of Ukraine; Ria Novosti, ‘The “DPR” battalion confirmed the death of a militiam in a battle at the “Marinovka” checkpoint’ (6 June 2014); Interfax, ‘FSB Confirms Rebel Attack on Marinovka Border Point’ (5 June 2014).

\textsuperscript{1109} Information provided by the Government of Ukraine; E. Brezhitskaya, ‘War and Peace of Platro’ (Rossiyskaya Gazeta, 11 September 2014).

\textsuperscript{1110} Vostochnii Variant, ‘I had to bomb my own city with rockets.” Khodakovsky confessed to shelling Yasynuvataya” (28 August 2019); Vchasno, ‘I personally ordered to cover the city with “Hail” - Khodakovsky admitted to shelling Yasynuvataya’ (6 February 2020); LB, ‘One of the leaders of the “DPR” Khodakovsky confessed to shelling Yasynuvataya’ (28 August 2019).

\textsuperscript{1111} The “DPR” battalion confirmed the death of a militiam in a battle at the “Marinovka” checkpoint’ (6 June 2014); Interfax, ‘FSB Confirms Rebel Attack on Marinovka Border Point’ (5 June 2014).

\textsuperscript{1112} Information provided by the Government of Ukraine; E. Brezhitskaya, ‘War and Peace of Platro’ (Rossiyskaya Gazeta, 11 September 2014).

\textsuperscript{1113} ‘I had to bomb my own city with rockets.” Khodakovsky confessed to shelling Yasynuvataya’ (28 August 2019); Vchasno, ‘I personally ordered to cover the city with “Hail” - Khodakovsky admitted to shelling Yasynuvataya’ (6 February 2020); LB, ‘One of the leaders of the “DPR” Khodakovsky confessed to shelling Yasynuvataya’ (28 August 2019).

\textsuperscript{1114} See Section 4.1.2.2.1.1.1.1 Girkin’s Group.

\textsuperscript{1115} See Section 4.1.2.2.1.2 The Formalisation of Groups into a Single Command: July 2014 – February 2015. See also, A. Isak, ‘Donbas after Zakharchenko. The final turn in favor of Russia’ (Radio Svoboda, 16 September 2018); A. Nikonorov, ‘How Yanukovych’s “shining” drove Surkov to fury’ (Depo Donbas, 25 February 2016); Interfax, ‘Donbas reports on conflict between military leaders of the DPR’ (9 July 2014).

\textsuperscript{1116} P. Kanygin, ‘Insatiable’ (Novaya Gazeta, 2 September 2018); I. Barabash, ‘The opportunity to become not only a person who is good at shooting down planes’ - how Zakharchenko led the DPR and fought in the Donbas’ (BBC News, 1 September 2018).

\textsuperscript{1117} BBC, ‘‘The leader of the Ukrainian organization “Oplot” was killed in a restaurant on Rubeleva’ (19 September 2016); Ukrainska Pravda, “‘Oplot’ that seized the Donetsk City Council demands a referendum” (16 April 2014).

\textsuperscript{1118} LB, ‘Militants seize Donetsk City Council (updated)’ (16 April 2014); Radio Svoboda, ‘Oplot captures City Council in Donetsk’ (16 April 2014).

\textsuperscript{1119} LB, ‘Militants seize Donetsk City Council (updated)’ (16 April 2014); Radio Svoboda, ‘Oplot captures City Council in Donetsk’ (16 April 2014); Tass, ‘The building of the Donetsk City Council was seized by the activists of the Kharkiv organization “Oplot”’ (16 April 2014).

\textsuperscript{1120} LB, ‘Militants seize Donetsk City Council (updated)’ (16 April 2014); Radio Svoboda, ‘Oplot captures City Council in Donetsk’ (16 April 2014); Censor, ‘The Donetsk City Council was seized by the soldiers of the Kharkiv “Oplot”. Requirement - holding a referendum’ (16 April 2014).

\textsuperscript{1121} S. Podilskia, ‘Six years ago, the fighting for the Donetsk airport began: how it was’ (Armiyninform, 26 May 2020); Dialog, “‘Oplot’: Donetsk airport razed to the ground” (25 June 2014); Vchasno, ‘PHOTO. May 26, 2014. The first battle at the Donetsk airport and the defeat of the Russian Iskra detachment - recollections of a special forces soldier of the 3rd regiment’ (26 May 2017); Espresso, ‘After losses at the Donetsk airport terrorist battalions “Oplot” and “Vostok” stopped participation in fights’ (22 October 2014).

\textsuperscript{1122} Fandom, ‘“Oplot” (battalion)”; Russki Mir Evrazii, ‘The battalion commander “Oplot” - There would be a sufficient number of tanks and artillery, we would have dealt with them very quickly’ [VIDEO] (23 July 2014); RT na Russkom YouTube Channel, ‘DPR militias entered into battle with the Ukrainian military near the checkpoint “Marinovka”’ (14 August 2014); Vedomosti, ‘Mutillif report fighting near the Marinovka checkpoint on the border with Russia’ (24 July 2014).
participated in fighting in summer 2014 including in Stepanivka village (August 2014), and in Olenivka and Sygnalne villages (24 August 2014). In September 2014, the Oplot Battalion was incorporated into the DPR’s 1st Army Corps.

The Battalion was commanded by Zakharchenko and Oleksandr Tymofeev aka ‘Tashkent’ was head of staff in the Battalion Oplot. According to another source, Tymofeev headed Oplot together with Zakharchenko. Toward the end of May it was reported that the Oplot Battalion was guarding the residence of Rinat Akhmetov (one of Ukraine’s richest men), who is, according to the media reports, financed the Battalion. A report from Radio Svoboda suggests the battalion initially consisted of local criminals and sportsmen but was then replenished with people who already had combat experience. There is information that as of the mid-July 2014 Oplot had no less than four tanks, MANPADS (‘Man-portable air-defense systems’), semi-automatic firearms, and rifles.

In sum, while there is limited information about the Oplot Battalion, the evidence does suggest that they were an armed group with rudimentary command. Although they participated in the takeover of the city council on 16 April 2014, it is not until 26 May 2014 that they participated in military activities. From 26 May 2014, the Oplot Battalion displayed significant military capacity and sufficient structure to operate over time, including in multiple military operations throughout spring and summer 2014.

4.1.2.2.1.2 Luhansk Oblast

The most active groups in the Luhansk oblast were the ‘Army of the South-East’ headed by Valerii Bolotov (between March and October 2014); the ‘People’s Militia of Luhansk region’ headed by Oleksii Mozhovii, which later became known as the Prizrak Battalion (between April 2014 and March 2015); the Luhansk District of the ‘Great Don Army’ (between March 2014 – spring 2015), and Dryomov’s Group (between May and September 2014). Each are discussed in turn below.
In addition, there were many smaller armed groups operating in the Luhansk oblast during this period including, among others, the Luhansk Guard, the ‘Leshiy’ special purpose battalion, the Rapid Response Unit ‘Batman’, and the Bryanka USSR. However, due to a lack of information, they will not be considered further.

4.1.2.2.1.1.2.1 ARMY OF THE SOUTH-EAST

The Army of the South-East was officially declared by the Russian-leaning protestors in Luhansk on 6 April 2014, with Valerii Bolotov as the commander. However, according to the SSU, there are some indications that the Army existed from as early as 13 March 2014 and was formed and coordinated by the Russian FSB and GRU.

The Army of the South-East was the most active protest group in the Luhansk oblast in March and April 2014. It was instrumental during the pro-Russian protests in Donbas, and in the seizure of the SSU building in Luhansk on 6 April 2014, where it was reported that Valerii Bolotov managed to gain some authority over the groups participating. However, after initially seizing the SSU building, the Army barricaded itself inside the building and did not engage in any armed activities.

This is alleged to be because they did not have enough people ready to participate in hostilities and because they were awaiting support from Russia. Moreover, one of the former commanders of the Army of the South-East has suggested that at this point the Army was not a functioning ‘army’; instead it was comprised of groups, which were subordinated to completely different services, with different centers of influence.

Regardless of the truth of this statement, there is clear and convincing evidence that throughout April and May 2014, the Army of the South-East developed significant military and organisational capacity.

To begin with, the Army established a clear organisational hierarchy and command. The leadership of the Army of the South-East consisted of Bolotov, his deputy Hennadii Tsyypkalov, Aleksey Karyakin who allegedly owned the

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1135 Justice for Peace in Donbas, ‘Pavlo Oleksi'; A. Dkhitiarenko, “'If I start telling you, your teeth will sweat': how militants robbed and tortured locals in Bryanka’ (Radio Svoboda, 17 June 2019); Centre for Civil Liberties, “Chemical triangle” of Luhansk region during the occupation: hostages, torture and extrajudicial executions” (2014), p. 12; StopTerror, “Separate Artillery Brigade “Kalmius”, military unit 08802” (24 October 2015).

1136 According to the Ukrainian SSU, already on 13 March 2014 they had information that the ‘Army of the South-East’ was formed and coordinated by the Russian FSB and GRU. Information provided by the Government of Ukraine; N. Dvali, ‘Former head of the Luhansk SSU Petrulevich: Terrorist groups of the GRU of Russia are already in Kiev and are waiting for a signal’ (Gordon, 2 July 2014); B. Butkevych, ‘Colonel Oleg Zhivotov: “We did not surrender Luhansk SSU”’ (Ukrayins’kyi Tyzhden, 25 March 2016); O. Hudetska, ‘SSU officer on the role of Russia, Alexander Efremov and the leadership of regional security forces in shaking up separatism’ (Insider, 9 October 2014).


1138 Information provided by the Government of Ukraine; N. Dvali, ‘Former head of the Luhansk SSU Petrulevich: Terrorist groups of the GRU of Russia are already in Kiev and are waiting for a signal’ (Gordon, 2 July 2014); B. Butkevych, ‘Colonel Oleg Zhivotov: “We did not surrender Luhansk SSU”’ (Ukrayins’kyi Tyzhden, 25 March 2016); O. Hudetska, ‘SSU officer on the role of Russia, Alexander Efremov and the leadership of regional security forces in shaking up separatism’ (Insider, 9 October 2014).

1139 Information provided by the Government of Ukraine; N. Dvali, ‘Former head of the Luhansk SSU Petrulevich: Terrorist groups of the GRU of Russia are already in Kiev and are waiting for a signal’ (Gordon, 2 July 2014); B. Butkevych, ‘Colonel Oleg Zhivotov: “We did not surrender Luhansk SSU”’ (Ukrayins’kyi Tyzhden, 25 March 2016); O. Hudetska, ‘SSU officer on the role of Russia, Alexander Efremov and the leadership of regional security forces in shaking up separatism’ (Insider, 9 October 2014).

1140 ‘How the war in Donbas began: Seven years ago, militants seized the SSU building in Luhansk’ (Depo Donbas, 6 April 2021); Vest’i, ‘Who led the protest in the southeast’ (24 April 2013); Ponyars Eurasia, ‘Internal sources of the armed conflict in Donbas’ (26 September 2014); A. Zhyzhkovskiy, Mozgovoi (Chernaya Sotnya 2015), p. 16.

1141 A. Stanko, “The situation in Luhansk was shaken by the then Kyiv authorities and the local elite” – Bolotov’s right hand in “LPR” (Hromadske, 15 November 2016).

1142 A. Stanko, “The situation in Luhansk was shaken by the then Kyiv authorities and the local elite” – Bolotov’s right hand in “LPR” (Hromadske, 15 November 2016).

1143 A. Stanko, ‘The deceased commanders from the LPR and DPR’ (BBC, 8 February 2017).
On early termination of powers by the end of April and the South-East'.

The Joint Headquarters of the Army of the South East, 2014; Former head of the Luhansk SSU Petrulevich: Terrorist groups of the GRU of Russia are already in Kiev and the other part was stormed and set on fire (4 June 2014); BBC News, 'Zarya' (5 December 2017); N. Dvali, 'Supporters of th... 4 June 2014); The organizers of the seizure of the Luhansk SSU in 2014 were released on the initiative of the local administration of the Ministry of Internal Affairs of the LPR (6 July 2018).

While the Army initially lacked substantial military capacity, its military capacity increased by the end of April and through the summer of 2014, enabling it to take control over territory and engage in significant combat operations against the UAF. The first significant takeover occurred on 28 April, when the Prizrak battalion captured Stanytsia Luhanska. During May 2014, the Army of the South-East conducted a number of military operations, including the capture of Military Town No. 2 of the National Guard of Ukraine ('NGU') in Luhansk (city) on 28 May 2014 by the 'Zarya' Battalion, and the capture of Military Town No. 3 of the NGU in Oleksandrivsk (Luhansk oblast) on 29 May 2014. Between 1-4 June 2014, the Army launched a several-day blockade and assault in Luhansk on a Ukrainian border guard detachment. By the end of June, the Army of the South-East had control over the following territory:

1156 I. Adiassov, 'State of Donbas. Co-owner of slate gas fields in Ukraine turned out to be Petro Poroshenko’s fellow countryman' (Lenta, 20 May 2014); Ria Novosti, 'LPR parliament adopted laws on police and armed forces' (21 May 2014); NSN, 'The new head of the LPR Igor Plotnitsky - biography' (20 August 2014).
1158 BBC, 'Luhansk Republic elected a head and adopted a Constitution' (19 May 2014); Decision of the People’s Council of the LPR. Early termination of powers of the deputy of the People’s Council of the Lugansk People's Republic A.V. Karakaev' (29 April 2016).
1159 See Sections 4.1.2.2.1.2.2 The People’s militia of Luhansk (later the Prizrak Battalion) and 4.1.2.2.1.2.2.1.3.1 The Luhansk Cossack National Guard.
1160 Information provided by the Government of Ukraine: OSCE SMM, 'Report on 29 April 2014' (29 April 2014); Ukrainska Pravda, 'Luhansk “under control” The separatists took the Ministry of Internal Affairs and the City Council' (29 April 2014); Interfax, 'Supporters of the “people’s governor” seized the building of the regional administration of Lugansk' (29 April 2014); T. Lashchuk, 'In 2014, Luhansk border guards saved Poroshenko’s life' (LB, 1 June 2017); VostokSOS, 'Summary of events in east of Ukraine for May 28' (28 May 2014); BBC News, 'Storm in Lugansk: the National Guard regiment left the military unit' (4 June 2014); Interfax, 'One of the military units in Luhansk was captured by armed men, the other part was stormed and set on fire' (4 June 2014).
1162 In Ukraine, a military town is a property complex of buildings, structures, other real estate of military property together with barrack, housing, socio-cultural facilities, utilities used for its maintenance, located on a separate plot of land belonging to categories of defense lands. Such military towns are located on the territory of Military units.
1163 VostokSOS, 'Summary of events in east of Ukraine for May 28' (28 May 2014); Korrespondent, 'A military unit in Lugansk is fired upon by a separatist battalion “Zarya” - Ministry of Internal Affairs' (28 May 2014).
1164 Information provided by the Government of Ukraine; BBC News, 'National Guard: militants blew up a warehouse with weapons in Aleksandrovsk' (29 May 2014).
1165 Information provided by the Government of Ukraine; T. Lashchuk, 'In 2014, Luhansk border guards saved Poroshenko’s life' (LB, 1 June 2014); BBC News, 'Storm in Lugansk: the National Guard regiment left the military unit' (4 June 2014); Interfax, 'One of the military units in Luhansk was captured by armed men, the other part was stormed and set on fire' (4 June 2014); M. Sokolov, 'Lugansk Army of the South-East took by storm the military unit of the Nazi National Guard 13+1' (Golos Sevastopolya, 4 June 2014).
1166 A. Zhychkovskii, Mozgovoi (Chernaya Sotnya 2015), p. 16; D. Snegriov, 'Spiders in a jar: who is behind the death of the Russian commander of the “LPR” battalion “Phantom”' (Novynnarndia, 29 October 2020); N. Dvali, ‘Former head of the Luhansk SSU Petrulevich: Terrorist groups of the GRU of Russia are already in Kiev and are waiting for a signal’ (Gordon, 2 July 2014); B. Butkevych, ‘Colonel Oleg Zhivotov: “We did not surrender Luhansk SSU”’ (Ukrainskiy Tyzhden, 25 March 2016).
1167 Krym.Realii, ‘“Silent mouse”: what is known about the new leader of the “LPR”’ (5 December 2017); N. Dvali, ‘Former head of the Luhansk SSU Petrulevich: Terrorist groups of the GRU of Russia are already in Kiev and are waiting for a signal’ (Gordon, 2 July 2014); A. Stanko, ‘Capture of the Luhansk SSU: how did the war in Luhansk start and who was responsible for it’ (Hromadske, 7 April 2017); B. Butkevych, ‘Colonel Oleg Zhivotov: “We did not surrender Luhansk SSU”’ (Ukrainskiy Tyzhden, 25 March 2016); Gordon, ‘The organizers of the seizure of the Luhansk SSU in 2014 were released on the initiative of the local administration of the Ministry of Internal Affairs of the LPR’ (6 July 2018).
1168 Justice for Peace in Donbas, ‘Prisons and torture chambers of Luhansk: SBU’ (4 April 2016); O. Prytykin, ‘Luhansk: how the city “without power” lives’ (BBC News, 10 May 2014); Voенно-Политическое Обозрение, ‘The Joint Headquarters of the Army of the South-East made a statement from the captured SSU headquarters (video)’ (7 April 2014).
1169 A. Stanko, ‘The situation in Luhansk was shaken by the then Kyiv authorities and the local elite’ - Bolotov’s right hand in “LPR”’ (Hromadske, 15 November 2016); Donetske Novosti, ‘She had doing windows until 2014: SSU uncovered the Luhansk habitant – “LPR” IAF leader (Photo)’ (20 January 2021).
1171 Kyiv.SOS, ‘Secret Master: who is behind the death of the commander of the LPR battalion “Phantom”’ (28 May 2014); Korrespondent, ‘The Joint Headquarters of the Army of the South-East was in the SSU in Luhansk. The headquarters of the Army of the South-East’; A. Zhychkovskii, Mozgovoi (Chernaya Sotnya 2015), p. 16; D. Snegriov, ‘Spiders in a jar: who is behind the death of the Russian commander of the “LPR” battalion “Phantom”’ (Novynnarndia, 29 October 2020); N. Dvali, ‘Former head of the Luhansk SSU Petrulevich: Terrorist groups of the GRU of Russia are already in Kiev and are waiting for a signal’ (Gordon, 2 July 2014); B. Butkevych, ‘Colonel Oleg Zhivotov: “We did not surrender Luhansk SSU”’ (Ukrainskiy Tyzhden, 25 March 2016).
the cities of Luhansk and Kadiivka (later controlled by the Cossacks), and partially in the cities of Alchevsk and Severodonetsk.\textsuperscript{1163}

From the beginning of the protests in April, the Army of the South-East already had access to weaponry, which increased during the following months. On 5 April 2014, the SSU confiscated 300 submachine guns from the Army.\textsuperscript{1164} The Army quickly replenished its weapon supplies on 6 April when it seized the SSU and gained access to its arsenal,\textsuperscript{1165} which according to some estimates amounted to between 1000 to 2000 submachine guns and 2.5 million ammunitions.\textsuperscript{1166} According to the former SSU deputy of Luhansk, the leaders of the Army of the South-East (Bolotov, Karyakin and Relke) systematically arranged shooting training with weapons stored in Karyakin’s arms store in Kadiivka.\textsuperscript{1167}

There is also evidence that the Army of the South-East had capacity to recruit and train men with military experience. On 9 April 2014, Bolotov claimed that most personnel had military experience.\textsuperscript{1168} A Ukrainian border guard commander also testified that Bolotov’s group largely consisted of veterans from the Afghanistan war and those who worked in the special forces.\textsuperscript{1169} Although it is hard to estimate the precise number of men within the Army, on 17 May 2014, after Bolotov was detained by the Ukrainian border guard officers while returning from Russia, around 200 armed men arrived at a checkpoint to demand his release.\textsuperscript{1170} According to one source, as of 1 June 2014, the Zorya Battalion alone consisted of 350 men.\textsuperscript{1171} By July, according to one source, the Army of the South-East included between 600 and 1000 fighters.\textsuperscript{1172}

Finally, there is clear and convincing evidence that the Army was able to speak with one voice and that the leadership made demands on behalf of the organisation. On 28 March 2014, Bolotov and two of his comrades released a video describing themselves as the “staff of the defense of the southeast”, proposing to establish “our regions” into federation, republic or autonomy”, and to “return our legitimate president”.\textsuperscript{1173} Bolotov and his former ally, Serhii Korsunskii, have also provided information that after the 6 April 2014 protests, Bolotov conducted negotiations on behalf of the Army with the Ukrainian authorities (including acting president Turchynov).\textsuperscript{1174} Turchynov confirmed that these negotiations occurred, although he denied his personal participation.\textsuperscript{1175} On 7 April, from the seized SSU building in Luhansk, Bolotov and Relke gave an interview in which they outlined their demands to the Ukrainian

\textsuperscript{1163} Centre for Civil Liberties, “‘Chemical triangle’ o Luhansk region during the occupation: hostages, torture and extradjudicial executions” (2014), p. 11; A. Stanko, “Capture of Luhansk SSU: Where did the war in Luhansk start, and who is responsible for it” (Hromadske, 6 April 2017); BBC News, “Luhansk Regional State Administration seized by pro-Russian activists” (29 April 2014); KHRPG, “Who and how started the war in Luhansk region: The story of an SSU officer” (10 October 2014); A. Kuznetsov, “All the most important administrative buildings seized in Luhansk (photo, video)” (Radio Svoboda, 29 April 2014); O. Hudetska, “SSU officer on the role of Russia, Alexander Efremov and the leadership of regional security forces in shaking up separatism” (Insider, 9 October 2014); BBC News, “Alchevsk: between peace and war” (4 August 2014); J. Pavlik, “Kadiivka: the name has been changed, the occupation continues” (UHHRU, 2020), pp. 33-34.


\textsuperscript{1167} B. Butkevych, “Colonel Oleg Zhivotov: ‘We did not surrender Luhansk SSU’” (Ukrainsky Tyzhden, 25 March 2016); N. Dvali, “Former head of the Luhansk SSU Petruilevich: Terrorist groups of the GRU of Russia are already in Kiev and are waiting for a signal” (Gordon, 2 July 2014).

\textsuperscript{1168} R. Kovalenko YouTube Channel, “Press conference of the South-Eastern Army 04/09/14” (9 April 2014), starting at 02:40.

\textsuperscript{1169} T. Lashchuk, “In 2014, Luhansk border guards saved Poroshenko’s life” (LB, 1 June 2017); S. Verbytska, ‘Who led the protests in Luhansk. Southeast activists in faces” (News Daily, 23 April 2014).

\textsuperscript{1170} T. Lashchuk, “In 2014, Luhansk border guards saved Poroshenko’s life” (LB, 1 June 2017); Focus, “Bolotov was detained at the border, but the terrorists recaptured him” (17 May 2014).


\textsuperscript{1172} V. Khrypun, “Change of positions of militants after Slavyansk” (Insider, 11 July 2014).

\textsuperscript{1173} A. Bond YouTube Channel, “Valery Bolotov Founder of the LPR Plots of the combat path” (27 January 2017), 00:01 to 01:00; Heroi Donbasa YouTube Channel, “04/07/2014 Luhansk. Interview with soldiers of the Army of the South-East in the building of the SBU” (31 December 2016), starting at 01:00.

\textsuperscript{1174} Hromadske.ru, “Negotiations between Bolotov and Turchynov, - Sergei Korsunsky” (21 October 2016); R. Kovalenko YouTube Channel, “Press conference of the South-Eastern Army 04/09/14” (9 April 2014).

\textsuperscript{1175} Focus, ‘The beginning of the armed conflict in Donbas in 2014 was inevitable. - Turchynov’ (14 April 2017).
In sum, while the Army of the South-East began displaying indicia of organisation, including significant weaponry, the ability to speak with one voice and the ability to train men from early April 2014, after the seizure of the Luhansk SSU building on 6 April it became clear that the group had insufficient personnel and capacity to conduct hostilities. By 28 April 2014, its military and logistical capacity had increased, providing clear and convincing evidence that it satisfied the organisational requirement. The Army of the South-East continued operating throughout summer 2014. On 14 August, Bolotov left Ukraine and was replaced by Ihor Plotnytskyi as head of the LPR. By his order on 7 October 2014, Plotnytskyi transformed the Army into the 2nd Army Corps.

4.1.2.2.1.1.2.2 The People’s Militia of Luhansk (Later the Prizrak Battalion) After the seizure of the SSU in Luhansk on 6 April 2014, Oleksandr Mozgovyi, who participated in the protest, but not in the seizure of the SSU, formed his own squad. His group, named the ‘People’s Militia of Luhansk’ would later be renamed as the ‘Prizrak Battalion’. Mozgovyi did not have weapons during the initial protests at the beginning of April, and his group had no command structure or military capacity at that time. However, from the end of April and throughout May, the Battalion increased its military capacity, enabling it to carry out operations against the UAF and seize territory in Luhansk. Between 27 April and 2 May, Kadiivka was taken over by the Prizrak Battalion and the Army of the South-East. On 28 April 2014, the Prizrak Battalion took control of Stanytsia-Luhanska with no resistance from the Ukrainian forces. From approximately 22-23 May until July

1176 Heroi Donbasa YouTube Channel, “04/07/2014 Lugansk. Interview with soldiers of the Army of the South-East in the building of the SBU” (31 December 2016), starting at 01:00.
1178 V. Shramovich, “How the 1176 paratroopers died near Luhansk” (BBC News, 14 June 2018); Tass, “The head of the LPR Bolotov ordered a counter-offensive by the militia in Luhansk” (22 July 2014); BBC News, “The National Guard is fighting near Luhansk” (10 July 2014).
1179 Interfax, “Bolotov left the post of head of the LPR” (14 August 2014); S. Kanashevich and Z. Ulianova, “LPR head “temporarily” resigned due to injury” (RBC, 14 August 2014); M. Vorontsova, “I came to Russia from Luhansk in a T-shirt and slippers” (Rosbalt, 8 December 2016).
1180 See Section 4.1.2.2.1.2.1 The Formalisation of Groups into a Single Command: July 2014 – February 2015. See also, Information provided by the Government of Ukraine; Liverealov, “The history of the army of the Luhansk People’s Republic” (11 April 2015); I. Zhukovskiy, “DPR brigade commander killed by Ukrainian shell” (Gazeta, 18 May 2018).
1181 A. Zhychkovskii, Mozgovoi (Chernaya Sotnya 2015), pp. 19, 31; V. Dergachev, “The murder of Mozgovoi turned out to be beneficial for all parties” (Gazeta, 29 May 2015); Komitet Narodnogo Kontrolya, “Mozgovoi Alexey Borisovich” (Gordon, “Dossier on the 10 Main Terrorists of Donbas” (1 January 2015).
1182 V. Hrypun, “Why was Alexei Mozgovoi killed? Who was one of the leaders of Luhansk separatists?” (Insider, 29 May 2015); StopTerror, “4th battalion of territorial defense of the DPR created on the basis of the “Ghost” brigade of Alexei Mozgovoi“ (28 December 2015); P. Likhomonov, “Killed on the front lines” (Rossiyskaya Gazeta, 24 May 2015); Komitet Narodnogo Kontrolya, “Mozgovoi Alexey Borisovich” (Gordon, “Dossier on the 10 Main Terrorists of Donbas” (1 January 2015).
1183 T. Lashchuk, “In 2014, Luhansk border guards saved Poroshenko’s life” (LB, 1 June 2017); A. Stanko, “The situation in Luhansk was shaken by the then Kyiv authorities and the local elite” – Bolotov’s right hand in “LPR” (Hromadske, 15 November 2016); Edinstvo24.RF, “Strekalov info – novosvyska” has lost one of its most faithful sons” (31 May 2015); E. Gromova, “Ghost” “The death of Borisych did not divide us” “Voennye Obozrenie, 27 August 2015.
1184 V. Hrypun, “Why was Alexei Mozgovoi killed? Who was one of the leaders of Luhansk separatists?” (Insider, 29 May 2015); A. Zhychkovskii, Mozgovoi (Chernaya Sotnya 2015), pp. 29-30.
1186 Information provided by the Government of Ukraine; J. Pavlik, "Kadiivka: the name has been changed, the occupation continues" (UHHRU, 2020), pp. 9-10, 24-25, 33-34; Centre for Civil Liberties, “Chemical Triangle of Luhansk region during the occupation: hostages, torture and extrajudicial executions” (2014), pp. 49-50; Ukrainian Institute of National Memory, “An information campaign dedicated to the 6th anniversary of the liberation of the cities of Eastern Ukraine has started” (6 July 2020); Y. Lutynya, “The first attempt was unsuccessful, the column was shot - a policeman about the release of Rubtshin” (Hromadske.Radio, 21 July 2021); Sudovyi Reporter, “An accountant of the Luhansk People’s Republic Police from Krasnodon was sentenced to 10 years in prison” (3 February 2018); Hromadske, “Cities abroad. Krasnodon” (26 September 2015); S. Movchan, V. Sniegirev and M. Martynenko, “The Story of One City. Occupation and Liberation of Severodonetsk” (UHHRU, 2017), p. 15; Galinfo, “Liberation of the cities of Eastern Ukraine: as it was 6 years ago” (7 July 2020); Army.FM, “Severodonetsk Celebrates Anniversary Of Release From Militants” (21 July 2021); V. Masny, “Anniversary of the liberation of Severodonetsk. A local resident shared his memories of the occupation” (Suspline.Media, 23 July 2021).
2014, the Battalion captured and controlled Lysychansk. Between 22 May and 24 July 2014, the Prizrak Battalion participated in fighting in Rubizhne, Severodonetsk and Lysychansk. After the withdrawal from Lysychansk on approximately 22 July 2014, Mozhovyi’s group deployed to Alchevsk.

Mozhovyi was the leader of the Prizrak Battalion and Oleksandr Kostin, with whom he formed the battalion, was his deputy. After the seizure of Lysychansk, Mozhovyi established the Battalion’s headquarters which it maintained until the second half of July 2014. There was a large quantity of military equipment stored at the headquarters, and a training base for the militants. By May 2014, there were around 1000 fighters in the Battalion. A Ukrainian law enforcement officer testified that Mozhovyi was able to issue weapons and to train and recruit fighters. On 21 April 2014, it was reported that Mozhovyi allegedly set up a training center close to the Russian border, which was transformed into a place where volunteers were recruited and trained. In October 2014, Mozhovyi had around 1000 fighters.

By May 2014, the Battalion had access to heavy weaponry. In early May 2014, Mozhovyi reportedly received numerous Kalashnikov automatic rifles from people associated with the Russian ‘Liberal Democratic Party’. After the Prizrak Battalion left Lysychansk, which served as its base in July 2014, a Ukrainian volunteer battalion named ‘Donbas’ which entered the town found two armored vehicles, anti-aircraft missile weapons, ATGMs (anti-tank guided missiles), mortars, small arms, a large number of cars, and tanks with gasoline and diesel fuel in a warehouse.

In sum, at least by 27 April 2014 the Prizrak Battalion had sufficient military, organisational and logistical capacity to take control of territory and operate over a period of time, including taking control of Lysychansk in May, after which they established a headquarters. In the winter of 2014-2015, Mozhovyi was asked to join the official ‘People’s Militia
of the LPR’, but with a significant reduction of personnel. However, it was only in March 2015 that the Prizrak Battalion was subsumed into the LPR’s 2nd Army Corps.

4.1.2.2.1.2.3 Cossack Groups

There were multiple Cossack groups operating in Luhansk in the spring and summer of 2014. Most notably the Luhansk Cossack National Guard, which was subordinated to the Russian International Union of Public Associations ‘Almighty Don Host’, and Dryomov’s group.

4.1.2.2.1.2.3.1 The Luhansk Cossack National Guard

On 9 April 2014, Mykola Kozitsyn, ataman of the Russian International Union of Public Associations ‘Almighty Don Host’, issued an order on the creation of the Cossacks National Guard. According to the 9 April order, Lieutenant General Sergey Geraschenko (ataman of the Donetsk district of the ‘Almighty Don Host’) was appointed commander of the Cossack National Guard and military sergeant major Victor Ivanovich Shchekatunov (ataman of the Luhansk district of the ‘Almighty Don Host’) was appointed as the deputy commander. At the end of April-beginning of May, the Cossack National Guard was established. On 3 May, the Luhansk Cossacks National Guard under the command of Kozitsyn arrived in Ukraine and took control in Antratsyt, where it established its headquarters. Later it relocated to Travneve.

Clear and convincing evidence establishes that the Luhansk Cossack National Guard was able to recruit and train members. An insider witness testified that he learned Kozitsyn was recruiting volunteers from TV and signed up in May, after which he was instructed to go to Antratsyt with around 15 other recruits where he received weapons and a uniform. While some reports suggest the National Cossack Guard had between 300 and 1700 fighters, on 3 July 2014 the Insider reported that Kozitsyn had ‘from 2 to 4,000 people, many of whom are activists of the Cossack organisations of Russia and Ukraine.

While information on how well equipped the Cossacks were is scarce, according to one source, when Kozitsyn arrived in Ukraine on 3 May 2014, the group was armed with small arms and a ZU-23-2 anti-aircraft installation. According to intercepted phone calls published on 4 June 2014, a subordinate informed Kozitsyn that they mostly had grenade launchers, two heavy machine guns and AK-74s.

Kozitsyn’s group had significant military capacity and participated in numerous military operations. According to witness testimony, Kozitsyn’s Cossacks seized the Antratsyt Region State Administration on 3 May 2014, and

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1203 V. Khrypun, “Why was Alexei Mozgovoy killed? Who was one of the leaders of Luhansk separatists?” (Insider, 29 May 2015); Ukrainska Pravda, “SSU detained a fighter from the battalion of killed Mozgovoy” (10 August 2017).
1204 StopTerror, “4th battalion of territorial defense of the “LPR” created on the basis of the “Ghost” brigade of Alexei Mozgovoy” (28 December 2015); O. Nikonorov, “The structure of the hybrid army of the Luhansk separatists” (Depo Donbas, 9 February 2017).
1205 An elected leader of the Cossacks. Collins dictionary, “Definition of "ataman".”
1209 Information provided by the Government of Ukraine; Centre for Civil Liberties, “Chemical triangle” of Luhansk region during the occupation: hostages, torture and extrajudicial executions” (2014), p. 11; StopTerror, “National Cossack Guard” of Nikolai Kozitsyn” (8 December 2015); A. Dikhtiareno, “Did you want "Novorossiya" in the Kremlin - did you get "Kazakia"?” (Krym.Reali, 24 November 2014).
1210 Centre for Civil Liberties, “Chemical triangle” of Luhansk region during the occupation: hostages, torture and extrajudicial executions” (2014), p. 11; Radio Svoboda, “The terrorist who fled to Russia praised Akhmetov and threatened competitors” (6 January 2015).
1211 Y. Soshin, ”The Kozitsyn Project and two Kremlin towers. Part 1” (APN, 31 May 2017); Information provided by Vostok SOS; Centre for Civil Liberties, “Chemical triangle” of Luhansk region during the occupation: hostages, torture and extrajudicial executions” (2014), p. 18.
1212 Information provided by the Government of Ukraine.
1213 Centre for Civil Liberties, “Chemical triangle” of Luhansk region during the occupation: hostages, torture and extrajudicial executions” (2014), p. 11; Rostov Gazeta, “Ataman Kozitsyn: “Donetsk and Luhansk are the territory of the Don Army”” (5 October 2021); Den Kyiv, “The regrouping of the “Don Cossacks” continues in the Luhansk region” - activist’ (9 June 2014).
1214 V. Khrypun, “Groups of militants of Donbas: who is at war with whom” (Insider, 3 July 2014).
1216 SSU YouTube Channel, “SSU established involvement of Russian Cossack structures in arms supplies to terrorist organizations and abductions of OSCE representatives” (4 June 2014), starting at 5:09.
subsequently used it as a military facility and weapons depot.\footnote{ Reports suggest that from May 2014, Kozitsyn's Cossacks took the strategically important line ‘Sverdlovsk - Rovenky - Antratsyt - Khruostalnyi – Debaltseve’, extracting considerable dividends from the heavy traffic of mercenaries, weapons and fuel from Russia to Horlivka and Donetsk through the checkpoint ‘Dovzhansky’.\footnote{ Nonetheless, there were also reports that Kozitsyn’s formation was poorly disciplined. Specifically, it was accused of “unmotivated abandonment of positions, weak general discipline” and an inability to mount a coordinated response or defense to shelling or attacks against it by armoured vehicles.\footnote{ As of July 2014, the Cossacks National Guard controlled the cities of Sorokyne, Perevalsk, Khruostalnyi, Voznesenivka, Antratsyt, Rovenki, as well as vital checkpoints for the LPR and DPR across the Russian-Ukrainian border.\footnote{ By the end of 2014, the Cossack National Guard together with the Prizrak Battalion controlled 80% of territory in the Luhansk oblast that was under the control of non-State armed groups.\footnote{ In sum, the Luhansk Cossack National Guard exhibited numerous indicia of organisation from 3 May 2014 when it entered Ukraine and took control in Antratsyt, including a clear command structure and headquarters, as well as significant military and logistical capacity. Evidence that the group was poorly disciplined and a lack of information pertaining to weapons does not alter the conclusion that they had sufficient structure and organisation to operate over time. Thereafter, the Cossack National Guard acted independently and refused to subordinate itself to the 1st and 2nd Army Corps.\footnote{ Consequently, by the end of 2015 they were gradually disarmed by the LPR and removed from Donbas along with the Prizrak Battalion and Dryomov’s group.\footnote{ The territory under their control subsequently came under the control of the official authorities of the LPR.}}}}

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4.1.2.1.1.2 Dryomov’s group

According to the available information, local Cossack, Pavlo Dryomov, participated in the seizure of the Luhansk SSU on 6 April 2014, commanding the so-called Stakhanov Cossack Self-Defence,\footnote{ which became known as Dryomov’s group. After the proclamation of Bolotov of as the ‘people’s governor’, Dryomov allied with Mozgovyi (PrizaK Battalion).\footnote{ According to reports, together Mozgovyi and Dryomov controlled Lysychansk, Severodonetsk and partly Ribizhne between approximately 22 May 2014 and 21-22 July 2014.\footnote{ After Mozgovyi left Lysychansk at the end of July 2014,}}}

See Sections 4.1.2.1.1.2.2. The People’s Militia of Luhansk (later the Prizrak Battalion) and 4.1.2.1.1.2.3.2 Dryomov’s group. See also, Information provided by the Government of Ukraine; J. Vishnevetskaya, “Russian Cossacks and the Ukrainian conflict” (DW, 15 May 2015); A. Dikhtyarenko, “They played the role of a screen”: how Russia used the Don “Cossacks” in Donbas (Krym.Reali, 24 December 2018).

See Section 4.1.2.2.1.2 The Formalisation of Groups into a Single Command: July 2014 – February 2015.

See Sections 4.1.2.2.1.2.2 The People’s Militia of Luhansk (later the Prizrak Battalion) and 4.1.2.2.1.3.1.2 Dryomov’s group. See also, Information provided by the Government of Ukraine; J. Vishnevetskaya, “Russian Cossacks and the Ukrainian conflict” (DW, 15 May 2015); A. Dikhtyarenko, “They played the role of a screen”: how Russia used the Don “Cossacks” in Donbas (Krym.Reali, 24 December 2018); M. Bondarenko, “Don Cossacks suffer losses in Donbas” (Nezavisimaya Gazeta, 4 July 2014); V. Nosach, “LPR militants disbanded “Cossack” detachments” – The anti-terrorist operation headquarters (UNN, 3 April 2015).

See Section 4.1.2.2.1.2 The Formalisation of Groups into a Single Command: July 2014 – February 2015.

See Sections 4.1.2.2.1.2.2 The People’s Militia of Luhansk (later the Prizrak Battalion) and 4.1.2.2.1.3.2 Dryomov’s group. See also, Information provided by the Government of Ukraine; J. Vishnevetskaya, “Russian Cossacks and the Ukrainian conflict” (DW, 15 May 2015); A. Dikhtyarenko, “They played the role of a screen”: how Russia used the Don “Cossacks” in Donbas (Krym.Reali, 24 December 2018); M. Bondarenko, “Don Cossacks suffer losses in Donbas” (Nezavisimaya Gazeta, 4 July 2014); V. Nosach, “LPR militants disbanded “Cossack” detachments” – The anti-terrorist operation headquarters (UNN, 3 April 2015); International Crisis Group, “Russia and the Separatists in Eastern Ukraine” (2016), p. 13.

J. Polukhina, “The cleanup has entered the final stage” (Novaya Gazeta, 15 December 2015); Ukrainska Pravda, “Almost everyone who was in opposition to Piotniyski was killed” - The media” (15 December 2015); O. Gorodenko, “Goodbye, “Sopka”!” - LPR buried the last manageable “ataman” (Ostro, 16 December 2015).

O. Nikonorov, “At whose expense lived Dromov, Stakhanov’s friend of Mozgovoi – “Locator”” (Depo Donetsk, 12 December 2015); Radio Svoboda, “In the Luhansk People’s Republic, the explosion of a car killed the Cossack commander Batya - Pavel Dremoy” (12 December 2015).


Dryomov redeployed to Kadiivka.\textsuperscript{1228} Thereafter, from around September 2014, Dryomov’s group became subordinate to the Luhansk Cossack National Guard.\textsuperscript{1229} In autumn, Dryomov was appointed by Kozitsyn to control Kadiivka and Travneve.\textsuperscript{1230} Reports suggest that Dryomov had between 470 and 1000 fighters from the Cossack National Guard under his command in spring 2014.\textsuperscript{1231}

While there is little information relating to the organisation of Dryomov’s group, there is clear and convincing evidence that by at least 22 May 2014 they were able to conduct military operations and had sufficient structure to operate over a period of time.

4.1.2.2.1.2 The Formalisation of Groups into a Single Command: July 2014 – February 2015

By July 2014, the separate groups described above began to be formalised into a single command structure under the D/LPR authorities. The number of forces present in the Donetsk and Luhansk oblasts had grown rapidly to around 15-20 thousand.\textsuperscript{1232} According to the UN Monitoring Mission, between June and July 2014 there was “a professionalisation of the armed groups fighting in the East”, that were becoming consolidated under the centralised common command of the D/LPR leaders.\textsuperscript{1233}

There is clear and convincing evidence that the groups operating during this period in Donbas were sufficiently organised armed groups displaying many of the indicia of organisation. In particular, in July 2014 the UNMMU reported that the leadership, many of whom were Russian Federation nationals, were trained and experienced in military conflicts, and that what was previously “something of a rag tag of armed groups with different loyalties and agendas [was] now being brought together under the central command of these men”.\textsuperscript{1234} By this time, the armed groups from the Donetsk and Luhansk oblasts had joined forces in a self-proclaimed “People’s Republic of Novorossia”.\textsuperscript{1235}

More specifically, there is evidence that, in July 2014, attempts were made by the D/LPR authorities to create a joint general staff in Sorokyne (Luhansk oblast) under the leadership of Colonel Nikolai Fedorovich Tkachev aka “Dolphin”.\textsuperscript{1236} According to another source, while based in Sorokyne on a part-time basis, Dolphin dealt with the reorganisation and consolidation of the various military groups operating in Luhansk.\textsuperscript{1237} There is additional corroborating evidence that a joint staff existed from July 2014, including a TV interview with Girkin, where he described a joint headquarters and portrayed the D/LPR forces as part of the ‘Novorossiya Federation’.\textsuperscript{1238} There is also a telephone intercept of 13 July 2014 in which ‘Vityaz’ (a LPR militant) stated, referring to Sorokyne, that “the General Staff is starting to gain momentum now, the General Command Headquarters” and that all units, including Girkin’s and Bezler’s groups, would be under its command.\textsuperscript{1239} In addition, in an interview with Russian media on 16

\textsuperscript{1228} A. Gromova, ‘Who left Luhansk without “Batya”’ (Rosbalt, 14 December 2015); V. Hrypun, ‘The ataman did not get to the banquet’ (Insider, 16 December 2015).

\textsuperscript{1229} See Section 4.1.2.2.1.1.3.1 The Luhansk Cossack National Guard. See also, V. Hrypun, ‘The ataman did not get to the banquet’ (Insider, 16 December 2015); O. Nikonorov, ‘At whose expense lived Dryomov, Stakhanyo’s friend of Mozgovoi: “Locator”’ (Depo Donetsk, 12 December 2015); V. Hrypun, ‘Why was Alexei Mozgovoy killed? Who was one of the leaders of Luhansk separatists?’ (Insider, 29 May 2015).

\textsuperscript{1230} LB, ‘There were three “mini-LPR” in the Luhansk region’ (20 October 2014); P. Pavlik, ‘Kadiivka: the name has been changed, the occupation continues’ (UHHRU, 2020), p. 45; A. Gostev and D. Volchek, ‘Mozgovoy died with “Song”’ (Radio Svoboda, 24 May 2015); V. Hrypun, ‘Why was Alexei Mozgovoy killed? Who was one of the leaders of Luhansk separatists?’ (Insider, 29 May 2015).

\textsuperscript{1231} I. Rusnak, ‘Kadiivka: the name has been changed, the occupation continues’ (UHHRU, 2020), p. 47; S. Kmet, ‘Stakhanyo People’s Republic’ (Ukrajinska Pravda, 7 October 2014); V. Hrypun, ‘Why was Alexei Mozgovoy killed? Who was one of the leaders of Luhansk separatists?’ (Insider, 29 May 2015).


\textsuperscript{1234} OHCHR, ‘Report on the human rights situation in Ukraine’ (15 June 2014), paras. 8-9.

\textsuperscript{1235} For an explanation of Novorossia, see Section 4.1.2.2.1.2 Shared Goals between Russia and the D/LPR. See also, OHCHR, ‘Report on the human rights situation in Ukraine’ (2014), paras 8-9.

\textsuperscript{1236} De Rechtspraak, ‘Livestream 9 June 2021 part 3’ (9 June 2021), starting at 46:20.

\textsuperscript{1237} Bellingcat, ‘Russian Colonel General Identified as Key MH17 Figure’ (8 December 2017).

\textsuperscript{1238} T. Kozak and A. Naumlyuk, ‘The case of the murder of passengers on flight MH17 of Malaysian Airlines in Donbas, Investigative materials - evidence of the involvement of the accused’, MH17 trial hearings’ (Graty, 9 June 2014).

\textsuperscript{1239} T. Kozak and A. Naumlyuk, ‘The case of the murder of passengers on flight MH17 of Malaysian Airlines in Donbas, Investigative materials - evidence of the involvement of the accused’, MH17 trial hearings’ (Graty, 9 June 2014).
July 2014, Bezler stated that he ‘fully’ coordinated his actions with Girkin via a ‘counsel’ established by Girkin, and that Khodakovskii (commander of the Vostok Battalion) was also a part of it.\textsuperscript{1240} Considering the context of the conversation, it is highly probable this ‘counsel’ refers to the joint command.

After meeting Dolphin in Sorokyne in July 2014, Girkin commented that Dolphin struggled to exercise complete command over the dispersed LPR forces, but was able to coordinate between them.\textsuperscript{1241} According to a Bellingcat source, during August and September 2014, Dolphin led attempts by Russia to organise the D/LPR armed groups into one command.\textsuperscript{1242} However, Dolphin failed in his attempts to ‘coordinate the disparate LPR military units’.\textsuperscript{1243}

During the first half of August 2014, the initial military leaders of the D/LPR – namely Girkin and Bolotov – resigned after pressure from Moscow.\textsuperscript{1244} Instead, Oleksandr Zakharchenko and Ihor Plotnitskyi became the leaders of the DPR and LPR, respectively, who managed to consolidate more control over DPR and LPR forces, between August 2014 and the beginning of 2015.\textsuperscript{1245} In November 2014, both Zakharchenko and Plotnitskyi won the local elections and became heads of their republics.\textsuperscript{1246} In their roles, both were able to enter into negotiations and sign peace agreements on behalf of the D/LPR, including the Minsk-I Agreement on 5 September 2014,\textsuperscript{1247} and the Minsk-II Agreement on 12 February 2015.\textsuperscript{1248}

Attempts by DPR and LPR authorities to bring all armed groups under a joint command, which began in July 2014, were crystallised starting in September 2014 with the establishment of the ‘United Armed Forces of Novorossiya’ (‘NAF’) commanded by the Russian officers.\textsuperscript{1249} On 16 September 2014, the DPR published information that they together with LPR decided to establish the ‘United Armed Forces of Novorossiya’.\textsuperscript{1250} However, on the same day, the LPR Chairman of the Supreme Council denied that an agreement had been reached.\textsuperscript{1251} There is however clear and convincing evidence that between September 2014 and February 2015, the 1st Army Corps (Donetsk) and 2nd Army Corps (Luhansk) were established,\textsuperscript{1252} with the assistance of Russian officers from the RFAF Southern Military District.\textsuperscript{1253} The armed groups operating in Donetsk and Luhansk were subsumed into the formal military structure.\textsuperscript{1254} During this time, the ‘People’s Militia of Donbas’,\textsuperscript{1255} ‘Vostok Battalion’,\textsuperscript{1256} Girkin’s group,\textsuperscript{1257} and Battalion ‘Oplot’\textsuperscript{1258}...
were absorbed by the 1st Army Corps. Meanwhile, the ‘Army of the South-East’,
the ‘People’s Militia of Luhansk Region’, the ‘Rapid Response Unit’ (‘Batman Unit’), and the ‘Leshiy’ unit were all incorporated into the 2nd Army Corps. Members of the NAF underwent military training at training grounds located in both the Russian Federation and Ukraine. Simultaneously, they received an influx of weapons and military equipment from the Russian Federation. More information on the command structure, training, capacity and organisation of the 1st and 2nd Army Corps is contained in Section 4.1.2.3.2 (Overall Control: Participants in the Internal Armed Conflict Act on Behalf of the State), below.

4.1.2.2.1.3 CONCLUSION ON ORGANISATION

As mentioned above, it is not required that the armed groups display each of the individual criteria to establish organisation. Even where the non-State armed groups have decentralised structures without clearly delineated roles and responsibilities or are fractious and divided with shifting alliances, it is still possible for the non-State armed group to be considered organised if they have sufficient structure to function over time and to carry out protracted armed violence. In addition, it is possible that the criteria of organisation may develop without being immediately evident at the beginning of the insurgency.

The process of the groups operating in Donbas formalising into organised armed groups took place over several months beginning in March or April 2014. It is recognised that the non-State armed groups did not all display each criterion of organisation from the beginning of the hostilities. Rather the criteria of organisation developed over the spring and summer, particularly as the armed groups increased their military capacity and ability to control territory and operate over a period time.

As described above, in Donetsk, the following operated during the hostilities as organised armed groups: Girkin’s group at least by 12 April 2014, Bezler’s Group at least by 14 April 2014, the Patriotic Forces of Donbas (Vostok Battalion) at least by 9 May 2014, and the Oplot Battalion at least by 26 May 2014. In Luhansk, the following operated during the hostilities as organised armed groups: the People’s Militia of Luhansk (Prizrak Battalion) at least by 27 April 2014; the Army of the South-East at least by 29 April 2014; the Luhansk Cossack National Guard at least by 3 May 2014; and Dryomov’s group at least by 22 May 2014.

From July 2014, the D/LPR attempted to formalise these groups into a single command structure under the D/LPR authorities. From September 2014 to February 2015, the D/LPR armed groups organised their armies into the 1st and

1259 TSN, “In the Donbas, militants who were preparing for terrorist attacks are becoming more active - the anti-terrorist operation press center” (27 July 2014); Stopterror, “Russian Orthodox Army of the so-called Donetsk People’s Republic” (17 November 2015).
1260 Information provided by the Government of Ukraine; LiveJournal, ‘The history of the army of the Luhansk People’s Republic’ (11 April 2015); I. Zhukovsky, “DPR brigade commander killed by Ukrainian shell” (Gazeta, 18 May 2018).
1261 Stopterror, “4th battalion of territorial defence of the LPR created on the basis of the “Ghost” brigade of Alexei Mozgovoy” (28 December 2015).
1263 J. Polukhina, “FSB Directorate for the “Russian World”” (Novaya Gazeta, 3 April 2015); LiveJournal, “From the memories of one “leshiy”” (13 February 2019); A. Isak, “Motorized rifle corps? What are the “people’s militias” of Donbas” (Radio Svoboda, 23 February 2020); Ukraine Crisis Media Centre, “Army Corps reorganised illegal armed groups into “operational and tactical associations”, the command staff is updated - according to the study of “StopTerror”” (11 August 2016).
1264 Information provided by the Government of Ukraine; V. Bulatchyk, “Representative of the GUR: “On the territory of the so-called “republics” activities are being held to mobilize the local population”” (Ostrov, 9 March 2016).
1266 E. Higgins, “Did Russia Send a New Batch of Military Vehicles to Separatists Controlled Ukraine?” (Bellingcat, 3 January 2015); Bellingcat, “Exclusive Access to the Russian Forpost Drone Shot Down in Ukraine” (13 June 2015); Bellingcat, “The Avalanche that Went from Russia to Ukraine” (31 May 2015); T. Allen and others, “Origin of the Separatists’ Buk: A Bellingcat Investigation” (Bellingcat, 8 November 2014); RFERL, “Ukrainian Separatists Have Russia’s Latest Weapons” (27 March 2017); V. Bulatchyk, “Representative of the GUR: “On the territory of the so-called “republics” activities are being held to mobilize the local population”” (Ostrov, 9 March 2016).
1267 See Section 4.1.1.1.1 Organised armed groups.
1268 Ntaganda Trial Judgement, paras. 704-705; Katanga Trial Judgement, para. 1186.
1269 RULAC Geneva Academy, ‘Non-international armed conflict’ (last updated 11 September 2017).
2nd Army Corps,\textsuperscript{1271} and local commanders that failed to submit to its command were forcibly removed to Russia or, on occasion, died under suspicious circumstances.\textsuperscript{1272}

4.1.2.2 INTENSITY

Since various groups participated in the armed clashes against the Ukrainian forces, it will first be considered whether these groups acted in a coalition, to enable a cumulative assessment of the intensity of the armed clashes. The following section will then consider when the armed clashes fulfilled the requirements of intensity and when, in light of these findings, the NIAC commenced.

4.1.2.2.1 DID THE GROUPS ACT AS A COALITION?

As described above, a cumulative approach can be used when assessing the intensity requirement in situations involving multiple armed groups. When using such an approach, it there must be evidence of “coordination and cooperation” between the groups,\textsuperscript{1273} meaning that the distinct non-State groups acted in “coalition”.\textsuperscript{1274} While the criteria to assess the level of coordination are not set in law, several elements have been considered as indicative, including: the “establishment of centralised joint command, allocation of areas of responsibility, sharing of operational tasks (detention, procurement, equipment, transport of troops and other logistics), declarations / agreements describing the tasks assigned to coalition members, existence of common Standard Operating Procedures (SOPs) and/or Rules of Engagement (RoEs), exchanges of tactical/strategic information, existence of an umbrella platform dealing with political issues and communication in the name of the members of the ‘coalition’, facilitating military operations of one of the actors in the areas under control of another actor, coordinating simultaneous attacks against the common enemy, conducting joint operations, etc”\textsuperscript{1275} Important, it has been considered that shared ideology, similarities or political views or the existence of a common enemy would be insufficient to establish a ‘coalition’.\textsuperscript{1276} It should be noted that the ICRC has acknowledged that “[i]n some situations, coalitions might be open and public, while in others the coordination between the parties might be much more covert or implicit”.\textsuperscript{1277}

Thus, prior to considering whether the armed clashes in Donetsk and Luhansk reach the intensity threshold, it is crucial to examine whether there was ‘coordination and cooperation’ between the groups to assess their actions cumulatively. As the following will describe, the non-State armed groups in the Donbas acted with a sufficient level of coordination and cooperation to fulfil many of the indicators of coalition set out in the previous paragraph.

To begin with, the non-State armed groups shared a common enemy – the Ukrainian Government – and conducted coordinated and collaborative military operations against that common enemy towards a shared objective (integration of Donbas into Russia).\textsuperscript{1278} Evidence shows that the groups participated in joint military action as early as April 2014,\textsuperscript{1279} with operational, strategic, and logistical cooperation. For example, on 13 April 2014 during a conversation

\textsuperscript{1271} L. Landman and O. Polischuk, ’Donbas: where the guns do not stay silent’ (ACLED, 2020); Ukraine Crisis Media Center, “‘Army Corps’ reorganized illegal armed groups into “operational and tactical associations”, updated the command staff - according to the study “StopTerror”” (11 August 2016).


\textsuperscript{1278} G. Baczyńska, ‘More foreign fighters break cover among Ukraine separatists’ (Reuters, 1 June 2014); International Crisis Group, ‘Rebels without a Cause: Russia’s Proxies in Eastern Ukraine’ (18 July 2019), p. 3; M. Vihilov and M. Butchenko, ‘The phenomenon of the “people’s republics” of Donbas’ (Carnegie Moscow Center, 12 April 2016).

\textsuperscript{1279} For example, in Luhansk, the ‘Leshiy’ special purpose battalion participated in the storming of the Luhansk SSU on 6 April 2014 together with the ‘Army of the South-East’ and the Cossacks. See, Depo Donbas, ‘Who is the commander “Leshiy”, who is fighting for “Novorosiyska without oligarchs”?’ (25 August 2015); Depo Donbas, “Confessions of Bolotov: Chronology of the shooting of Luhansk by militants in the summer of 2014” (12 December 2016).
between Girkin and Borodai (who became the so-called Prime Minister of the DPR on 16 May 2014),
Borodai informed Girkin that men with military experience from Luhansk would join Girkin in Sloviansk to assist with the takeover there. Similarly, Bezl’s group went to Donetsk at the beginning of April on the direction of Girkin, who later supplied Bezl with men and weaponry in order to seize control over Horlivka. Moreover, in Luhansk, the Luhansk SSU was stormed simultaneously by the ‘Army of the South-East’ headed by Bolotov, groups of Cossacks and the members of the future ‘Lesiy’ special purpose battalion on 6 April 2014. The ‘Lesiy’ unit later became subordinated to Girkin, who supplied weapons and ammunition. By April, these forces were collectively referred to as D/LPR’s army or ‘People’s Militia of Donbas’, despite continuing to operate as separate entities.

Cooperation between the groups continued throughout the spring and summer of 2014. For example, the Vostok Battalion engaged in joint operations against Ukrainian forces with Bezl’s group and Oplot on 23 May (near Karlivka, Donetsk oblast) and 26 May 2014 (the fighting for the Donetsk airport). The Vostok Battalion also acted together with other separatist units during the Donetsk Airport operations in July 2014. On 3 July 2014, during a telephone conversation between Borodai (then-Prime Minister of DPR) and Surkov (a Russian curator), Borodai explained that Girkin was encircled in Sloviansk and that he, Borodai, had a meeting with Khodakovsky and Zakharchenko to discuss how they could break through to assist Girkin. There is other corroborating evidence that Bezl and Girkin coordinated their military activities during this period. Bezl has also claimed that his forces assisted the Luhansk armed groups in mid-July. Toward the end of July, Khodakovsky claimed to be operating in the area of Snizhne together with Girkin’s forces, units of the Russian Orthodox Army, and the Oplot Battalion.

Further, there is clear and convincing evidence of the coordination of different groups during the shooting down of MH17, which occurred on 17 July 2014 in the Donetsk oblast. During the MH17 trial conducted by the Dutch Prosecution Service in the Netherlands, the various armed groups in the D/LPR were considered by the prosecution

1282 Igor Strelkov’s Novorossiy Movement, “Questions to Igor Strelkov (on events in Novorossiya)” (7 March 2016); R. Lazorenko, “Strelkov told how Bezl captured the SSU in Donetsk and tried to storm the TV center” (62.ua, 2 March 2020).
1284 V. Heypun, “Donbas militant groups: Who is fighting against whom” (Insider, 3 July 2014); LiveJournal, “How Bes did not allow the Russian hero Girkin to hand over Gorlovka on the way from Sloviansk to Donetsk” (1 April 2015); Minprom, “The leader of the ‘LPR’ told about the feuds of the militants” (21 July 2014).
1285 For example, on 12 April 2014, Girkin’s Group was referred to as the ‘People’s Militia of Donbas’: Vest’, “Protests in the South-East of Ukraine: the police go over to the side of the people” (12 April 2014); Correspondent, “Everything is under control. Geography of Donbas capture” (15 April 2014). On 14 April 2014, the groups operating in Horlivka, Kramatorsk and Mariupol were also described as the ‘People’s Militia of Donbas’: S. Reiter and others, “The uprising of Sloviansk: where did the ‘militias’ come from in southeastern Ukraine” (RBC, 14 April 2014).
1286 For more information, see Section 4.1.2.2.2.1 Did the Groups Act as a Coalition?. After the arrival of Igor Girkin in mid-April, all pro-Russian armed groups operating in the regions were referred to as the ‘People’s Militia of Donbas’. However, they remained separate, and the name does not indicate command by Hybaryov/Pushillin’s People’s Militia of Donbas’ which formed in March. Rossiyiskaia Gazeta, “Denis Pushilin was elected as a head of the “DPR” Presidential” (19 May 2014); Novaya Gazeta, “Denis Pushilin headed the Donetsk People’s Republic” (19 May 2014); Y. Poluhina, “Inglorious hybrids” (Novaya Gazeta, 17 July 2020); BBC News, “Who is who in the east of Ukraine” (14 August 2014); E. Sergatskova, “A very short guide to separatist combatants” (Colta, 16 March 2015).
1287 Svit Vremeni, “TV ‘The Essence of Time’ – DPR”. Issue 19: Alexander Khodakovsky on the situation on July 14” (14 June 2014); Svit Vremeni, “Khodakovsky on the operational situation” (22 July 2014); Ria Novosti, “Igor Bes’ Bezl: Let’s start the offensive when the enemy runs out of steam” (16 July 2014).
1288 Censor, “On May 23, 2014, the Donbas Battalion entered its first battle in Karlivka” (24 May 2021); OHCHR, “Report on the human rights situation in Ukraine” (15 June 2014), para. 168; BBC News, “Ukraine: battle ‘Donbas’ was ambushed by separatists” (23 May 2014); A. Filippovych, “Battalion ‘Donbas’ was ambushed by militants” (RBC, 23 May 2014); Ukrainska Pravda, “Bes’ told the commander of ‘Donbas’ that he killed all the prisoners” (23 May 2014); ArmyFm, “Six years ago battles for Donetsk began” (26 May 2020).
1289 P. van Huis, “A Birdie is Flying Towards You” Identifying the Separatists Linked to the Downing of MH17” (Bellingcat 2019), p. 38.
1290 See Section 4.1.2.3.2.4.9 Vladimir Surkov.
1293 Ria Novosti, “Igor (Bes) Bezl: Let’s start the offensive when the enemy runs out of steam” (16 July 2014); P. van Huis, “A Birdie is Flying Towards You” Identifying the Separatists Linked to the Downing of MH17” (Bellingcat 2019), p. 5.
1295 Malaysia Airlines flight MH17 downed in eastern Ukraine on 17 July 2014 led to the death of all 298 people on board. The Netherlands, Malaysia, Australia, Belgium and Ukraine are working together to conduct an international criminal investigation of the cause of the crash of flight MH17 and those thought to be responsible. On the basis of the criminal investigation the Dutch Public Prosecution Service (OM) took the decision on 19 June 2019 to prosecute the suspects.
Moreover, to have gradually begun working together at least by the date of the events of MH17. The Prosecution also showed that Girkin had control over the various units by this date and was responsible for, inter alia, combat readiness, mobilisation and training, daily logistics, military and technical support, and military action funded by the DPR government. Bellingcat’s investigations establish that the DPR’s intelligence service led by Sergey Dubinsky (who was Girkin’s subordinate) was chiefly responsible for the procurement and guarding of the BUK missile launcher that was used to shoot down MH17, while Bezler’s group was the first to spot and (mis)identify MH17 as a target. The BUK crew consisted of personnel from Russia. Dubinsky’s group oversaw the removal of the missile launcher back to Russia in the aftermath of the shooting and the removal of other evidence, seemingly with the approval of Girkin. Meanwhile, the Vostok Battalion also had a role in facilitating the transport of the missile launcher.

In addition, there is evidence that from as early April 2014, while a clearly defined common command did not exist, the groups formed a loose coalition under a common leadership. To begin with, it was shortly after his arrival in Donbas in April 2014 that Igor Girkin emerged as commander over several distinct armed groups, with some voluntarily subordinating to him. In particular, when Girkin arrived in the Donetsk oblast, Pushilin recognised the authority of Girkin as a military leader. After a meeting in Sloviansk on 26 April 2014 between Girkin and Pushilin, Pushilin announced ‘the unification of political and military structures of the militia’, with all the ‘self-defence forces’ in the DPR coming under the command of Girkin. Similarly, as mentioned above, Bezler pledged allegiance to Girkin on 14 April 2014 for a short period of time. By April 2014, all non-State armed groups operating in the Donbas were referred to by themselves and by others reporting on the hostilities as the D/LPR’s army or ‘People’s Militia of Donbas.’

In addition, as described in more detail below, between April and May the D/LPR leadership began to form and establish rudimentary government structures. In the DPR, Igor Girkin (aka ‘Strelkov’) declared himself the ‘Supreme Commander of the DPR’ on 12 May 2014. On 15 May 2014, the post of Prime Minister of the Republic was introduced and, on 16 May, Moscow nominated Alexander Borodai Prime Minister. During the MH17 trial, it was claimed that, by Girkin’s own account, he was responsible for coordinating the activities of the DPR armed forces, including military operations, the formation of the headquarters, and the administration of the DPR Ministry of State armed groups operating in the Donetsk People’s Republic. The Prosecution also showed that Pushilin was “chosen for the role of” the future leader of the “Republic” back in April 2014.”

1299 It should be noted that while Bellingcat concluded that Bezler’s group misidentified MH17 as a target, the MH17 prosecutors did not charge Bezler or his subordinate stating that the investigation was unable to establish that their conversation actively contributed to the Downing of the plane: Netherlands Public Prosecution Service, ‘Opening Statement public prosecutor’.
1300 P. van Huis, “A Birdie is Flying Towards You” Identifying the Separatists Linked to the Downing of MH17 (Bellingcat 2019), pp. 4, 87.
1302 A. Kots and D. Steshin, ‘Self-Defense Commander of Slavyansk Igor Strelkov: Detained observers are regular scouts’ (Komsomolskaya pravda, 26 April 2014); R. Saakov, ‘Donetsk separatist Pushilin: “We are united by the Russian world!”’ (BBC News, 30 April 2014); Ria Novosti, ‘The leadership of the Donetsk People’s Republic promised assistance to Slavyansk’ (26 April 2014).
1303 A. Kots and D. Steshin, ‘Self-Defense Commander of Slavyansk Igor Strelkov: Detained observers are regular scouts’ (Komsomolskaya pravda, 26 April 2014); Censor, “A terrorist Girkin said that Pushilin was “chosen for the role of” the future leader of the “Republic” back in April 2014” - Necro Mancer” (8 September 2018); Ria Novosti, ‘Events in the east of Ukraine on April 26: Online reporting’ (26 April 2014).
1304 Igor Strelkov’s Novorossiya Movement, ‘Questions to Igor Strelkov on events in Novorossiya’ (7 March 2016).
1305 For example, on 12 April 2014, Girkin’s Group was referred to as the ‘People’s Militia of Donbas’: Vesti, ‘Protests in the South-East of Ukraine: the police go over to the side of the people’ (12 April 2014); Korrespondent, ‘Everything is under control. Geography of Donbas capture’ (15 April 2014). On 14 April 2014, the groups operating in Horlivka, Kramatorsk and Mariupol were also described as the ‘People’s Militia of Donbas’: S. Reiter, ‘The uprising of Slavyansk: where did the “militias” come from in southeastern Ukraine’ (RBC, 14 April 2014).
1306 Sections 4.2.3.31 Establishment of Governmental Structures.
1309 OHCHR, ‘Report on the human rights situation in Ukraine’ (15 April 2014), para. 162; Information provided by the Government of Ukraine; BBC News, ‘DPR separatist leader Borodai has resigned’ (7 August 2014); F. Rustamova and V. Gordeev, ‘Borodai resigned as DPR prime minister’ (RBC, 7 August 2014). See also, Section 4.1.2.3.2.4.4.1 Alexander Borodai.
Defence. In the LPR, Vasily Nikitin was appointed ‘Prime Minister’ of the LPR on 18 May, and the republic was headed by Valery Bolotov. 

Even though not all of the various armed groups pledged allegiance to the official representatives of the DPR (Borodai and Girkin) or LPR (Bolotov and Plotnitsky), they nonetheless aligned themselves with the Republics in other ways. Expressions of allegiance took many forms, including the following: submitting to the authority of Girkin or Bolotov and Plotnitsky; issuing public statements in support of the D/LPR structures; flying D/LPR flags above seized property, and formally declaring seized territory as belonging to the D/LPR. Additionally, although there was a serious conflict between Girkin and Bezler in June-July 2014, Bezler “still recognized the DPR leadership and coordinated operations with other DPR commanders.” Similarly, on 17 July 2014, Khodakovskii stated to a media outlet that there were no conflicts between the different armed groups and they were all “in a clear linkage, in clear interaction, we support each other with our shoulders, and provide all round assistance […] the defence is being established as a united front”.

Girkin’s command over armed groups was extensive by July 2014. At that time, Girkin stated that Battalion ‘Oplot’ came under his operational control, and that Mozgovyi (commander of the ‘People’s Militia of Luhansk’) voluntarily subordinated to him in the territory of Luhansk. According to some sources, Mozgovyi became Girkin’s subordinate on approximately 7 June 2014. Girkin stated that he ordered Mozgovyi to withdraw from Lysychansk in the second half of July 2014. Also in early July 2014, Bezler told Dubinsky (one of Girkin’s men) that he should convince ‘the first’ (i.e., Girkin) to withdraw men from Sloviansk, to which Dubinsky responded that Girkin had talked to Moscow who would not allow withdrawal. By July this crystallised into a joint command, and between September 2014 and February 2015 the groups were formalised under the ‘United Armed Forces of Novorossiya’ (‘NAF’).

Considered cumulatively, there is clear and convincing evidence showing that the level of coordination between the various armed formations in Donetsk and Luhansk goes far beyond a mere shared ideology and common enemy. From as early as April 2014, the groups conducted joint operations, shared operational tasks, exchanged tactical and strategic information, facilitated operations in areas under the control of other groups, and coordinated simultaneous attacks against the common enemy. In the present context, the available information suggests the existence of an

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1311 RBC, ‘Luhansk Republic elected a head and adopted a Constitution’ (19 May 2014); Ria Novosti, ‘Vasily Nikitin elected the Head of the LPR Council’ (19 May 2014).


1313 M. Perevozkina, ‘The commander of the Luhansk brigade “Ghost”: “No one else can replace Strelkov”’ (MK, 28 August 2014); Insider, ‘Igor Girkin [Strelkov]: “Surkov brought bands to power in both Donetsk and Luhansk republics”’ (8 December 2017).


1315 J. Pavlik, ‘kadiivka: the name has been changed, the occupation continues’ (UHHRU, 2020), p. 35; Army.fm, ‘How was Donetsk captured?’ (6 April 2020); V. Leoshko, ‘Maripol lives a peaceful life … This was preceded by the defeat of the separatists (Golos Ukrainy, 12 June 2021); BBC News, ‘Donetsk authorities told about the seized administrative buildings in area’ (15 April 2014); Centre for Civil Liberties, ‘Chemical triangle’ of Luhansk region during the occupation: hostages, torture and extrajudicial executions’ (2014), p. 11, 50.

1316 A. Konstantynov, ‘Luhansk region is captured by some Russian self-proclaimed “atamans”’ (Insider, 10 June 2014); M. Fitiliov, ‘Features of the legal regime of real estate in the quasi-states of LPR and DPR’ (KHRPG, 9 May 2016).


1320 Insider, ‘Why was Aleksey Mozgovoy killed’ (29 May 2015); Y. Butosov, ‘FSB Colonel Girkin spoke about how he started the war’ (Censor, 14 April 2019); IFPress, ‘Terrorist groups of Donetsk: Who is fighting whom’ (3 July 2014).

1321 Insider, ‘Why was Aleksey Mozgovoy killed’ (29 May 2015); Stopterror, ‘4th battalion of territorial defense of the LPR created on the basis of the “Ghost” brigade of Alexey Mozgovoy’ (28 December 2015); Y. Poluhina, ‘FSB Directorate for the “Russian World”’ (Novaya Gazeta, 3 April 2015); Komitet Narodnogo Kontrolya, ‘Reference Aleksey Mozgovoy Borisovich’; Meduza, ‘Five years ago in Donbas the bloodiest war in Europe of the XXI century began. Meduza tells how it ended for the separatist leaders’ (26 May 2019).

1322 Vedomosti, ‘Strelkov: The militia destroyed the Grad installation at the entrance to Donetsk’ (24 July 2014); Ria Novosti Ukraine, ‘Strelkov said that the militia left Lischansky by his order’ (24 July 2014).


1324 See Section 4.1.2.2.1.2.1 The Formalisation of Groups into a Single Command: July 2014 – February 2015, above for more details.
active coalition of groups, in regular communication with one another, gradually operating under a common command (ultimately formalised with the establishment of the NAF).

Therefore, there is clear and convincing evidence that, at least by the time the individual armed groups displayed indicia of organisation, they operated as part of a coalition and their actions may be considered cumulatively for the purpose of the intensity assessment of the Donbas conflict. In particular, in Donetsk, the following groups were operational as part of the coalition: Girkin's group at least by 12 April 2014, Bezler's Group at least by 14 April 2014, the Patriotic Forces of Donbas (Vostok Battalion) at least by 9 May 2014, and the Oplot Battalion at least by 26 May 2014. In Luhansk, the following groups were operational as part of the coalition: the People’s Militia of Luhansk (Prizrak Battalion) at least by 27 April 2014; the Army of the South-East at least by 29 April 2014; the Luhansk Cossack National Guard at least by 3 May 2014; and Dryomov’s group at least by 22 May 2014.

4.1.2.2.2 When was the Intensity Requirement in Eastern Ukraine Satisfied?

As discussed above, the hostilities must have reached a certain level of intensity in order to establish the existence of an armed conflict. The following indicia may be considered when assessing whether the intensity requirement has been met:

- The seriousness and frequency of attacks and the potential increase in armed clashes;
- The spread of clashes over territory and over a period of time;
- The type and number of armed forces deployed, including any increase in the involvement of government forces;
- The quantity, type and grade of military equipment, weapons and munitions used during the conflict by the parties;
- The group’s ability to control territory over a period of time;
- Whether any ceasefire orders had been issued or ceasefires agreed to;
- Whether those fighting considered themselves bound by IHL;
- The effects of the violence on the civilian population, including the extent to which civilians left the relevant area, the extent of destruction and the number of persons killed; and
- Whether the conflict has attracted the attention of the United Nations Security Council ('UNSC'), or involvement of other international organisations.

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1325 See Section 4.1.2.2.1 Organisation.
1326 See Section 4.1.2.2.2 Intensity.
1327 ICRC Commentary to Geneva Convention III, Article 3, paras. 421, 455; Rome Statute, Article 8(2)(f); Ntaganda Trial Judgement, para. 703; Tadić Trial Judgement, para. 562; Akayesu Judgement, para. 620; Kordić and Čerkez Appeal Judgement, para. 341; Limaj Judgement para. 84, Boškoski and Tarčulovski Trial Judgement, para. 175. See also, Bemba Trial Judgement, para. 137; Kotanga Trial Judgement, para. 1187; Lubanga Trial Judgement, para. 534.
1328 Ntaganda Trial Judgement, para. 717; Ongwen Trial Judgement, para. 2684; Prosecutor v. Al Mahdi, ICC-01/12-01/15, Trial Judgement, 27 September 2016 ('Al Mahdi Trial Judgement'), para. 49.
While it is not a requirement that the non-State armed groups were able to control territory over a period of time to establish the existence of a NIAC, in the absence of active hostilities, it may be a determinative factor in assessing whether the intensity threshold is fulfilled.¹³³⁰

As the following section will demonstrate, there is clear and convincing evidence that by at least 14 April 2014 in Donetsk and 30 April 2014 in Luhansk, the clashes between the organised armed groups and Ukrainian forces had reached a level of intensity sufficient to establish a non-international armed conflict. By these dates, numerous indicators of intensity were evident. From 12 April 2014 onwards, the seriousness and frequency of attacks had increased, and the clashes had spread over the territory of the Donetsk oblast. The armed groups operated with significant numbers of personnel and high military capacity, and also began controlling territory across this region. The intensity of the situation prompted Ukraine to deploy its armed forces to the region on 13 April and, further, in connection with an official ATO on 14 April 2014. In the Luhansk oblast, the armed groups had conducted their first takeovers of cities and towns by 28 April 2014. The severity of the takeovers was confirmed by the Ukrainian government’s official acknowledgement of its loss of control over the situation in the region on 30 April 2014.

By the time of the outbreak of armed conflict in the region, various other indicators of intensity were also fulfilled. Both sides of the conflict had access to and utilised significant military equipment and weaponry. From the first clashes, there is evidence that the violence had a significant effect on the civilian population, with evidence of significant internal displacement, destruction of property, and loss of life. By this point in time, several international organisations, including the UNSC and OCHCR, had also raised concerns about the situation in eastern Ukraine. The armed clashes and takeovers continued, and increased, throughout the spring and summer of 2014.

4.1.2.2.2.1 MID-APRIL 2014: THE FIRST ARMED CLASHES AND TAKEOVER OF TOWNS

From 12 April 2014 onwards, serious and frequent armed clashes between the armed groups and the Ukrainian forces began in the Donetsk oblast. The clashes spread over the territory of Donetsk and continued over a period of time. In addition, from 12 April 2014 in Donetsk and 28 April 2014 in Luhansk, the armed groups began to take over the control of cities and towns. In sum, and as discussed in more detail in the following paragraphs, the attacks against the Ukrainian forces and takeover of cities and towns that occurred during this period involved Girkin’s group from 12 April 2014, Bezler’s Group from 14 April 2014 in the Donetsk oblast, and the Prizrak Battalion from 28 April 2014 and the Army of the South-East from 29 April 2014 in the Luhansk oblast. As established above, the groups acted in coalition from the time that they became organised and started operating in the region.

4.1.2.2.2.1.1 SERIOUS AND FREQUENT ARMED CLASHES AND CONTROL OF TERRITORY IN DONETSK

Starting from 12 April 2014, the armed groups acting in Donetsk (i.e., primarily Girkin’s and Bezler’s groups) launched attacks and took control of cities and towns in, inter alia, Sloviansk, Druzhkivka and Bakhmut between approximately 12-13 April 2014,¹³³¹ Kramatorsk between 12 April-14 April,¹³³² Makivka, Yenakieve and Khartsyzk between 13 April-

¹³³⁰ Ntaganda Trial Judgement, para. 717; Ongwen Trial Judgement, para. 2684; Al Mahdi Trial Judgement, para. 49.
¹³³¹ Information provided by the Government of Ukraine; O. Lager, “People in camouflage were running everywhere. We heard shots, explosions.” The Liberation of Bakhmut in 2014: how it was (PHOTOS, VIDEO) (Viline Radio, 6 June 2019); RBC, “In Druzhkovka, Donetsk region pro-Russian activists seized the district administration” (12 April 2014); BBC News, “Ukraine gunmen seize buildings in Sloviansk” (12 April 2014); BBC News, “Ukraine crisis: Casualties in Sloviansk gun battles” (13 April 2014); LB, “Geography and chronicle of the capture of Donbas by separatists” (12 April 2014); Hromadske, “Cities abroad. Yenakievsk” (31 October 2015); LB, “In Yenakiieve, separatists seized the prosecutor’s office, police and city council” (13 April 2014); Ukrainska Pravda, “In Khartsyzk, “green men” captured the City Council. “Regionalists with them” (13 April 2014).
¹³³² Information provided by the Government of Ukraine; Y. Pavlik, “The city from which the war began. The leading role goes to...” (UHHRU 2019), p. 11-14; O. Harbar and others, “Armed Conflict in Ukraine: Military Support of Illegal Armed Formations ‘DPR’ and ‘LPR’ by Russian Federation” (UHHRU 2018), p. 8; Information provided by Vostok SOS; A. Maiorova (ed.), “Donbas in Flames” (Prometheus 2017), p. 35; Ukrainian Institute of National Memory, “To the 5th anniversary of the beginning of the armed aggression of the Russian Federation against Ukraine” (27 February 2019); C. Miller, “Executioners of Sloviansk” (Radio Svoboda, 23 July 2020); BBC News, “Ukraine gunmen seize buildings in Sloviansk” (12 April 2014); BBC News, “Ukraine crisis: Casualties in Sloviansk gun battles” (13 April 2014); LB, “Geography and chronicle of the capture of Donbas by separatists” (12 April 2014); UNIAN, “In Kramatorsk, separatists planted the flag of “Donetsk Republic”” (12 April 2014); Liga, “In Kramatorsk, the City Department of Internal Affairs and the City Council, a checkpoint near the airfield were captured” (13 April 2014); Liga, “Strelkov told why he captured Sloviansk in the first place” (11 November 2014).
May 2014, Horlivka between 14 April – 13 May 2014, Snizhne, Toretsk on 15 April, Kostyantynivka on 28 April, Avdiivka, Debaltseve, Mariupol, Novoazovsk, Siversk, Kalmiuske, Pokrovsk, and Rodynske between 16 April and 10 May, and Donetsk city by 30 April 2014. The main armed clashes that occurred during April 2014 in Donetsk are examined in the chronology below.

The first serious armed clash occurred on 12 April 2014, when Girkin’s group consisting of approximately 52 armed men under Girkin’s command seized control over Sloviansk. At the beginning of the takeover, they immediately began establishing checkpoints and barricades. A BBC correspondent stated that “the take-over was well-organised and the gunmen were quickly spreading their control throughout the town and beyond.” According to reports, the armed men used smoke checkers and tear gas, and fired weapons in the air. Some Ukrainian police officers located inside the Sloviansk police office, seized by Girkin’s group, were injured and/or detained. On the same day, Girkin’s group, supported by local pro-Russian individuals, launched attacks and seized administrative buildings in Druzhkivka, Bakhmut, and Kramatorsk.

In response to the increase in armed clashes, on the night of 12-13 April, the Ukrainian government issued a decision to initiate an anti-terrorist operation (‘ATO’) in Eastern Ukraine with the involvement of the Ukrainian Armed Forces and law enforcement agencies, including the National Guard of Ukraine (‘NGU’), to re-establish its control over the territory lost to the armed group. By 13 April, Ukrainian forces were operating to counter the activities of the

1333 Information provided by the Government of Ukraine; Hromadske, ‘Cities abroad, Yenakiieve’ (31 October 2015); LB, ‘In Yenakiieve, separatists seized the prosecutor’s office, police and city council’ (13 April 2014); Ukrainska Pravda, ‘In Kartsyz, “green men” captured the City Council. “Regional” with them’ (13 April 2014); OSCC, ‘Latest from the Special Monitoring Mission to Ukraine – based on information received up until 20 April 2014, 20:00 (Kyiv time)’ (21 April 2014); Ukrainska Pravda, ‘City council seized in Makivka, “people’s mayor” elected’ (13 April 2014).

1334 Bellingcat, ‘Identifying the Separatists Linked to the Downing of MH17’ (19 June 2019); Forum Novorossia, ‘Questions to leor Streklov (on events in Novorossiysk)’ (18 January 2016).

1335 V. Leoshko, ‘21 July - the seventh anniversary of the liberation of Toretsk from Russian mercenaries’ (Golos Ukrainy, 21 July 2021). According to other sources in May 2014: 5 Channel, ‘Operation without a single victim: how in 2014 he was able to release Toretsk’ – “Mysteries of war” (3 August 2020).


1337 N. Melnyk (comp) and others, ‘Armed conflict in the East of Ukraine: the damage caused to the housing of the civilian population’ (Human Rights Publisher 2019), p. 34; O. Shulman, ‘Debaltseve was a real bone in the throat for the occupiers’ (Armiyainform, 23 January 2020).

1338 Information provided by the Government of Ukraine; N. Melnyk (comp) and others, ‘Armed conflict in the East of Ukraine: the damage caused to the housing of the civilian population’ (Human Rights Publisher 2019), p. 21; Zna, ‘Mariupol Liberation Day: history and chronology of events’ (2 May 2017).

1339 RFI, ‘Kyiv lost control over Donetsk and Luhansk’ (30 April 2014); Kharkiv Oblast State Administration, ‘The appearance of the official statement of the President of Ukraine, the Head of the Verkhovna Rada for the sake of Ukraine Oleksandr Turchynov, for an hour together with the heads of the provincial state administrations’ (30 April 2014).


1341 Information provided by Vostok SOS.


1345 Order of the President of Ukraine No. 405/2014 ‘On the decision of the National Security and Defense Council of Ukraine of April 13, 2014 “On urgent measures to overcome the terrorist threat and preserve the territorial integrity of Ukraine”’ (14 April 2014); Ukrainska Pravda, ‘The National Security and Defense Council is launching a large-scale anti-terrorist operation with the involvement of the Armed Forces – Turchynov’ (13 April 2014).


1347 OHCHR, Report on the human rights situation in Ukraine (15 June 2014), para. 95; Order of the President of Ukraine No. 405/2014 ‘On the decision of the National Security and Defense Council of Ukraine of April 13, 2014 “On urgent measures to overcome the terrorist threat and preserve the territorial integrity of Ukraine”’ (14 April 2014); OHCHR, ‘Human rights violations and abuses and international humanitarian law violations committed in the context of the Ilovaisk events in August 2014’ (9 September 2018), para. 4; A. Maiorova (ed.), ‘Donbas in Flames’ (Prometheus 2017), p. 35; Ukrainian Institute of National Memory, ‘To the 5th anniversary of the beginning of the armed aggression of the Russian Federation against Ukraine’ (27 February 2019); RUCAC Geneva Academy, ‘International armed conflict’ (last updated 11 September 2017). Notwithstanding the qualification of the mission as a “counter-terrorism” operation, the fighting that took place between the Ukrainian armed forces and the armed elements active in Donbas - as part of this operation- forms part of the assessment as to whether the threshold.
armed groups in Donbas, including units of the SSU and the UAF in Sloviansk. On this date, the SSU special task force ‘Alfa’ was attacked by a sub-set of Girkin’s group in Semenivka village (close to Sloviansk) with machine gun fire. Simultaneously, the Ukrainian forces were attacked by another sub-set of Girkin’s group, who opened fire from the nearby forest. The 80th Airmobile Brigade of the Ukrainian Armed Forces went to rescue the SSU group, and opened fire on the militants causing a retreat. One Ukrainian officer and at least one militant were killed, with three Ukrainian officers injured.

The ATO was officially launched on 14 April 2014 and involved further deployment of units of the UAF and volunteer battalions. The official initiation of the ATO on 14 April was reflective of the increasing seriousness of attacks and also demonstrated an increase in the type and number of governmental armed forces deployed.

On the same day, Bezler’s group joined the hostilities and seized control over Horlivka police station. In its first report on the situation in eastern Ukraine, issued on 14 April 2014, the OSCE observed that there were around 100 people building barricades with tires and sandbags at the office of the Ministry of the Interior, which was topped with a ‘Donetsk republic’ flag. Ukrainian senior officers attempted to repulse the attackers, resulting in the injury of two officers.

On 15 April, as part of the UAF operation to re-take control of the airport in Kramatorsk, shooting took place between the UAF and the People’s Militia of Donbas which led to the wounding of several individuals involved in the fighting. Ukrainian checkpoints were installed around Sloviansk. On the same day, the HRMMU published its first report.

of intensity for the classification of the situation as a NIAC has been met. The determination of the existence of an armed conflict is based on a factual assessment of the situation on the ground, with the views of the parties to the conflict being therefore irrelevant for such a determination. See A. Paulus and M. Vashakmadze, “Asymmetrical war and the notion of armed conflict: a tenant towards standardization” (2009) 9(873) IRRC 95, pp. 115-116. See also, RULAC Geneva Academy, “Non-international armed conflict” (last 11 September 2017), according to which: “the assessment whether a situation amounts to a non-international armed conflict is based on the factual situation, not on the characterisation given by states involved or by the international community. The latter can only serve as an indicative factor to be considered.”


N. Dym, “At first I thought it was airsoft.” Three years of anti-terrorist operation: the first fight, the broken order, the hero, loss” (Novynarnia, 13 April 2017); Armiyainform, “In the Donetsk region honored the memory of the first Heroes who died during the anti-terrorist operation in 2014” (14 April 2021); D. Putyata, A. Karbinvnychy and V. Rudyka, “That’s how Slavyansk started” (Mil.in.ua, 8 April 2020).

Order of the President of Ukraine No. 405/2014 “On the decision of the National Security and Defense Council of Ukraine of April 13, 2014 “On urgent measures to overcome the terrorist threat and preserve the territorial integrity of Ukraine” (14 April 2014); OHCHR, “Human rights violations and abuses and international humanitarian law violations committed in the context of the Ilovaisk events in August 2014” (9 September 2018), para. 4; A. Maiorova (ed.), “Donbas in Flames” (Prometey 2017), p. 35; Ukrainian Institute of National Memory, “To the 5th anniversary of the beginning of the armed aggression of the Russian Federation against Ukraine” (27 February 2019).

Order of the President of Ukraine No. 405/2014 “On the decision of the National Security and Defense Council of Ukraine of April 13, 2014 “On urgent measures to overcome the terrorist threat and preserve the territorial integrity of Ukraine” (14 April 2014); OHCHR, “Human rights violations and abuses and international humanitarian law violations committed in the context of the Ilovaisk events in August 2014” (9 September 2018), para. 4; A. Maiorova (ed.), “Donbas in Flames” (Prometey 2017), p. 35; Ukrainian Institute of National Memory, “To the 5th anniversary of the beginning of the armed aggression of the Russian Federation against Ukraine” (27 February 2019).

Information provided by the Government of Ukraine; Fakty, “Sergei Chernyshev: ‘Beat him until he starts coughing up blood[,]’ ordered the ‘Bez’, shooting me through both knees.” (8 August 2017); Assir Don YouTube Channel, “Bezler I.N. (Bez) in Gorlovka. (Capture of the regional department) 14.04.2014” (14 April 2014).

Darnytysa, “How the head of the Darnytysa police escaped from separatist captivity” (17 August 2018); Gazeta.ua, “They put bags on their heads and shot them in the back” – details of the execution of police officers in Horlivka” (27 May 2018).

Information provided by the Government of Ukraine; RFE/RL, "Ukrainian Forces Capture Kramatorsk Airport" (15 April 2014); T. McCarthy and A. Yuhas, “Ukraine crisis: Kyiv launches ‘anti-terror operation in east’ – live updates” (Guardian, 15 April 2014); LB, “The Ukrainian military recaptured Kramatorsk airfield” (15 April 2014); Ukrainska Pravda, “Kramatorsk airfield repulsed an attack by armed terrorists’” (15 April 2014).

Information provided by the Government of Ukraine; RFE/RL, "Ukrainian Forces Capture Kramatorsk Airport" (15 April 2014); T. McCarthy and A. Yuhas, “Ukraine crisis: Kyiv launches ‘anti-terror operation in east’ – live updates” (Guardian, 15 April 2014); LB, “The Ukrainian military recaptured Kramatorsk airfield” (15 April 2014); Ukrainska Pravda, “Kramatorsk airfield repulsed an attack by armed terrorists’” (15 April 2014).

In March 2014, the OHCHR established the HRMMU to monitor, report and advocate on the human rights situation in Ukraine. The mission became operational on 15 March and consisted of 34 staff deployed in Lviv, Kharkiv, Odessa and Donetsk. OHCHR, “Situation in eastern Ukraine worsening, says UN report” (15 September 2016); OHCHR, “Report on the human rights situation in Ukraine” (15 May 2014), para. 12.
which examined, among other things, the demonstrations that had continued to take place since early March in eastern Ukraine.\textsuperscript{1361}

On 16 April 2014, the People’s Militia of Donbas launched an attack against the Ukrainian Military Unit No. 3057 in Mariupol. Three persons were reportedly killed, 13 wounded and 63 were detained by the Ukrainian law enforcement officers.\textsuperscript{1362} Days later, on 20 April 2014, militants in Bibasiyka attacked Ukraine’s volunteer battalion, ‘Right Sector’, opening fire and killing a member of the battalion.\textsuperscript{1363} According to the head of ‘Right Sector’, the battalion killed six militants, while some of the Right Sector members received grenade and firearms wounds.\textsuperscript{1364}

Between 20-21 April 2014, Ukraine ceased the ATO in observance of the Easter holidays and in the aftermath of the Geneva meeting and statement on 17 April.\textsuperscript{1365} However, acting Ukrainian President, Oleksandr Turchynov, ordered the resumption of the ATO in eastern Ukraine on 24 April\textsuperscript{1366} and, on the same day, the Ukrainian forces attempted to liberate Sloviansk.\textsuperscript{1367} The units of the NGU, as well as the unit of the special purpose of the Ministry of Internal Affairs ‘Omega’, destroyed two separatist checkpoints. However, they were forced to turn back to their starting positions on the order of the ATO leadership.\textsuperscript{1368} Five separatists allegedly died during the clashes.\textsuperscript{1369}

On 27 April, a video recorded three beaten and detained men, alleged by Girkin to be SSU Alfa officers, who were captured in Kramatorsk while going to Horlivka on a mission to capture Bezler.\textsuperscript{1370} On 28 April, the Ukrainian Ministry of Interior reported that Ukrainian security forces had demolished three separatist checkpoints and killed five “terrorists” as the government forces attempted to regain control of Sloviansk.\textsuperscript{1371}

4.1.2.2.2.1.2 ARMED CLASHES AND CONTROL OVER TERRITORY IN LUHANSK

In contrast to Donetsk, there were very few incidents of violent armed clashes in the month of April 2014 in the Luhansk oblast. For example, on 29 April, when the Army of the South-East captured the Luhansk Regional State Administration, the Prosecutor’s Office, and the Department of the police in Luhansk and other important

\textsuperscript{1361} OHCHR, ‘Report on the human rights situation in Ukraine’ (15 May 2014), para. 68.

\textsuperscript{1362} It is not known whether the persons killed or injured were civilians or combatants. However, there is some evidence that those killed and injured had taken part in the storming of the Military Unit: OHCHR, ‘Report on the human rights situation in Ukraine’ (15 May 2014), para. 100; OSCE, ‘Latest from the Special Monitoring Mission to Ukraine – based on information received up until 17 April 2014, 20:00 (Kyiv time)’ (18 April 2014); Information provided by the Government of Ukraine; V Snegiyov and others, ‘History of one city. Liberation and defense of Mariupol’ (UHHRU 2018), pp. 5, 6-7; BBC News, ‘Assault on a military unit in Mariupol: three attackers killed’ (17 April 2014); LB, ‘As a result of assault of military unit in Mariupol 12 people were injured (Updated)’ (17 April 2014).

\textsuperscript{1363} D. Putyata, A. Karbivnychy and V. Rudyka, ‘It is getting hot in Sloviansk’ (Mil.in.ua, 12 April 2020); Rubryka, ‘The first battle of the “Right Sector”: the Slavic debut and “business card of Yarosh”’ (20 April 2019).

\textsuperscript{1364} Rubryka, ‘The first battle of the “Right Sector”: the Slavic debut and “business card of Yarosh”’ (20 April 2019); Censor, ‘Dmytro Yarosh: “The first offensive battle of the war took place on April 20, 2014 - volunteers attacked a checkpoint near Sloviansk”’ (22 April 2016).

\textsuperscript{1365} Meeting of the representatives of Ukraine, Russia, US and the EU aimed at finding a way to stop violence in eastern Ukraine. As a result of the meeting a Geneva Statement was adopted: Mission of Ukraine to the North Atlantic Treaty Organization, ‘Geneva Statement of 17 April 2014’ (17 April 2014); OHCHR, ‘Report on the human rights situation in Ukraine’ (15 May 2014), para. 95; N. Melnyk (comp) and others, ‘Armed conflict in the East of Ukraine: the damage caused to the housing of the civilian population’ (Human Rights Publisher 2019), p. 7. See also, see Section 4.1.2.2.2.2.1.2 The Satisfaction of other Indicia of Intensity by Mid-April, below.

\textsuperscript{1366} OHCHR, ‘Report on the human rights situation in Ukraine’ (15 May 2014), para. 95.

\textsuperscript{1367} Information provided by the Government of Ukraine; O. Harbar and others, ‘Armed Conflict in Ukraine: Military Support of Illegal Armed Formations ‘DPR’ and ‘LPR’ by Russian Federation’ (UHHRU 2018), p. 9; A. Maiorova (ed.), ‘Donbas in Flames’ (Prometheus 2017), p. 37; Korrespondent, ‘Assault Slavic online: chronicle of events PLOT’ (24 April 2014); D. Popovych, ‘Anniversary of the anti-terrorist operation: what prevented Ukraine from successfully ending the war’ (Slovo i dilo, 13 April 2017); D. Buginov, ‘As it was: April 24 – the sixth anniversary of the first powerful offensive of anti-terrorist operation forces near Slavyansk (video)’ (Sloviansk city website, 24 April 2020); BBC News, ‘There was a shootout in Sloviansk: there are dead’ (24 April 2014); Radio Svoboda, ‘In Sloviansk - the second stage of the anti-terrorist operation, the city is completely blocked - Pashinsky’ (25 April 2014); LB, ‘The anti-terrorist operation in Sloviansk has been suspended due to Russian troops at the border’ (24 April 2014).

\textsuperscript{1368} Information provided by the Government of Ukraine; Korrespondent, ‘Assault Slavic online: chronicle of events PLOT’ (24 April 2014); D. Popovych, ‘Anniversary of the anti-terrorist operation: what prevented Ukraine from successfully ending the war’ (Slovo i dilo, 13 April 2017).


\textsuperscript{1370} Tyshchen, ‘The separatists captured three SSU officers’ (27 April 2014).

\textsuperscript{1371} OHCHR, ‘Report on the human rights situation in Ukraine’ (15 May 2014); Ukrainska Pravda, ‘Security forces demolished 3 more checkpoints near Sloviansk’ (30 April 2014).
administrative buildings, there is evidence that the militants opened fire at the police station. However, reports suggest that the police did not resist and there is no evidence that any casualties resulted from the shooting.

Nevertheless, on 28 April 2014, the LPR armed groups began to take over cities and towns in the Luhansk oblast. In particular, the following towns came under the control of the non-State armed groups in April and beginning of May: Stanytsia-Luhanska was taken over by the Prizrak Battalion (28 April 2014), Luhansk was taken over by the Army of the South-East (29 April 2014), and Kadiivka was taken over by the Prizrak Battalion and the Army of the South-East (2 May 2014). By 30 April 2014, Ukraine’s then acting President announced that the Kyiv government had effectively lost control over the situation in both the Luhansk and Donetsk oblasts. Recalling that, in the absence of hostilities, the ability of the armed groups to control territory may be determinative of intensity, this ability of the LPR (shown to have continued throughout the subsequent months), in addition to the Ukrainian government’s admission of its loss of control over the situation in the region on 30 April, is critical to the assessment of the NIAC in Luhansk.

4.1.2.2.2.2 THE SATISFACTION OF OTHER INDICIA OF INTENSITY FROM MID-TO LATE APRIL

In addition to the seriousness and frequency of armed clashes, and the control of territory by the armed groups, an analysis of numerous other indicia of intensity is instructive, including the type and number of forces deployed, the quantity and type of military equipment and weapons, the effects of the violence on the civilian population and whether the conflict attracted the attention of the UNSC and other international organisations.

There were numerous organised armed groups operating in Donbas, with significant membership. As of 9 April 2014, according to the Information Resistance group, members of the armed and unarmed pro-Russian separatist groups in the region exceeded 2,500. As assessed above, the following organised armed groups operated in Donbas in April 2014: Girkin’s group (from 12 April), Bezler’s group (from 14 April), the Prizrak Battalion (from 27 April) and the Army of the South-East (from 29 April). In addition, as discussed above, from 13 April 2014, in response to attacks by armed groups in Donetsk, Ukrainian forces began operating in the region and, from 14 April 2014, the Ukrainian government officially launched the ATO. At first, the armed divisions of the UAF and MIA operated in the vicinity of...
Sloviansk, Kramatorsk and Mariupol in the Donetsk oblast. By the end of April, they operated in territories including Semenivka, Bylbasivka, Donets, Sloviansk, Kramatorsk, and Mariupol.1383

By mid-April 2014, there is also evidence that both sides of the conflict had a large quantity of weaponry, including heavy weaponry. There is clear and convincing evidence that the armed groups had submachine guns, armoured vehicles (seized from the Ukrainian forces), man-portable air-defence systems, automatic rifles, rocket-propelled grenade launchers, and cannon-launched guided projectile installations.1388 There is also evidence that from around end of April and beginning of May, the Ukrainian government equipped its armed forces with armoured vehicles, wide blast artillery, airplanes and helicopters.1391 On 24 April 2014, during an attempt to liberate Sloviansk, the NGU ‘Omega’ officers used at least two or three military helicopters and armoured vehicles (BTRs) against the militants.1395 On 25 April, a Ukrainian military helicopter at Kramatorsk aerodrome was shot from a grenade launcher.1393

The number of casualties and the effect on the civilian population also establishes that the clashes and takeovers increased in intensity from mid-April. The first civilian casualties due to the violence in the Donetsk oblast occurred on 17-18 April 2014 when it is widely reported that two persons – named Yuri Popravko (a student and Maidan activist)1394 and Volodymyr Rybak (Horlivka city councillor)1395 – were detained by Girkin/Bezler’s groups and subsequently tortured and killed due to their opposition towards the DPR.1396 This allegation is confirmed by Girkin who admitted his involvement in this violence in an interview.1397 On 28 April 2014, the body of another victim was found – a civilian by the name of Yuriy Dyakovskiy, who had been abducted in Sloviansk on 17 April by militants belonging to Girkin’s group.1394 According to the Ukrainian Prosecutor General, between 14 April and 15 May 2014, 68 individuals (servicemen and civilians) were killed.1399 In addition, between 2 April and 6 May 2014, the OHCHR

1386 Donetsk Vesti, ‘Girkin told where the militants in Sloviansk get their weapon’ (30 October 2015).
1387 UNSC ‘Text of speeches’ S/PV.7165 (29 April 2014), p. 3; Donetsk Vesti, ‘Girkin told where the militants in Sloviansk get their weapon’ (30 October 2015); Ministry of Defense of Ukraine, ‘At the airport in Kramatorsk vibuhovyi helicopter Mi-8: There are no victims’ (25 April 2014).
1388 Donetsk Vesti, ‘Girkin told where the militants in Sloviansk get their weapon’ (30 October 2015).
1389 D. Bigunov, ‘As it was: April - 24 the sixth anniversary of the first powerful offensive of anti-terrorist operation forces near Sloviansk (video)’ (Sloviansk City Website, 24 April 2020); N. Dym, ‘At first I thought it was airsoft.’ Three years of anti-terrorist operation: the first fight, the order is broken, the hero, loss’ (Novynarnia, 13 April 2017); Armyinform, ‘In the Donetsk region honored the memory of the first Heroes who died during the anti-terrorist operation in 2014’ (14 April 2021); S. Walker, ‘Ukraine crisis: tension mounts in Kramatorsk after army rolls in’ (Guardian, 4 May 2014).
1391 Information provided by the Government of Ukraine; BBC News, ‘There was a shootout in Sloviansk: there are dead’ (24 April 2014); D. Bigunov, ‘As it was: April - 24 the sixth anniversary of the first powerful offensive of anti-terrorist operation forces near Sloviansk (video)’ (Sloviansk City Website, 24 April 2020); OHCHR, ‘Report on the human rights situation in Ukraine’ (15 June 2014), para. 169; A. Malorova (ed.), ‘Donbas in Flames’ (Prometheus 2017), p. 38.
1392 Korrespondent, ‘Assault of Sloviansk online: chronicle of events’ (24 April 2014); TSN, ‘The assault on the checkpoints continues in Sloviansk’ (24 April 2014); Vchasno, ‘Human rights activists have found evidence of Russia’s involvement in the occupation of Sloviansk five years ago’ (12 April 2019).
1395 Volodymyr Rybak was a member of the Horlivka City Council. On April 17, 2014 he tried to remove the flag of the so-called ‘Donetsk people’s republic’ which the militants had hanged over the seized council building. A video shows Rybak being stopped as he tried to enter the building, pushed and beaten, before being forced into a waiting car and taken away by masked militants in camouflage gear: H. Covenash, ‘Horribily tortured and murdered, or imprisoned in Crimea and Donbas for the Ukrainian Flag’ (KHRPG, 24 August 2017); A. Luhn, ‘Ukraine: murdered council member Vladimir Rybak buried’ (Guardian, 24 April 2014). There is information that Bezler ordered to capture Rybak who was subsequently brought to Girkin: ‘Rybak who actively opposed the militia was an enemy in my eyes. And his death is to some extent under my responsibility’, Girkin said. Novosti Donbas. ‘Girkin partly taken responsibility for the killing of a fisherman in 2014’ (19 May 2019); Y. Poluhina, ‘Inglorious hybrids’ (Novaya Gazeta, 17 July 2020).
1396 There is information that Bezler ordered to capture Rybak who was subsequently brought to Girkin. Censor. ‘On April 17, 2014, DNR terrorists abducted and brutally killed Gorlivka City Council deputy Vladimir Rybak on Bezler’s behalf’ (17 April 2014); S. Horbatenko, ‘Bezler’s controlled hte: Ukraine is finally ready to try Russian officer for torture’ (Radio Svoboda, 4 August 2021); Ostrov, ‘Seven years ago, in captured Gorlivka, Russian terrorists brutally killed the Ukrainian patriot Vladimir Rybak’ (17 April 2021); Novosti Donbas. ‘Girkin partly taken responsibility for the killing of a fisherman in 2014’ (19 May 2019); Y. Poluhina, ‘Inglorious hybrids’ (Novaya Gazeta, 17 July 2020; OHCHR, ‘Report on the human rights situation in Ukraine’ (15 May 2014), para. 95, fn. 31; Gordon, ‘Girkin confessed to killing three Ukrainians’ (18 May 2020); O. Komarova, ‘Three years since the death of Vladimir Rybak. He also defended the Ukrainian flag’ (Radio Svoboda, 17 April 2020).
1397 Gordon, ‘Girkin confessed to killing three Ukrainians’ (18 May 2020).
reported a “rise in the number of reported cases of intimidation, harassment, and killings, as well as a wave of abductions and unlawful detentions of journalists, activists, local politicians, representatives of international organizations and members of the military” in Sloviansk where the armed groups were operating.\textsuperscript{1400} The OHCHR also reported that it had received information regarding alleged cases of enforced disappearances in eastern Ukraine carried out by the Ukrainian forces as part of it operations, as well as credible reports of the detention and transfer to Kyiv of a number of persons by the SSU.\textsuperscript{1401}

Finally, the hostilities in eastern Ukraine drew the attention of the UNSC and other international organisations at least by mid-April. In March 2014, the OHCHR established the HRMMU to monitor, report and advocate on the human rights situation in Ukraine.\textsuperscript{1402} The mission became operational on 15 March and consisted of 34 staff deployed in Lviv, Kharkhiv, Odesa and Donetsk.

\textsuperscript{1403} Its first report was published on 15 April 2014, examining, \textit{inter alia}, the demonstrations that had continued to take place since early March in eastern Ukraine.\textsuperscript{1404} The OSCE Special Monitoring Mission to Ukraine was deployed on 21 March 2014,\textsuperscript{1405} and its first daily report published on 14 April 2014, describing violence in Donetsk and Luhansk oblasts.\textsuperscript{1406}

During a UNSC meeting on 16 April 2014, there was a discussion on the situation in Ukraine in which it was stated: "[t]he situation in the east, if not adequately addressed as a matter of priority, risks seriously destabilizing the country as a whole. Those who exercise influence over the situation should take immediate action to halt the violence. The arming of the protesters and their transformation into quasi-paramilitary forces must be stopped. Anyone inciting violence and providing arms to protesters can be held accountable for the resulting tragic consequences".\textsuperscript{1407} Thereafter, on 17 April 2014, Russian and Ukrainian representatives signed and adopted the Geneva Statement, which provided that all illegal armed groups must be disarmed, and all illegally seized buildings returned.\textsuperscript{1408} The deteriorating situation in eastern Ukraine was again mentioned by the UNSC in meetings on 29 April 2014.\textsuperscript{1409}

To conclude, there is clear and convincing evidence that by at least 14 April 2014 in Donetsk and 30 April 2014 in Luhansk, numerous indicators of intensity were present that established that a NIAC between the armed groups and the Ukrainian armed forces had begun. Thereafter, as the following sections will describe, the NIAC continued to increase in intensity throughout the spring and summer of 2014.

\subsection{May 2014: Continued Intensification of Armed Conflict}

The hostilities between the armed groups and the Ukrainian forces continued to increase in intensity in May 2014 and, as described above,\textsuperscript{1410} the following organised armed groups operated during this period: Girkin's group, Bezler's Group, the Patriotic Forces of Donbas (Vostok Battalion) from 9 May 2014, and the Oplot Battalion from 26 May 2014 in the Donetsk oblast; and the Army of the South-East; the People’s Militia of Luhansk (Prizrak Battalion); the Luhansk Cossack National Guard from 3 May 2014; and Dryomov’s group from 22 May 2014. As described above,\textsuperscript{1411} these groups acted in coalition.

\textsuperscript{1401} OHCHR, ‘Report on the human rights situation in Ukraine’ (15 May 2014), paras. 97, 103-104.
\textsuperscript{1404} OHCHR, ‘Report on the human rights situation in Ukraine’ (15 May 2014), para. 68.
\textsuperscript{1405} OSCE, ‘OSCE Special Monitoring Mission to Ukraine’ (2014).
\textsuperscript{1406} OSCE, ‘Latest from the Special Monitoring Mission to Ukraine - Monday, 14 April 2014’ (14 April 2014).
\textsuperscript{1407} OHCHR, ‘Briefing by the ASG Ivan Simonovic to the UN Security Council’ (16 April 2014).
\textsuperscript{1409} UN Security Council, 7165th Meeting Record (29 April 2014), p. 3.
\textsuperscript{1410} See Section 4.1.2.2.1 Organisation.
\textsuperscript{1411} See Section 4.1.2.2.1 Did the Groups Act as a Coalition?
Between April and May, the UN HRMMU received credible reports regarding the “increasing number and presence of well-organised armed persons in eastern Ukraine”. From May until July 2014, the number of forces present in the Donetsk and Luhansk oblasts grew rapidly to around 15-20 thousand. As described below, from May 2014 onwards, the RFAF began to supply the D/LPR armed forces with significant amounts of heavy weaponry.

During May 2014, the fighting, which was concentrated in the northern part and border areas of the Donetsk oblast and the south of the Luhansk oblast, continued to intensify, with an increased number of casualties during this period. The OHCHR reported that there was more regular and intense fighting as the Government was trying to restore peace and security over the eastern regions of Donetsk and Luhansk through security operations involving its armed forces. As a result of the hostilities, the Ukrainian forces gained control over a large portion of the territory held by the armed groups in the Donetsk and Luhansk oblasts. The below paragraphs provide a summary of the armed clashes that occurred in Donetsk and Luhansk in May 2014.

In the Donetsk oblast, serious fighting erupted throughout the month of May between the Ukrainian forces alongside the MIA, and the D/LPR armed groups (particularly, Girkin's Group, Bezler's Group and the Vostok Battalion), in the residential areas of Sloviansk, Semenivka, Bylbasivka, Kramatorsk, Yasnohirka, Liman, Mariupol in the Donetsk oblast. From 2-5 May 2014, fierce fighting broke between the Ukrainian forces and Girkin's group out around Sloviansk, Kramatorsk and adjacent territories, which resulted in the Ukrainian forces suffering significant losses for the first time. The Ukrainian forces lost 3 helicopters (2 Mi-24 and 1 Mi-8MT) to Man-portable air-defence systems (“MANPADS”). On 9 May, fighting occurred between the Ukraine forces (Armed Forces, NGU, and volunteer organizations) and the D/LPR forces.

1412 The UN Human Rights Monitoring Mission in Ukraine (HRMMU) monitors, reports and advocates on the human rights situation in Ukraine. HRMMU was deployed as part of the Human Rights Up Front policy of the UN Secretary-General. See, UN Human Rights in Ukraine, UN Human Rights Monitoring Mission in Ukraine.


1415 See Section 4.1.2.3.2.7.1 Provision of Military Equipment.


1421 Information provided by the Government of Ukraine; OSCE SMM, “Latest from the Special Monitoring Mission to Ukraine - based on information received up until 02 May 2014, 19:00 (Kyiv time)” (2 May 2014); A. Maiorova (ed.), “Donbass in Flames” (Prometheus 2017), p. 36; M. Kofman and others, “Lessons from Russia’s Operations in Crimea and Eastern Ukraine” (RAND 2017) p. 43; R. Lebed, “ATO: what are the losses in Ukrainian aviation” (BBC News, 25 July 2014).

1422 According to some sources – 2 helicopters - information provided by the Government of Ukraine; OSCE SMM, “Latest from the Special Monitoring Mission to Ukraine - based on information received up until 02 May 2014, 19:00 (Kyiv time)” (2 May 2014); A. Maiorova (ed.), “Donbass in Flames” (Prometheus 2017), p. 36; M. Kofman and others, “Lessons from Russia’s Operations in Crimea and Eastern Ukraine” (RAND 2017) p. 43; R. Lebed, “ATO: what are the losses in Ukrainian aviation” (BBC News, 25 July 2014).
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battalions ‘Azov’ and ‘Dnipro’ and the DPR armed groups (including the Vostok Battalion) in Mariupol, resulting in numerous people being wounded and approximately 12 fatalities. On 13 May, Girkin’s group ambushed by fire (using grenade launchers and small arms) a Ukrainian military unit near Kramatorsk, killing at least seven Ukrainian soldiers. Fighting continued in Sloviansk and Kramatorsk throughout May 2014. On 22 May, during the armed clashes in Volnovakha between Bezler’s group and Ukrainian forces, 17 Ukrainian servicemen were killed and 31 wounded.

The Vostok battalion and the Oplot Battalion also began operations in the Donetsk oblast. In particular, in 23 May, Ukrainian battalion ‘Donbas’ was ambushed and attacked by armed groups, controlled by Igor Bezler and Oleksandr Khodakovskii (i.e., the Vostok Battalion), near the town of Horlivka (in Karlivka), leading to the killing of one Ukrainian serviceman and wounding and detention of another nine. On 26 May, hostilities took place between the Ukrainian armed forces and the armed groups (primarily the Vostok Battalion and Oplot Battalion) for control over the Donetsk airport. Around 45 militants were killed and there were several civilian casualties due to fighting.

In Luhansk, while towns had been taken over without resistance from 28 April, the first armed clashes that occurred between the UAF and the armed groups reportedly occurred on 7 May 2014. Ukrainian media reported that, on 7 May, the Ukrainian border guards at the Izvarine crossing point, Luhansk oblast, fired at a Tiger armoured vehicle that had crossed the border from Russia. However, there is insufficient clear and convincing evidence to corroborate this evidence or to establish who was manning the Tiger armoured vehicle.

In the Luhansk oblast, the first civilian casualties were discovered in the beginning of May 2014. On 10 May 2014, the BBC reported that five people had been killed in Luhansk since the beginning of May, including two people who were shot near an Army of the South-East check-point on 8 May. This incident is corroborated by various reports.

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1423 ‘Azov’ and ‘Dnipro’ were volunteer battalions organised by local residents that assisted the Ukrainian Forces. The chain of command and subordination of these battalions was loose, and in June 2014 they were formally integrated into the structures of the Ministry of Internal Affairs and the Ministry of Defence of Ukraine: OHCHR, “Human rights violations and abuses and international humanitarian law violations committed in the context of the Ilovaisk events in August 2014”, p. 1, fn. 5.

1424 Information provided by the Government of Ukraine; Army Info, ‘Fights for Mariupol on May 9, 2014. Memories of the participants of those events’ (9 May 2020).

1425 OSCE SMM, ‘Latest from the Special Monitoring Mission to Ukraine - based on information received up until 02 May 2014, 19:00 (Kyiv time)’ (2 May 2014); OHCHR, ‘Report on the human rights situation in Ukraine’ (15 June 2014), para. 189.


1427 Information provided by the Government of Ukraine; Radio Svoboda, ‘Militants fired at the military airfield near Kramatorsk – the Ministry of Defence’ (16 May 2014); Ministry of Defence of Ukraine, ‘Terrorists fired on a military airfield near Kramatorsk’ (16 May 2014); Ukrainian military TV YouTube Channel, ‘Special Operation Kramatorsk 18.05.2014’ (19 May 2014), starting from 2:59; RusMonitor, ‘Terrorists shot a security checkpoint from a kindergarten’ (19 May 2014); Insider, ‘Near Sloviansk, separatists fired mortar shells from a kindergarten’ (19 May 2014); Daily Live, ‘Terrorists killed a paratrooper in Slavyansk with a mortar located in a kindergarten’ (19 May 2014).


1429 OHCHR, ‘Report on the human rights situation in Ukraine’ (15 June 2014), para. 168; BBC News, ‘Ukraine: battalion ‘Donbas’ was ambushed by separatists’ (23 May 2014); BBC, ‘Battalion “Donbas” was ambushed by militants’ (23 May 2014); Ukrainska Pravda, ‘Boris Kudakovsky deliberately framed Iskra for execution’ (4 June 2019), starting from 26:06; Y. Butusov, ‘Why did the battle take place on May 26, 2014 at Donetsk airport?’ (Censor, 27 May 2019); ArmyFm, ‘Six years ago battles for Donetsk began’ (26 May 2020); D. Puitala, A. Karibinychyna and V. Rudyka, ‘First battle for the Donetsk Airport’ (Mil.in.ua, 26 May 2020); K. Danylenko, ‘Ilovaisk Remembrance Day. What questions remained unanswered after 7 years?’ (Page, 30 August 2021).

1430 Information provided by the Government of Ukraine; S. Podilska, ‘Six years ago, the fighting for the Donetsk Airport began: as it was’ (ArmyInform, 26 May 2020); OHCHR, ‘Report on the human rights situation in Ukraine’ (15 June 2014), para. 169; A. Maiorova (ed.), ‘Donbas in Flames’ (Prometheus 2017), p. 38.


1433 See Section 4.1.2.2.2.1.2 Armed Clashes and Control over Territory in Luhansk, above.

1434 T. Lashchuk, ‘In 2014, Luhansk border guards saved Poroshenko’s life’ (LB, 1 June 2017); Y. Bozhko, ‘Zhirinovsky’s “Tiger” crossed the Ukrainian border under cover of 35 armed militants’ (UNN, 8 May 2014); Volyn Post, ‘Zhirinovsky’s jeep stormed the border and broke to the terrorists’ (8 May 2014); E. Alekseeva, ‘Zhirinovsky sent his “Tiger” to help the Luhansk militia’ (Za Rulim, 8 May 2014).

1435 Liga, ‘Donets farmer was shot by terrorists in front of his family’ (18 May 2014); Ukrainska Pravda, ‘Terrorists brutally shot a couple in Luhansk region’ (9 May 2014); O. Prytykin, ‘Luhansk: how the city “without power” lives’ (BBC News, 10 May 2014).


1437 Liga, ‘Donets farmer was shot by terrorists in front of his family’ (18 May 2014); Ukrainska Pravda, ‘Terrorists brutally shot a couple in Luhansk region’ (9 May 2014).
There is, however, clear and convincing evidence that armed clashes occurred in Luhansk from mid-May onwards. Of particular note, on 17 May, fighting occurred at the ‘Dovzhanski’ crossing point after around 200 militants from among the Army of the South-East arrived using small arms and grenades to release Bolotov, who had been detained earlier the same day by the Ukrainian border guard officers. On 22 May, Mozhovyi’s Prizrak Battalion and Drymov’s Group attacked a convoy of military vehicles near Rubizhne, killing one Ukrainian fighter and injuring two others. On 25 May, there was an exchange of fire between Ukrainian forces and LPR militants in Novoaydar, Luhansk oblast, resulting in the death of two civilians.

On 27 May, Ukraine launched an airstrike at a training camp located close to Sverdlovsk (currently - Dovzhansk) where the Prizrak Battalion’s training camp was located. On 29 May 2014 the Army of the South-East commanded by Bolotov attempted to seize NGU military unit 3035 in Aleksandrovsk, Luhansk oblast. On 30 May, unidentified armed militants alleged to be Cossacks launched an assault on the Dyakove Border Guard Department. More than 80 militants arrived in trucks and took part in the attack. The attackers used mortars, grenade launchers and small arms. As a result of the battle, three servicemen were wounded, and one was injured.

By the end of May 2014, in addition to settlements indicated above, the following settlements were controlled by the separatists: Chystyakove, Khrustalnyi, Rovenki, Sorokyne (between May-June 2014), Antratsyt (5 May 2014), Dovzhansk (by mid-May 2014), Lysychansk (approximately 22-23 May 2014), Severodonetsk (22 May 2014), and Rubizhne (partly, from 22-30 May 2014). By the end of May 2014, in the Donetsk oblast, the areas controlled by the D/LPR armed forces encompassed no less then 13,500 km² (out of 26,500 km² of the total area of the region), including a population of no less than 3,9 million people. In the Luhansk oblast, the areas controlled by...
D/LPR armed groups covered no less than 11,000 km² (out of 26.7 thousand km² of the total area of the region), including a population of no less than 1.6 million people.\textsuperscript{1457}

In May and June 2014, the OHCHR reported that the residents of the areas affected by the fighting were increasingly being caught in the crossfire between the Ukrainian military and armed groups, with a growing number of residents killed and wounded, and damage to property.\textsuperscript{1458} Further, the OHCHR described displacement from Donetsk and Luhansk, starting in the days leading up to the ‘referendums’ on 11 May,\textsuperscript{1459} due to violence and harassment.\textsuperscript{1460}

The deteriorating situation in eastern Ukraine was again mentioned by the UNSC in meetings on 29 April 2014, 2 May 2014, and 28 May 2014.\textsuperscript{1461} On 28 May 2014, it was stated that: “violence rages on in parts of the east, causing loss of life and injuries. Since the last Security Council consultations on the issue, held on 21 May, both Luhansk and Donetsk oblasts experienced a dramatic increase in deadly fighting. As a result, the numbers of casualties and wounded continue to increase on both sides, with civilian casualties reported as well”.\textsuperscript{1462}

4.1.2.2.2.4  JUNE-JULY 2014: CONTINUED HOSTILITIES

The D/LPR armed groups continued to engage in hostilities against the UAF throughout June and July. In June and July, reports continued of heavy weaponry used by both parties to the conflict, including artillery, tanks, rockets, and missiles.\textsuperscript{1463} Indeed, there is clear and convincing evidence that by summer the armed groups had access to large quantities of machine guns,\textsuperscript{1464} self-propelled artillery and tanks,\textsuperscript{1465} anti-tank rocket launchers,\textsuperscript{1466} missiles,\textsuperscript{1467} assault rifles, grenades, and grenade launchers.\textsuperscript{1468}

In June 2014, intense hostilities took place on the territories, including in Sloviansk, Semenivka, Bylbasivka, Kramatorsk, Yasnohirka, Donetsk, Olenivka, Mariupol, Schastya, Stanytsia Luhanska, Metalist, Kambrod, Luhansk, Stukalova Balka, Verhunka, in the suburbs of Tryokhizbenka, Slovenosserb, Rubizhne, Lyman, Yampol and Izvarine.\textsuperscript{1469} In a period between 1 June and 20 June 2014, there were daily incidents of fighting and shelling of the territory leading to the death among the combatants and civilians.\textsuperscript{1470} On 20 June 2014, Ukraine announced a 10-day
ceasefire. However, this was “reportedly breached at least 108 times, killing 27 Ukrainian soldiers and wounding 69”. 1471

While in June 2014, Ukrainian forces regained control of Lyman (4 June 2014), Mariupol (14 June 2014) and Schastya (14 June 2014),1472 the territories controlled by DPR extended to no less than 9,400 km² (out of 26,500 km² of the total area of the Donetsk oblast), while the LPR controlled no less than 8,400 km² (out of 26,700 km²).1473

The armed conflict continued to affect civilian life throughout June 2014. On 3 June, according to the OHCHR, 181 people had been killed since the official start of the Government’s security operations on 14 April. Of those killed, 59 were Ukrainian soldiers; the others were reported to be residents. 1474 The HRMMU reported 222 cases of abductions and detentions by armed groups since 13 April. Of these, four were killed; 137 released; and 81 remained detained as of 7 June 2014. 1475 Additionally, the fighting between the Ukrainian government and the armed groups in eastern Ukraine resulted in mass displacement in mid-2014,1476 with a high number of people having relocated to areas under the control of the Ukrainian government or to neighbouring countries.1477 As of 6 June 2014, according to the OHCHR, the departments of social protection in Ukraine’s regions had identified over 12,700 internally displaced persons, although this number was believed to be much higher. 1478 On the same day, the Russian Federation Federal Migration Service announced that 837 persons had applied and were granted refugee status, and 3,750 persons had applied and were granted temporary asylum. 1479

As of 10 June 2014, human rights organisations reported thousands of people were leaving the region. 1480 On 19 June 2014, Ukrainian human rights groups indicated that there were between 10-20,000 IDPs.1481 On 24 June 2014, the Assistant Secretary-General for Human Rights stated that: ‘from 15 April to 20 June, 423 people, including servicemen and civilians, were killed”, and that there had been an increase in the number of IDPs and “an increase in arms and recruitment for armed groups.” 1482

1471 OHCHR, “Report on the human rights situation” (15 July 2014), para. 10; OHCHR, “Report on the human rights situation in Ukraine” (15 June 2014), paras. 171-172; State Border Guard Service of Ukraine, “The battle for the Maryinka checkpoint: events that will remain in the history of Ukraine forever” (5 June 2018); Ukrainskiy Memorial, “The crash of the AN-30B plane near the village of Pryshib, Sloviansky district, Donetsk region” (6 June 2014); Ukrainian Institute of National Memory, “To the 5th anniversary of the beginning of the armed aggression of the Russian Federation against Ukraine” (27 February 2019); OSCE SMM, “Latest news from the OSCE Special Monitoring Mission to Ukraine (SMM), based on information received until 18:00 hrs, 16 June (Kyiv time)” (17 June 2014); OSCE SMM, “Latest news from the OSCE Special Monitoring Mission to Ukraine (SMM), based on information received until 18:00 hrs, 15 June (Kyiv time)” (16 June 2014); O. Harbar and others, “Amerid Conflict in Ukraine: Military Support of Illegal Armed Formations ‘DPR’ and ‘LPR’ by Russian Federation” (UHHRU 2018), p. 32; V. Snegirev, O. Martynenko and S. Movchan, “The Story of One City. Occupation and Liberation of Severodonetsk” (UHHRU 2017), p. 14; OSCE SMM, “Latest news from the OSCE Special Monitoring Mission to Ukraine (SMM), based on information received until 18:00 hrs, 13 June (Kyiv time)” (14 June 2014); BBC, “There are dead in the battle near Kramatorsk” (10 June 2014); Donbas SOS, “Digest June 7-8, 2014” (9 June 2014).

1472 Ukrainian Institute of National Memory, “Information materials dedicated to the 5th anniversary of the liberation from the Russian occupation of the cities of eastern Ukraine. ‘We return ours’” (5 July 2019); S. Podilská, “Six years ago, the Ukrainian military launched an operation to liberate the city of Lyman” (ArmyInform, 3 June 2020); ArmyInform, “Seven years ago, the city Schastya was liberated from Russian occupation” (13 June 2021); AFU, “The first period of the armed conflict in eastern Ukraine” (21 April 2021); T. Nikishina, “Chronicles of the war: the liberation of Mariupol, happiness, shot down IL-76 with paratroopers - June 2014” (QRIM News, 14 June 2021).

1473 V. Zakharev (comp.) and others, “Violent crimes committed during the Armed Conflict in Eastern Ukraine between 2014-2018” (KHRPG 2018), p. 14; O. Kramar, “Special zone of Ukraine. What we are losing in Donbas” (Ukrainskiy Tzvden, 12 September 2014); LB, “A map of the territories controlled by the separatists has been drawn up” (15 May 2014).


1477 OSCE, “Conflict-related Displacement in Ukraine: Increased Vulnerabilities of Affected Populations and Triggers of Tension within Communities” (July 2016), p. 5; UNHCR, “Ukraine conflict uproots hundreds of thousands” (5 December 2014).


1481 Center for the Study of the Society, “Overview of the situation with internally displaced persons in Ukraine” (June 2014), para. 1; UNHCR, “UNHCR says internal displacement rising in Ukraine” (20 May 2014); OSCE, “Internal displacement in Ukraine” (12 August 2014), p. 5; Vostok SOS, “Who and where are people glad to see the refugees from the Donbas who fled from the war” (19 June 2014).

1482 Information provided by the Government of Ukraine.
Fighting continued into summer 2014 in both the Donetsk and Luhansk oblasts. In July 2014, the fighting took place in the areas of Shakhtarsk, Maryinka, Stepantyvka, Chystyakove, Panchenko, Dovzhanske, Zelenopiiliya, Snizhe, Sloviansk, Kramatorsk, Bakmut, Popasna, Lysychansk, Zolote, Travneve, Svitlodarsk, Debaltseve, Oleksandrivsk, Stanytsia Luhanska, Tarany, Saurivka, Maryivka, Hrybuvakha, Dyakove, Dmytryvka, Maryivka, Stepantyvka, Biryukove, Kozevnyva, Savur-ysota, Kuteynikovo, and Mospyne, among others. As reported by the OHCHR, the fighting in July “using heavy weaponry in and around population areas, has devastated towns and villages, demolishing residential buildings and killing an increasing number of their inhabitants.” The fighting occurred on a daily basis and claimed hundreds of lives. On 17 July 2014 the militants shot down passenger flight MH17 flight with a BUK missile system, killing 298 civilians.

By 10 July 2015, according to the Ukrainian Ministry of Health, 478 civilians had been killed (441 men, 30 women and seven children) and 1,392 injured (1,274 men, 104 women and 14 children) since the fighting began in eastern Ukraine in mid-April. Estimates from the HRMMU and the World Health Organisation (WHO) confirm that at least 1,000 people died from mid-April until 15 July, including deaths of personnel of the Ukrainian armed forces, members of the organised armed groups and civilians. By 15 July 2014, more than 100,000 people had fled areas of fighting in eastern Ukraine. UNSC meetings discussing the situation in eastern Ukraine also took place in June (24 June 2014) and July (18 July 2014, 21 July 2014).

4.1.2.2.3 NIAC CONCLUSION

There is clear and convincing evidence that, by 14 April 2014 in Donetsk and 30 April 2014 in Luhansk, both criteria to establish the existence of a NIAC between Ukraine and D/LPR non-state armed groups operating in the region had been satisfied. Namely, the non-state armed group(s) involved were sufficiently organised, and the hostilities had reached a sufficient level of intensity.

The process of the D/LPR armed groups formalising into organised armed groups took place over several months beginning in March 2014, when various groups formed and participated in pro-Russian protests in Donbas. While not

1488 Ukrain’ska Pravda, “Turchynov: The active phase of the anti-terrorist operation was resumed in the morning” (1 July 2014); O. Bida and O. Martynenko, “Story of One City. Stanitsya Luhanska” (UHHRU 2018), p. 9; BBC News, “Anti-terrorist operation forces blocked Nikolaevka near Slavyansk” (4 July 2014); Army FM, “Day of liberation of Slavyansk and Kramatorsk from pro-Russian terrorists” (5 July 2019); M. Ozerov, “From Slavyansk to Donetsk. Battles for Donbas” (Radio Svoboda, 5 July 2014); National Security and Defense Council of Ukraine, “Operational information of the Information and Analytical Center of the National Security and Defense Council” (11 July 2014); A. Maiorova (ed.), “Donbas in Flames” (Prometheus 2017), pp. 39-41; OHCHR, “Report on the human rights situation in Ukraine” (15 July 2014), paras. 32-34; OHCHR, “Human rights violations and abuses and international humanitarian law violations committed in the context of the ilovaisk events in August 2014” (2018), para. 38; Interfax, “Transport plane shot down in Luhansk region” (14 July 2014); BBC News, “Ambush near Shakhtarsk: 10 soldiers were killed” (1 August 2014); Interfax, “The Ukrainian army occupied the city of Avdeevka in the immediate vicinity of Donetsk” (30 July 2014); BBC News, “There were artillery shelling near Donetsk at night” (29 July 2014); A. Hrabška, “The offensive of the Ukrainian troops proceeds in the ATO zone” (DW, 27 July 2014); RFI, “As a result of the fighting, the Luhansk region was cut off from the energy grids of Ukraine” (26 July 2014); N. Nedliko, “ATO forces continue offensive battles against separatists” (DW, 24 July 2014); IB, “ATO forces released Soledar in Donetsk region” (21 July 2014); Galinfo, “The Ministry of Defense assures that the aircraft covers problem areas of ATO where fights take place” (16 July 2014).
1489 B. Meijer, B. Biesemans and A. MacSwan, “Judge sees evidence of Buk missile being used in downing of MH17 airliner” (Reuters, 8 July 2021); Court MH17, “Summaries of the Day in Court Thursday 10 June 2011” (10 June 2011).
1490 However, the Ministry withdrew these figures the same day they announced them, and have issued no further data since: OHCHR, “Report on the human rights situation in Ukraine” (15 July 2014), para. 28.
1492 OHCHR, “Intense fighting in eastern Ukraine “extremely alarming”, says Pillay, as UN releases new report” (28 July 2014).
every indicium of organisation was present in each group from the beginning of hostilities, the groups developed significant military capacity and sufficient structure to operate over time, as exhibited by their ability to conduct military operations against the UAF and to control territory. By mid-April, the groups began to display sufficient indicia of organisation for purposes of establishing a NIAC. In Donetsk, the following operated during the hostilities as organised armed groups: Girkin’s group at least by 12 April 2014, Bezler’s group at least by 14 April 2014, the Patriotic Forces of Donbas (Vostok Battalion) at least by 9 May 2014, and the Oplot Battalion at least by 26 May 2014. In Luhansk, the following operated during the hostilities as organised armed groups: the People’s Militia of Luhansk (Prizrak Battalion) at least by 27 April 2014; the Army of the South-East at least by 29 April 2014; the Luhansk Cossack National Guard at least by 3 May 2014; and Dryomov’s group at least by 22 May 2014. Between July 2014 and February 2015, the armed groups transformed into the 1st and 2nd Army Corps, which exhibited organisation comparable to a traditional state army.

Where various non-State armed groups act in a coalition, their actions can be considered cumulatively for the purposes of assessing the intensity requirement necessary to establish the existence of a NIAC. There is clear and convincing evidence to suggest that armed groups operating in Donbas acted with a sufficient level of coordination and cooperation to fulfil many of the indicators of coalition. From as early as April 2014, the groups shared a common enemy (i.e., Ukraine) and conducted coordinated and collaborative military operations against that enemy towards a shared objective (integration of Donbas into Russia). The joint operations conducted by the armed groups demonstrated operational, strategic, and logistical cooperation. Moreover, attempts to formalise the armed groups into a single command that began in July and culminated in the establishment of the 1st and 2nd Army Corps by at least February 2015, evidenced the progression from a loose coalition in April 2014 into a more formalised Army under a single command.

Consequently, it has been established that – at least by the time each of the armed groups satisfied the organisational requirement – the armed groups operated as part of a coalition and their actions could be considered cumulatively for the purpose of the intensity assessment. Therefore, when assessing the intensity requirement, the actions of the individual groups were assessed cumulatively from the time they became sufficiently organised.

The hostilities in Donbas reached the required level of intensity by at least 14 April 2014 in Donetsk and 30 April 2014 in Luhansk. From this time in Donetsk, what were previously sporadic and isolated acts of violence that occurred during protests had clearly transformed into protracted violence between organised armed groups and Ukrainian forces, which had been deployed to the area and also reinforced. There was a significant increase in the seriousness and frequency of attacks and armed clashes, and the groups had taken control over key cities and towns. From this time, the armed groups had access to and utilised a significant quantity of weaponry, including heavy weaponry. The violence had also begun to impact significantly on the civilian population, causing a wave of refugees to flee the area. Moreover, the hostilities had attracted the attention of the UN Security Council and other international organisations, including the OSCE, which issued its first report on the situation on 14 April 2014, and the HRMMU, which issued its first report on 15 April 2014.

In Luhansk, there were no active hostilities during April. However, the organised armed groups were able to take and maintain control over territory from 28 April. The severity of the circumstances was confirmed on 30 April 2014, when the Ukrainian government conceded it had lost control over the situation in the area. These factors were determinative in assessing that the intensity threshold was fulfilled in Luhansk by at least 30 April 2014. From these dates, other indicators of intensity were also present. These included the involvement in serious armed clashes of heavily armed (and organised) groups, in significant numbers; the involvement of Ukraine’s armed forces; the
increasingly negative impact on the local population, including significant civilian casualties; and the attention received from international organisations, including the UNSC.

Thereafter, the conflict in Donbas intensified further throughout the spring and summer of 2014, with the Ukrainian forces launching several offensive operations to re-establish control over territory lost to the D/LPR armed groups. During this period, there was an increasing number of casualties and a serious effect on the civilian population. The use of heavy weaponry also increased through the spring and summer of 2014, particularly as the armed groups began receiving supplies of weaponry from Russia.\textsuperscript{1497} Clashes between Ukrainian forces and the organised armed groups have continued to date.

4.1.2.3 \textbf{Existence of an International Armed Conflict in Eastern Ukraine}

As concluded above, from 14 April 2014 in Donetsk and 30 April 2014 in Luhansk, there was a NIAC between Ukraine and the non-state armed groups operating in the Donetsk and Luhansk oblasts. The following sections will assess whether an IAC between Russia and Ukraine exists either: 1) in parallel to the NIAC as a result of any direct intervention by Russia in the conflict in support of the non-state armed groups; or 2) in place of the NIAC, in the case that the non-state armed groups acted under Russia’s overall control, thereby internationalising the conflict.

4.1.2.3.1 \textbf{Direct Intervention in Support of Non-State Armed Groups}

Direct involvement of the armed forces of a State in a conflict alongside and in support of an armed group on the territory of another State may both: 1) establish an IAC between the intervening and the territorial States,\textsuperscript{1498} and 2) be an indicator (amongst others)\textsuperscript{1499} that the armed group in question was under the overall control of the intervening State.\textsuperscript{1500}

Russian government and military officials have repeatedly denied the involvement of the RFAF in the territory of Ukraine.\textsuperscript{1501} In July 2014, for example, Putin stated: “[t]here were no Russian military units or military trainers in the south-east of the Ukraine and there are none. [...] We have never been engaged in the destabilization of the situation in Ukraine and are not engaged with this.”\textsuperscript{1502}

Nonetheless, as the following analysis will show, there is clear and convincing evidence that Russian forces have repeatedly intervened on Ukrainian territory in support of the D/LPR armed groups.\textsuperscript{1503} In sum, direct intervention by Russia on the territory of Ukraine occurred at least from 11 July 2014 and provided critical military support to the D/LPR armed groups in consolidating their control over the territory in Donbas. After the signing of the Minsk-II Agreement, and the stabilisation of the conflict in the D/LPR controlled areas on 18 February 2014, the need for direct Russian intervention decreased, although the RFAF may have been involved in certain military operations. From September 2014, Russia has engaged in the deployment of RFAF servicemen into commanding and staff officer

\textsuperscript{1497} See Section 4.1.2.3.2.7.1 Provision of Military Equipment.
\textsuperscript{1498} See e.g., Prlić et al. \textit{Trial Judgement}, paras. 528-544.
\textsuperscript{1499} See Section 4.1.2.3.2.1 Direct Intervention.
\textsuperscript{1500} Tadić \textit{Appeal Judgement}, para. 151(iii).
\textsuperscript{1501} The Nemtsov Report, p. 15; M. Solopov, \textit{‘RBC investigation: where did Russian soldiers come from in Ukraine’} (RBC, 2 October 2014); Tass, “Putin: There are no Russian troops in Ukraine” (16 April 2015); A. Luhn, \textit{“They Were Never There: Russia’s Silence for Families of Troops Killed in Ukraine”} (Guardian, 19 January 2015); G. Baczyńska and T. Tsolova, \textit{“Russia Denies NATO Accusations over Troops in Ukraine”} (Reuters, 12 November 2014); Ministry of Foreign Affairs of the Russian Federation, \textit{“Remarks and Answers to Questions from the Media by Foreign Minister Sergey Lavrov During a Joint News Conference with the Minister of Foreign Affairs of the Islamic Republic of Iran Mohammad Javad Zarif”} (29 August 2014); AFP, \textit{“Russia Accuses US of ‘Smear Campaign’ over Ukraine”} (25 July 2014); G. Baczyńska, \textit{“Russia Says No Proof It Sent Troops, Arms to East Ukraine”} (Reuters, 21 January 2015).
\textsuperscript{1502} The Nemtsov Report, p. 15; Tass, “Putin: There are no Russian troops in Ukraine” (16 April 2015); Interfax, “Putin reiterated the absence of the Russian army in the Donbass” (14 December 2017).
positions in the D/LPR armed forces.\textsuperscript{1504} Moreover, Russia has continued to maintain troops strategically along the border of Ukraine, retaining the ability to further integrate itself rapidly into the separatist’s structures should it decide to escalate the conflict to assist the D/LPR armed forces.\textsuperscript{1505}

The evidence is sufficient to establish the existence of an IAC between Russia and Ukraine on the territory of Ukraine from at least 11 July 2014, in parallel to the NIAC between Ukraine and the D/LPR armed forces. However, as will be evaluated further below,\textsuperscript{1506} considered along with the totality of the available evidence, it is more appropriate to consider Russia’s direct intervention within the context of overall control, resulting in displacement of the NIAC.

4.1.2.3.1.1 \textbf{EARLY MOBILISATION OF RUSSIAN ARMED FORCES AND SHELLING ALONG THE BORDER WITH UKRAINE: APRIL – MAY 2014}

Beginning in April 2014, up to 40,000 members of the RFAF began amassing on the territory of Russia in strategic locations along the border with Ukraine.\textsuperscript{1507} Due to the threat of a large-scale Russian invasion, the UAF diverted their operations away from the conflict zones in Donetsk and Luhansk toward the border areas to defend cities such as Kharkiv.\textsuperscript{1508}

In addition, the Government of Ukraine (‘GoU’) has alleged that, in April 2014, small teams of Russian military personnel, armed and well-equipped, crossed the Russian-Ukrainian border into the Donbas oblast.\textsuperscript{1509} These teams are alleged to have included five sabotage-reconnaissance units and three groups of militants formerly enlisted in Crimea, and to have entered the territory of Ukraine on the night of 8 to 9 April 2014.\textsuperscript{1510} However, in the absence of sufficiently credible corroborating evidence and clear and convincing evidence to establish the connection of these units to the RFAF (i.e., that they were operating as units of, or under the direction of, the RFAF), the allegation that Russian military personnel crossed the border on the night of 8 to 9 April will not be considered further.

On 6 and 7 April 2014, members of the Russian FSB are reported to have participated in the seizure of the Regional State Administration buildings in Donetsk and Kharkiv and the State Security Service of Ukraine SSU buildings in Donetsk and Luhansk.\textsuperscript{1511} This evidence is contained in Annex C (Participation of Russian Citizens in the Seizure of the Donetsk and Luhansk Regional Administration Buildings: April 2014).

In relation to FSB involvement in Donetsk and Kharkiv, the allegations emanate predominantly from the GoU and are not corroborated or substantiated further by independent sources. As such, it has been assessed that this evidence currently does not meet the clear and convincing standard.

In relation to Luhansk, however, there is corroborating evidence for these claims. Interviews with SSU and UAF members suggest that officers of the FSB\textsuperscript{1512} and the Main Intelligence Directorate of the RFAF (‘GRU’)\textsuperscript{1513} participated

\textsuperscript{1504} See Section 4.1.2.3.2.2 Officers and Servicemen of the Russian Armed Forces, including the GRU.

\textsuperscript{1505} F. Holcomb, ‘The Kremlin’s Irregular Army: Ukrainian Separatist Order of Battle’ (Institute for the study of war 2017), p. 9; BBC News, ‘Russia is sending troops to the border with Ukraine. Will there be a big war’ (1 April 2021); T. Yavorovych, ‘Russia maintains a powerful offensive group around Ukraine’ - OP (Suspilne, 13 November 2021); F. Vasylyevsky and S. Johns, ‘In the event of an invasion, Russia is more likely to suffer a catastrophe than to achieve its goal’ (Ukrinform, 25 January 2022).

\textsuperscript{1506} See Section 4.1.2.3.2.1 Direct Intervention.

\textsuperscript{1507} M. Kofman and others, ‘Lessons from Russia’s Operations in Crimea and Eastern Ukraine’ (RAND 2017), p. 42; D. Bloom, ‘Satellite Photos Expose 40,000 Russian Troops, Tanks, and Fighter Jets Massed Near Ukraine’s Borders as NATO Warns Kremlin Could Order Invasion Within 12 Hours’ (Daily Mail, 10 April 2014).

\textsuperscript{1508} M. Kofman and others, ‘Lessons from Russia’s Operations in Crimea and Eastern Ukraine’ (RAND 2017), p. 42; D. Bloom, ‘Satellite Photos Expose 40,000 Russian Troops, Tanks, and Fighter Jets Massed Near Ukraine’s Borders as NATO Warns Kremlin Could Order Invasion Within 12 Hours’ (Daily Mail, 10 April 2014). See also, Section 4.1.2.2.2.2.1 Serious and Frequent Armed Clashes and Control of Territory in Donetsk.

\textsuperscript{1509} Information provided by the Government of Ukraine; M. Czuperski and others, ‘Hiding in plain sight. Putin’s war in Ukraine’ (Atlantic Council, May 2015), p. 6.

\textsuperscript{1510} Information provided by the Government of Ukraine. See also, Ukrainska Pravda, ‘Sabbatos Instructed To Allow Russian Army To Ukraine - Source’ (8 April 2014); LB, ‘Russian troops regrouped, but did not try to cross the border with Ukraine’ (9 April 2014).

\textsuperscript{1511} Information provided by the Government of Ukraine. L. Samohvalova, ‘Serhi Tutar: Within ten days we have built such a defence line of Maripol which Russians did not manage to take’ (Ukrinform, 29 April 2021); Gordon, ‘SSU Colonel Zhivotov stated FSB assigned the militants to hold a rally in Donetsk on 6 April 2014 but not to seize the building’ (6 June 2017).

\textsuperscript{1512} Information provided by the Government of Ukraine; information provided by Vostok SOS; N. Dvali, ‘Former head of the Luhansk SSU Petrulevich: Terrorist groups of the GRU of Russia are already in Kiyev and are waiting for a signal’ (Gordon, 2 July 2014).

\textsuperscript{1513} B. Butkevych, ‘Colonel Oleg Zhivotov: ‘We did not surrender Luhansk SSU’’ (Ukrainskyi Tyzhden, 25 March 2016).
in the seizure of the SSU building on 6 April. There are also reports that FSB officers were physically present in the captured Regional SSU buildings in Luhansk during April 2014, participating in the questioning of captured witnesses. These testimonies suggest that individuals involved in the Luhansk events represented themselves as FSB officers and showed their FSB IDs. Further, it is alleged that the FSB members organised and supervised the protests and created the ‘Army of the South-East’. Given there is no requirement that the use of armed force between the States reach a certain level of intensity or duration to be classified as an IAC and the fact that non-military State agents may participate in the conflict, in principle, the participation of agents of the FSB and GRU in the takeover of Luhansk may indicate that an IAC between the Russian Federation and Ukraine started on 6 April 2014.

However, at this point in the conflict, while there is information of a few FSB/GRU individuals present in Luhansk, there is insufficient evidence that these individuals were directed to the area as agents of the Russian Federation (or that the Russian Federation was aware of their presence). Circumstantial evidence of Russia’s increasingly belligerent statements, particularly relating to protecting the Russian-speaking population in Donbas, make a conclusion that these FSB/GRU officials were operating on behalf of Russia more likely. Nonetheless, without additional evidence, it has not been possible to determine whether these FSB and GRU officers were operating as organs of the Russian State, or whether they were FSB/GRU officers acting independently or ultra vires (i.e., acted outside legal authority). Therefore, while an IAC in Donbas could have started on 6 April 2014, further information is necessary to reach a definitive determination in this regard.

There is testimonial evidence that on 29 to 30 April 2014, the villages of Komyshe and Yuganivka in the Luhansk oblast were shelled from Russian territory. Further testimony alleges the Ukrainian forces were shelled from Russian territory in late May. However, the information about each incident comes from a single witness’ testimony collected by the Ukrainian Government and is not corroborated by other sources. Accordingly, it is not possible to draw conclusions to a clear and convincing standard concerning these allegations of cross-border artillery attacks.

4.1.2.3.1.2 Early Indicators of the Physical Presence and Activity of Russian Units: June – July 2014

Between May and July 2014, there was fierce fighting between the UAF and the non-state armed groups, as the UAF commenced a military campaign to regain territory. In line with its mission, the UAF regained control over a large

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2514 Information provided by the Government of Ukraine; O. Hudetskaya, ‘How the War Began in Luhansk Region’ (Insider, 9 October 2014); B. Butkevych, ‘The Surrender of Luhansk SSU’ (Ukrainskyi Tyzhden, 23 December 2015).

2515 Information provided by the Government of Ukraine; B. Butkevych, ‘Colonel Oleg Zhivotov: “We did not surrender Luhansk SSU!”’ (Ukrainskyi Tyzhden, 25 March 2016); O. Hudetskaya, ‘How the War Began in Luhansk Region’ (Insider, 9 October 2014); N. Dvali, ‘Former head of the Luhansk SSU Petrulevich: Terrorist groups of the GRU of Russia are already in Kiev and are waiting for a signal’ (Gordon, 2 July 2014); information provided by Vostok SOS.

2516 N. Dvali, ‘Former head of the Luhansk SSU Petrulevich: Terrorist groups of the GRU of Russia are already in Kiev and are waiting for a signal’ (Gordon, 2 July 2014).


2518 Information provided by the Government of Ukraine; N. Dvali, ‘Former head of the Luhansk SSU Petrulevich: Terrorist groups of the GRU of Russia are already in Kiev and are waiting for a signal’ (Gordon, 2 July 2014); B. Butkevych, ‘Colonel Oleg Zhivotov: “We did not surrender Luhansk SSU!”’ (Ukrainskyi Tyzhden, 25 March 2016); O. Hudetskaya, ‘How the War Began in Luhansk Region’ (Insider, 9 October 2014).

2519 RULAC Geneva Academy, ‘International Armed Conflict’ (last updated 30 August 2017); ICRC 2020 Commentary to Common Article 2, para. 259. See also, D. Akande, ‘Classification of Armed Conflicts: Relevant Legal Concepts’ in E. Wilmshurst (ed), International Law and the Classification of Conflicts (OUP 2012).

2520 ICRC 2020 Commentary to Common Article 2, para. 259 (see also, para. 261). See also, Section 3.1.1 Overview of the Law, above.

2521 For example, in March 2014, Sergei Glazyev (a close advisor to Putin – see Section 4.1.2.3.2.4.9.1 Sergei Glazyev) noted the Russian President’s Constitutional powers to use force in Ukraine as a last resort to save people. Whilst he specified that there were no current plans to do so, he stated that the resort to violence by “neo-fascists” from Western Ukraine in south-eastern Ukraine would require not only Russia but also the international community to protect people: Glazyev.ru, ‘Interview with The National Interest Read’ (27 March 2014). On 17 April, Putin stated that people in south-eastern Ukraine had become worried about their future due to a surge in nationalism and a desire to abolish rights of national minorities, including the Russian minority: See, President of Russia, ‘Direct line with Vladimir Putin’ (17 April 2014).


2523 Information provided by the Government of Ukraine; D. Koval, O. Sedov and I. Nerubayeva, ‘Where Did the Shell Come From’ (International Partnership for Human Rights 2016), pp. 4-7.15

2524 Information provided by the Government of Ukraine.

2525 N. Melnyk (comp) and others, ‘Armed conflict in the East of Ukraine: the damage caused to the housing of the civilian population’ (Human Rights Publisher 2019), p. 7; Decree of the President of Ukraine No. 405/2014 ‘On the Decision of the National Security and Defence Council on Immediate Measures Aimed at Combating the Terrorist Threat and Maintenance of the Territorial Integrity of Ukraine’ (24 April 2014). See also, Section 4.1.2.2.2.1.1 Serious and Frequent Armed Clashes and Control of Territory in Donetsks.
portion of the territory held by the armed groups in the Donetsk and Luhansk oblasts during this time. It is within this context that the Russian Federation increased its support to armed groups in the form of direct intervention.

There are some indications that units of the RFAF were present in eastern Ukraine as early as June 2014. According to the GoU, on 13 June 2014, materiel produced in Russia and a BM-21 ‘Grad’ with the identification mark of the 18th Separate Motor-Rifle Brigade of the 58th Combined Arms Army of RFAF of the South Military District were discovered on Ukrainian territory. The GoU’s allegations are based on the discovery of Russian military equipment in the territory of Ukraine by UAF members. However, other reasonable explanations — such as the equipment having been given to the D/LPR armed forces by the RFAF — would need to be explored and ruled out before this can be accepted as clear and convincing evidence of direct Russian intervention. Without this additional substantiating evidence, it has not been possible to conclude that RFAF units were present in eastern Ukraine in mid-June 2014.

In addition, there are indications that towards the end of June 2014 there were artillery attacks on Ukrainian positions carried out from Russian territory. According to a report by International Partnership for Human Rights (‘IPHR’), on 27 June 2014, the Ukrainian forces in Krasna Talivka village in the Luhansk oblast were shelled by anti-tank missiles “possibly fired by Russian troops from the Ukrainian side of the border.” While this could indicate the beginning of an IAC between Russia and Ukraine, there is insufficient corroboration to convincingly determine that the artillery attack was conducted by Russia.

There is ample evidence to establish that cross-border shelling was directed at Ukraine from Russia on a regular basis from July 2014 onwards. However, it is not until 11 July that a single incident is sufficiently corroborated to meet the clear and convincing standard. Information collected by the Government of Ukraine and media reports suggest that between 1 July and September 2014, cross-border shelling was recorded by the Ukrainian military on an almost daily basis. According to an Atlantic Council Report, there were around 120 instances of artillery strikes conducted from Russia’s territory between 9 July and 5 September 2014. Considering the numerous reports of shelling that emerged from the beginning of July onwards, it is likely that an IAC between Russia and Ukraine commenced in early July.


1527 Information provided by the Government of Ukraine; Y. Butusov Facebook page, ‘The new evidence of Russian aggression against Ukraine are found!’ (14 June 2014); I. Komahidze, ‘On the Russian trace and “GRAD” out of the blue’, (Informnapalm, 14 June 2014).

1528 D. Koval, O. Sedov and I. Nerubayeva, ‘Where Did the Shell Come From?’ (IPHR 2016), p. 18. According to the report, two shells were fired in the space of 10 minutes with an action radius of 1.5 kilometres and after the shelling a witness found long thin copper conductors leading in the direction of Russia. According to witness statements, after carrying out this shelling, Ukrainian border guards found the location of the intelligence group on the territory of Ukraine and their escape route back to Russian territory with the TOW weapon system. The likelihood that fire was opened by separatist forces from the D/LPR is minimal given the long distance of Krasna Talivka from the separatist-controlled area.

1529 While the occurrence of shelling in the area has been supported by two witnesses in testimony to the GoU, neither testimony specifies the dates of the shelling. As such, their evidence has not been considered as sufficiently reliable to corroborate the IPHR report: Information provided by the Government of Ukraine.


July. However, further investigations are needed to produce the corroborating evidence necessary to meet a clear and convincing standard.

The first attack which is corroborated by sufficiently clear and convincing evidence occurred on 11 July 2014 in Zelenopillya, Luhansk oblast. The available information suggests that, on the night of 11 July 2014, Ukrainian border patrol officers and other Ukrainian army units were attacked from inside Russian territory. Using artillery system BM-21 “Grad”, the Russian forces shelled Ukrainian positions, killing 36 Ukrainian servicemen. Consequently, it is concluded that from 11 July 2014, at the latest, there is clear and convincing evidence that Russia intervened on the territory of Ukraine in support of the D/LPR armed groups.

Bellingcat investigations found that thousands of artillery projectiles were fired by the Russian military at targets in Ukraine constituting at least 149 separate attacks between 14 July and 8 August. The ICC OTP assessed in its 2019 Report on Preliminary Examinations that “direct military engagement between the respective armed forces of the Russian Federation and Ukraine, indicated the existence of an international armed conflict in eastern Ukraine from 14 July 2014 at the latest.”

On 17 July 2014, a Malaysian passenger jet (flight MH17) was shot down by a Russian BUK anti-aircraft missile reported to have been brought to Ukraine by the 53rd Anti-Aircraft Missile Brigade of the RFAF. The investigations of the Joint Investigative Team (JIT) came to the same conclusion that the BUK-TELAR that shot down MH17 came from the 53rd Anti-Aircraft Missile Brigade of the RFAF. The EU, the US and NATO regarded this as proof of Russia’s direct involvement in Donbas and imposed further sanctions on the Russian Federation. Bellingcat and JIT investigations established that Colonel Oleg Ivannikov, a staff GRU officer, who was deployed in 2014 to eastern Ukraine, helped establish that Colonel Oleg Ivannikov, a staff GRU officer, who was deployed in 2014 to eastern Ukraine, helped.

According to reports, Russia’s shelling of the Ukrainian border allowed it to: 1) secure a steady supply of weapons to the armed groups; and 2) reverse the course of the fighting and stop Ukraine’s offensive against pro-Russian forces.


1534 Bellingcat, “Direct evidence of aggression” (Day Kyiv, 12 July 2019); DW, “Ukraine official: rebel rocket attack kills dozens of government troops” (11 July 2014). Whether Ukrainian forces responded to the attack is unclear and has not been reported.

1535 At the same time, the available information suggests that on 14 July 2014, the Ukrainian forces attacked the Russian city of Donetsk, Rostov-na-Donu region, killing a civilian. Ukraine has not admitted to this. See BBC News, “Ukraine denies shelling Russian territory” (14 July 2014); I. Barabanov, S. Strokan and E. Chernenko, “Ukrainian war violated the border” (Kommersant, 14 July 2014); Interfax, “The Investigative Committee called the shelling of Russian Donetsk from Ukraine deliberate” (14 July 2014); R. Melnikov and R. Falailev, “Deadly ‘Gift’” (Rossiyskaya Gazeta, 14 July 2014).


1538 D. Remein, “MH17 - Potential Suspects and Witnesses from the 53rd Anti-Aircraft Missile Brigade” (Bellingcat 2016); Nastoyaschee Vremya, “All the way ‘Buk’: How the International Investigation Team proved Russia’s involvement in the downed Boeing” (24 May 2018).

1539 Established for the inquiry into the facts pertaining to the MH17 downing in 2014. The JIT comprises officials from the Dutch Public Prosecution Service and the Dutch police, along with police and criminal justice authorities from Australia, Belgium, Malaysia and Ukraine. See, Government of the Netherlands, “Criminal Investigation”.

1540 D. Remein, “MH17 - Potential Suspects and Witnesses from the 53rd Anti-Aircraft Missile Brigade”, (Bellingcat 2016); BBC News, “Bellingcat called the number of the installation “BUK”, which brought down MH17” (3 May 2016); Ukrinform, “MH17 was shot down by the Russian “BUK” of the 53rd brigade from Kursk - international investigators” (24 May 2018); Netherlands Public Prosecution Service, “Update in criminal investigation MH17 disaster” (24 May 2018).


There is also evidence that the RFAF were present on the territory of Ukraine from mid-July. GoU materials reveal that, from July 2014, armoured vehicles, artillery and rifles belonging to military units of the RFAF were recovered on the territory of Ukraine. In particular, Russian reconnaissance and special operations units were operating on Ukrainian territory by at least 14 July 2014, and comprised teams from six RFAF military units. In July and August 2014, a number of reconnaissance and intelligence operations were reportedly launched from Russian territory, including reconnaissance by drones and helicopters.

In sum, the above analysis—which is derived from a variety of independent and reliable sources, as well as numerous witness testimonies provided to the Ukrainian authorities—establishes clear and convincing evidence that Russia directly intervened in the conflict in Ukraine from 11 July 2014 to 18 February 2015, through cross-border artillery strikes. This intervention was launched in support of the D/LPR armed groups who had lost a large portion of the territory previously under their control as a result of Ukrainian advances throughout May to July. This is sufficient to establish the existence of an IAC between Russia and Ukraine. As the following sections demonstrate, the IAC continued and intensified throughout 2014 and the beginning of 2015.

4.1.2.3.1.3 Military Interventions: August 2014 – February 2015

Between August 2014 and February 2015, Russia launched a series of large-scale military operations in Donbas in support of the D/LPR armed forces against the Ukrainian forces. Despite Russia’s limited intervention in July—primarily in the form of cross-border shelling—the D/LPR armed forces continued to lose territory to the advancing Ukrainian forces. In Donetsk, the D/LPR armed forces had lost over 50% of the territory that had been under its control in June, while in Luhansks it had lost roughly a quarter of its territory. Under these circumstances, Russia increased its intervention in support of the D/LPR armed forces in August 2014, participating in largescale operations on the territory of Ukraine to repel the Ukrainian forces.

Russia reportedly sent dozens of artillery units, airborne troops, navy and special units of the GRU, as well up to 20 tanks and up to 90 combat vehicles to participate in the hostilities against Ukraine in Donbas. NATO satellite imagery from August 2014 displays Russian activity inside Ukraine, substantial activity inside Russia in areas adjacent

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1544 Information provided by the Government of Ukraine; Podrobnosti, ‘NGU Chief Poltorak presented weapons from Russia (video)’, (6 July 2014); O. Argat, ‘A year of Putin’s surplus store work (photo-evidence)’, (27 November 2014).


1547 Information provided by the Government of Ukraine; Truth Hounds and IPHR, ‘Attacks on Civilians and Civilian Infrastructure in Eastern Ukraine. Period Covered: March 2014 – November 2017’, p. 29, para 64; Radio Svoboda, ‘Russia continues to increase its military presence along the border with Ukraine - border guards’ (22 July 2014); Uryadovy Portal, ‘Cabinet of Ministers on the situation on the Ukrainian-Russian border’ (23 July 2014); Hromadske, ‘The Russian Armed Forces continue to fire at anti-terrorist operation forces and violate airspace - SBGZ’ (23 July 2014); Uryadovy Portal, ‘Cabinet of Ministers on the situation on the Ukrainian-Russian border - 10.08.2014’ (10 August 2014).


1551 Information provided by the Government of Ukraine; O. Harbar and others, ‘Armed Conflict in Ukraine: Military Support of Illegal Armed Formations ‘ DPR’ and ‘LPR’ by Russian Federation’ (UHHRU 2018), p. 12; UHHRU, ‘The Tragedy of Illovaysk 2014. Events and Responsibility’ (2016), pp. 29-30; V. Snegiyov and others, ‘History of one city, Liberation and defense of Mariupol’ (UHHRU 2018), p. 16; Censor, ‘A column of Russian troops invaded the territory of Ukraine and went to Mariupol. - media (updated)’ (25 August 2014). See also, V. Sharamovych, ‘Ilovaisk, Memories of August 2014’ (BBC News, 28 August 2019); BBC, ‘Ilovaisk’s second anniversary: no culprits have been named yet’ (26 August 2016); M. Tsvetkova, ‘Ukrainians say Russian troops captured them in east Ukraine’ (Reuters, 29 September 2014); Ukraina Pravda, ‘“Humanitarian corridor” for anti-terrorist operation fighters fired. The wounded were given to the Russians’ (28 August 2014); Bellingcat, ‘Russia’s 6th Tank Brigade: The Dead, the Captured, and the Destroyed Tanks (Pt. 1)’ (22 September 2015); Bellingcat, ‘Russia’s 6th Tank Brigade: The Dead, the Captured, and the Destroyed Tanks (Pt. 2)’ (29 September 2015). Detailed analysis of the military operations conducted by the D/LPR and Russian armed forces, as well as the composition of the units, was provided by the Ukrainian ministry of defence in Official website of Ukrainian Ministry of Defence, ‘Analysis of hostilities in the Ilovaisk region after the invasion of Russian troops on 24-29 August 2014’ (19 October 2015). As the processed data suggests, Russian involvement was not limited to the area of Ilovaysk but covered wider zones of hostilities in the Donetsk and Luhansks regions. See e.g., Bellingcat, ‘Artillerymen of Russia’s 336th Motorized Infantry Brigade in the Donbas’ (13 November 2015); Bellingcat, ‘Russia’s 200th Motorized Infantry Brigade in the Donbas’ (16 January 2016); Bellingcat, ‘Russia’s 200th Motorized Infantry Brigade in the Donbas: The Hero of Russia’ (21 June 2016); Bellingcat, ‘Russia’s 200th Motorized Infantry Brigade in the Donbas: The Tell-Tale Tanks’ (4 July 2016); Bellingcat, ‘Russia’s 61st Separate Naval Infantry Brigade in the Donbas’ (15 November 2016).
to the border with Ukraine, and the reinforcement and resupplying of the D/LPR forces by Russia in a "blatant attempt to change the momentum of the fighting, which [was] favouring the Ukrainian military". The following sections describe the large-scale military operations conducted by Russia against Ukraine during this period.

4.1.2.3.1 INTRODUCTION OF RUSSIAN REGULAR TROOPS IN ILOVAISK (AUGUST 2014)

The first phase of large-scale operations by regular Russian troops began on 11 August 2014, when Russian troops participated in the combat operations taking place around the Ukrainian city of Ilovaisk. Prior to Russia’s intervention, the Ukrainian forces had launched an operation to regain control of Ilovaisk in early August, and had partially taken control of the town after fighting from 18 to 24 August 2014.

The GoU alleges that during the night of 23 to 24 August 2014, separate divisions of the RFAF, including more than 3,500 servicemen in total, entered the territory of Ukraine. By the end of August, this number had reached 6,000-6,500. This is corroborated by Bellingcat, which reported that Russia sent thousands of servicemen with their tanks and military equipment to Ukrainian territory in August, most of whom were involved in the Battle of Ilovaisk.

During a UNSC meeting on 28 August 2014, the US representative stated that, satellite imagery of 26 August 2014 showed Russian combat units south-east of Donetsk. There is also evidence that Russian soldiers were killed during the fighting in Ilovaisk.

The battalion-tactical groups that were present in Ukraine in August 2014 consisted of the 2nd Spetsnaz Brigade of the Russian GRU, as well as nine units operating in the direction of Donetsk and seven units in the direction of Luhansk. The servicemen hid their Russian Federation insignia and marked their equipment with the signs used by the Ukrainian forces. During this period, several members of the Russian armed forces were captured on Ukrainian territory in the Donbas oblast.

Between 8 and 23 August 2014, the RFAF also continuously shelled Ukrainian positions from Russian territory and reinforced their troops on the eastern border of Ukraine. The Russian military presence consisted of up to 32 battalion and tactical groups and 3 company-tactical groups, no less than 45,000 servicemen, up to 160 tanks, up to 1,360 armoured personnel carriers, up to 360 artillery items, up to 130 multiple rocket launchers, 192 military aircrafts and 137 helicopters.

There is uncorroborated testimony which alleges that officers of the RFAF issued orders to the D/LPR armed groups involved in the fighting around Ilovaisk. The witness testified that members of his armed group, who were mostly
Chechen, received a command from an officer of the RFAF to take the witness and his group to a local settlement.\footnote{Information provided by the Government of Ukraine.} There are also multiple testimonies given by Ukrainian prisoners of war detained in Ilovaisk, who claim that they were detained by members of the RFAF and subsequently handed over to the D/LPR armed groups.\footnote{Information provided by the Government of Ukraine; Texty, "Four stories from the Ilovaisk boiler. Ordinary stories" (25 August 2015); N. Dym, "What the hell it looked like. "Ilovaisk boiler" in the memories of the fighters" (Novynarnia, 29 August 2016).} On 27 August, negotiations between the command of the UAF General Staff and the command of the RFAF General Staff began to establish a humanitarian corridor for the peaceful withdrawal of Ukrainian soldiers from Ilovaisk.\footnote{Information provided by the Government of Ukraine; I. Shevchuk and A. Tokhmakhchy, "A corridor that was not agreed upon. 5 Stories of Survivors of the Ilovaisk Corridor" (Hromadske, 27 August 2019).} On 28 August, representatives of the RFAF verbally guaranteed the Ukrainian forces safe passage, although the Ukrainian forces were subsequently shot at on their retreat by RFAF forces, leaving 366 servicemen dead, 429 wounded and hundreds missing.\footnote{Information provided by the Government of Ukraine; Medium, "A Brief History of the Ukrainian Conflict in Satellite Imagery. Part I" (31 January 2017); A. Maioirova (ed.), "Donbas in Flames" (Prometheus 2017), p. 42.}

After August 2014, the involvement of Russian regular army units in eastern Ukraine increased.\footnote{Information provided by the Government of Ukraine; Nato commander announced the arrival of Russian military equipment to the east of Ukraine.} Ukrainian investigative authorities identified a number of military units of the RFAF in Ukrainian territory including: GRU Special Forces; Forces of the Southern Military District of the Russian Ministry of Defence; Forces of the Western Military District of the Russian Ministry of Defence; Forces of the Central Military District of the Russian Ministry of Defence; Forces of the Eastern Military District of the Russian Ministry of Defence; Russian Airborne Forces; Forces of the Russian Navy; and Russian Auxiliary Units.\footnote{Information provided by the Government of Ukraine; I. Sutyagin, "Russian Forces in Ukraine" (RUSI), p. 4.} This is corroborated by a report from the Royal United Services Institute, which provides that between 3,500 and 6,500 Russian troops were operating in Ukraine by the end of August 2014, with the number peaking at 10,000 in mid-December.\footnote{Information provided by the Government of Ukraine; NATO releases satellite imagery showing Russian combat troops inside Ukraine. The report also corroborates the presence of many of the different units alleged to have been present on the territory of Ukraine.} On 28 August 2014, NATO released satellite images of Russian forces in Ukraine, while Dutch Brigadier General Nico Tak, commander of NATO's crisis operations centre, stated that “Russia has ‘well over 1,000 troops’ inside Ukraine”.\footnote{On 4 September 2014, a NATO military officer stated that "Russia had several thousand combat troops and hundreds of tanks and armoured vehicles inside Ukraine and around 20,000 troops close to the Ukrainian border".} Between 28 September 2014 to 21 January 2015, Russian forces were present and active at battles for Donetsk airport.\footnote{Information provided by the Government of Ukraine.}

4.1.2.3.1.3.2  \textbf{BATTLE FOR DONETSK AIRPORT (SEPTEMBER 2014 – JANUARY 2015)}

Donetsk airport, an important strategic location, and its surrounding areas had been the site of ongoing hostilities between the DPR and the Ukrainian forces since 26 May 2014.\footnote{Information provided by the Government of Ukraine; See Annex D (Presence of the Russian Armed Forces, Including GRU Officers, in Donbas: July 2014 – 2015), for details.} Between 28 September 2014 to 21 January 2015, Russian forces were present and active at battles for Donetsk airport.\footnote{2015-01-26-0404. L. C. Fox, "Cyborgs at Little Stalingrad: A Brief History of the Battles of the Donetsk Airport, 26 May 2014 to 21 January 2015" (Institute of Land Warfare 2019), p. 5; S. Shokin, "September 28, 2014 in the history of DAP defense: “at least nine dead and twenty wounded!”" (Radio Svoboda, 28 September 2020); GLACOM, "Seven years ago, the first battle for the Donetsk airport took place" (26 May 2021).}
In addition to direct participation in combat, Russian officers and generals were also involved in the command and coordination of the DPR militants’ actions. According to the former head of a special forces unit in the DPR, Dmitry Sapozhnikov, Russian generals coordinated all crucial military operations and planned them together with local DPR commanders, passing the designed plans to the DPR units for execution. According to Sapozhnikov, the DPR units received direct instructions from the Russian military during large-scale operations. Additionally, according to a Ukrainian soldier, two RFAF officers who had commanded the operations near the Spartak mine (in the vicinity of the airport) were detained by the Ukrainian forces.

4.1.2.3.1.3.3 THE ATTACK ON MARIUPOL (24 JANUARY 2015)

During the shelling of Mariupol on 24 January 2015, the Russian military, including high-ranking officers, provided instructions and supervision. According to a Bellingcat report, the Russian Ministry of Defence ordered the preparation and initiation of the attack. Subsequently, two batteries armed with a total of 12 multiple launch rocket systems (‘MLRS’) were transferred across the Russia-Ukraine border during the night and early morning of 23 to 24 January 2015. The Bellingcat report, confirmed by the Ukrainian SSU, named 11 of the Russian officers and militants involved in the Mariupol shelling.

This is corroborated by intelligence data which suggests that the attack on Mariupol was conducted by two regular MLRS battalions of the RFAF, which crossed the border between Russia and Ukraine equipped with GRAD BM-21 systems and were assisted by D/LPR militants. According to evidence from the Ukrainian SSU, a Russian major

1579 Informnapalm, “Everything you wanted to know about Donetsk Airport but were afraid to ask” (21 January 2015).
1580 A. Horianov and O. Ivshyna, “DPR special forces fighter: Russia’s aid was decisive” (BBC News, 31 March 2015).
1581 Dmitry Nikolaevich Lisai, Alexander Mikhailovich Evtody ‘Pepel’ (Ukrainian militant), G. Manukovich Egaizaryan ‘Shram’ (Russian militant). See also, SSU YouTube Channel, “Evidence of involvement of the Russian military in the shelling of Mariupol” (7 May 2018); Korrespondent, “The shelling of Mariupol. Ukraine is sending evidence against Russia to the UN” (7 May 2018), p. 51. SSU website, “SSU continues to document war crimes of the Armed Forces of the Russian Federation on the territory of Ukraine for transfer to international courts - Vasyl Hrytsak (video)” (7 May 2018).
1583 Information provided by the Government of Ukraine.
1587 SSU YouTube Channel, “Evidence of involvement of the Russian military in the shelling of Mariupol” (7 May 2018); Ukrinform, “Shelling of Mariupol: Ukraine will submit evidence of Russia’s actions to ICC” (7 May 2018).
coordinated the divisions’ actions and a Russian colonel directly commanded the shelling operation, while the overall operation was coordinated from Russian territory by a Russian major-general – the commander of the rocket and artillery forces of the Russian Southern Military District.1594

4.1.2.3.1.3.4 DEBALTSEVE OPERATION (14 JANUARY – 18 FEBRUARY 2015)

Between January and February 2015, Russian armed forces were directly involved in the large-scale military offensive aimed at taking the strategic railway hub of Debaltseve in support of the D/LPR armed groups operating there.1595 Up to 8 battalion tactical groups of the RFAF were concentrated near Debaltseve,1596 and shelled Ukrainian positions during the fight for control over the area.1597 According to the Ukrainian Government, Russian generals1598 “directly carried out commanding and coordination of hostilities against anti-terrorist operation forces during this period”.1599 A serviceman of Ukraine has testified that when he was taken prisoner by the Russian military in Debaltseve, he witnessed an officer of the RFAF giving orders to the D/LPR militants, including to take away the phones and valuables of the detainees.1600

The Debaltseve offensive, which caused the imminent risk that the Ukrainian military would be surrounded, led to the signing of the 12 February 2015 Minsk-II Agreement and the withdrawal of Ukrainian troops from the area on 18 February 2015.1601

4.1.2.3.1.4 RUSSIAN INTERVENTION AFTER THE MINSK-II AGREEMENTS (POST-FEBRUARY 2015)

In March 2015, the US military estimated that there were around 12,000 RFAF soldiers, comprised of military advisers, weapons operators and combat troops, supporting the D/LPR armed formations in eastern Ukraine.1602 Nevertheless, there have been no overt incidents of direct intervention by the RFAF, acting as such, in Donbas, since the signing of the Minsk-II Agreement on 12 February and the conclusion of the Debaltseve operation on 18 February 2015.

There is witness testimony made before a Russian first-instance court that suggests that Russian military units were stationed on Ukrainian territory controlled by the D/LPR in 2018 and 2019. In a case concerning the commission of bribery by a company that provided food services to servicemen of the Russian Southern Military District, the witness testified that food was delivered to military units of the RFAF deployed on D/LPR-controlled territory in Ukraine during 2018 and 2019.1603 While persuasive, in the absence of further corroborating evidence, this information, which is

1594 SSU YouTube Channel, ‘Evidence of involvement of the Russian military in the shelling of Mariupol’ (7 May 2018).

1595 In relation to the D/LPR forces operating in Debaltseve: M. Czuperski and others, ‘Hiding in plain sight. Putin’s war in Ukraine’ (Atlantic Council, May 2015), pp. 11, 14, 15, 16; Armilinform, “Six years ago, anti-terrorist operation forces left Debaltseve” (18 February 2018); The Nemslov Report, p. 19.

1596 20th Separate Motorized Rifle Brigade (Volgograd) of the Southern Military District - near Horlivka; 21st Separate Motorized Rifle Brigade of the 2nd Army of the Central Military District (Totkoye village, Orenburg region) - near Yenakieve; 28th separate motorized infantry brigade of the 2nd Army of the Central Military District (Yekaterinburg) - in the area of Bryanka and Kadiivka; 32nd Separate Motorized Rifle Brigade of the Central Military District (Shiloivo village, Novosibirsk region) - near Yenakieve;138th Separate Motorized Rifle Brigade (Kamenka, Leningrad Region) of the 6th Army of the Western Military District - in the area of Snizhny and Chystyakove; 200th Separate Motorized Rifle Brigade (Pechenga) of the Northern Fleet of the Joint Strategic Command “North” - in the area of Fashchivka, Nikishyne, Komshtiske; 13th Tank Regiment of the 4th Tank Division of the 1st Tank Army of the Western Military District - in the districts of Novosvitlivka, Yenakieve; 104th Airborne Assault Regiment of the 76th Airborne Assault Division (Cheryokha village, Pikov region) Airborne troops - in Georgiyivka and Horlivka. Air defense equipment and electronic warfare units of regular units of the Armed Forces of the Russian Federation were deployed near Chystyakove, Snizhny, Shaktarsk, and Donetsk. Ministry of Defence of Ukraine, ‘Analysis of the General Staff of the Armed Forces of Ukraine regarding the fighting on the Debaltseve bridgehead from January 27 to February 18, 2015’ (3 February 2016); Armilinform, “Six years ago, anti-terrorist operation forces left Debaltseve” (18 February 2018); See also J. Bodie, ‘Modern Imperialism in Crimea and the Donbas’ (2017) 40 LLACLR 267, p. 300; K. Demirjian, ‘Ukrainian battalion’s soldiers recall desperate run to safety’ (Washington Post, 15 February 2015).

1597 They were located near Nuhnyaya Krynka, Chystyakove, Fashchivka, Kadiivka, Bryanka, Alchevsk, and Seleznivka. Ministry of Defence of Ukraine, ‘Analysis of the General Staff of the Armed Forces of Ukraine regarding the fighting on the Debaltseve bridgehead from January 27 to February 18, 2015’ (3 February 2016). 1598 Major General S. Kuzovlev; Major General O. Tsekov; Lieutenant General A. Gurulyov; Major General O. Zavizion.

1599 Information published by the Office of the Prosecutor General of Ukraine.

1600 Information provided by Vostok SOS.


1603 Case №1-82/2021, Judgement of 10 November 2021, Kievsky City District Court of Rostov-na-Donu (Russia).
suggestive of direct Russian intervention in Ukraine’s Donbas region during these years, will not be considered further in the present context.

As described above, after the Minsk-II Agreement was signed, the hostilities in Donbas decreased, localised to the contact line, and the area under the control of the D/LPR forces stabilised. Need for direct Russian intervention therefore decreased. Yet, Russia has, to the present, continued to maintain a significant number of troops along the Russia-Ukraine border in the Donbas oblast, signalling a clear ability to conduct combat activities in support of the D/LPR at short notice.1605

In 2015, 50,000 troops were positioned on the Russian side of the border with Ukraine.1606 Since 2015, there have been over 20 Ukrainian intelligence reports, as well as reliable reports from Ukrainian and foreign media and other organisations, on the build-up of Russian troops along the border with Ukraine, often coinciding with periods of heightened hostilities in Donbas.1607 For example, in June 2016, Reuters reported about a Russian army base which was built close to the border with Ukraine.1608 In August 2016, the Institute for the Study of War published a map depicting Russia’s military build-up close to Ukraine’s northern, eastern and southern borders.1609 In November 2018, Ukraine’s Ministry of Defence reported that the Russian Federation had transported 250 T-62 tanks to the border under the guise of “exercises”.1610 In February 2019, the Foreign Policy Research Institute reported on Russia’s accelerated military build-up close to Ukraine’s border.1611

Again, in spring 2021, there have been multiple reports, including from NATO, the US, the UK, and the EU, of a build-up of Russian troops along the Ukrainian border to “intimidate” Kyiv.1612 According to the Command-in-Chief of the UAF, in March 2021, 28 battalion tactical groups were deployed to the Russian-Ukrainian border,1613 and there were 12 additional battalion tactical groups located in the Rostov region that could be involved in a military operation at any time.1614 In August 2021, it was reported that about 87,000 military personnel, up to 1,100 tanks, up to 2,600 armoured combat vehicles, up to 1,100 artillery and up to 360 MLRS, were placed permanently at the border within the territory of the Russian Federation.1615 As such, as stated by a special correspondent of the Russian newspaper Novaya Gazeta in Donbas, Dmytro Durnev, the Ukrainian army “proceeds from the fact that all these Russian units

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1604 See Section 4.2.3.2.1.4 Sporadic Fighting Along the Contact Line (February 2015 – Present).
1605 F. Holcom, ‘The Kremlin’s Irregular Army: Ukrainian Separatist Order of Battle’ (Institute for the Study of War, 2017), p. 9; BBC News, ‘Russia is sending troops to the border with Ukraine: Will there be a big war’ (1 April 2023); T. Yavorovych, ‘Russia maintains a powerful offensive group around Ukraine - OP’ (Suspinle, 13 November 2021); F. Vasylevsky and S. Johns, ‘In the event of an invasion, Russia is more likely to suffer a catastrophe than to achieve its goal’ (25 January 2022).
1606 S. Siebold, C. Copley and G. Jones, ‘Some 12,000 Russian soldiers in Ukraine supporting rebels: U.S. commander’ (Reuters, 3 March 2015); A. Golts, ‘Russian Army Facing Big Problems in Ukraine’ (Moscow Times, 9 February 2015); Economist, ‘From cold war to hot war’ (12 February 2015).
1607 K. Bronch-Osmolovskaya, A. Shchennikov and A. Asanova, ‘“The men had a little drink – and let’s bang”’ (Novaya Gazeta, 24 August 2021); J. Marson and T. Grove, ‘Russia Builds Up Army Near Ukraine Border’ (Wall Street Journal, 19 August 2019); K. Weinberger and F. Holcomb, ‘This map shows the alarming Russian military buildup encircling Ukraine’ (Insider, 15 August 2016); A. Zverev, ‘Russia deploys troops westward as standoff with NATO deepens’ (Reuters, 7 June 2016).
1608 A. Zverev, ‘Russia deploys troops westward as standoff with NATO deepens’ (Reuters, 7 June 2016).
1609 K. Weinberger and F. Holcomb, ‘This map shows the alarming Russian military buildup encircling Ukraine’ (Insider, 15 August 2016).
1610 K. Bronch-Osmolovskaya, A. Shchennikov and A. Asanova, ‘“The men had a little drink – and let’s bang”’ (Novaya Gazeta, 24 August 2021).
1612 O. Musafirova, ‘Is Ukraine threatened by “Russian summer”: The border of confrontation between Russia and the United States now passes through the Donbas’ (Novaya Gazeta, 3 April 2021); E. Romanova, ‘Can’t we repeat?: Our correspondent - about the situation on the Russian-Ukrainian border’ (Novaya Gazeta, 8 April 2021); E. Lutsenko, ‘Investigators found a camp of Russian troops near the border with Kharkiv and Luansk regions’ (Hromadske, 8 April 2021); Medium, ‘On Russian vehicles in the border regions began to mask plate numbers’ (3 April 2021); CIT, ‘“The commanders set their eyes on a field right next to houses”: Russian forces set up camp in Voronezh region bordering Ukraine’ (8 April 2021); D. Kramar, ‘Russia is building up its troops on the border, but Ukraine is ready for this - Zelensky’ (Hromadske, 1 April 2021); Defence of Intelligence of the Ministry of Defence of Ukraine, ‘Russian Federation Is Ready for Large-Scale Provocations against Our State’ (1 April 2021); M. Williams, J. Landay and A. Zverev, ‘Analysis: Russian military buildup raises stakes as fighting in Ukraine intensifies’ (Reuters, 9 April 2021); Novaya Gazeta, ‘US and UK urged Russia to withdraw troops from border with Ukraine’ (11 April 2021); M. Lisitsyna, ‘The United States announced the maximum concentration of Russian troops near the border of Ukraine’ (BBC, 8 April 2021); DW, ‘Russia, after sending troops to Ukraine border, calls escalation “unprecedented”’ (9 April 2021); DW, ‘US asks Russia to explain Ukrainian border ‘provocations’’ (6 April 2021); BBC News, ‘Russian ‘troop build-up’ near Ukraine alarms NATO’ (2 April 2021); New York Times, ‘Fighting Escalates in Eastern Ukraine, Signalling the End to Another Cease-Fire’ (30 March 2021); N. P. Walsh, ‘Russian forces are massing on Ukraine’s border. But for now, Putin is playing for time’ (CNN, 9 April 2021); D. Magnay, ‘“Russia inside the Kremlin’s military build-up along the Ukraine border”’ (Sky News, 12 April 2021); D. Sabbagh and A. Roth, ‘NAVO tells Russia to stop military buildup around Ukraine’ (Guardian, 13 April 2021); A. Osborn, R. Emmott and H. Pamuk, ‘Biden promises summit with Putin after Russia calls U.S. adversaries “embarrasses” over Ukraine’ (Reuters, 13 April 2021); A. Smout and W. James, ‘Britain concerned about Russia military build-up on Ukraine border’ (Reuters, 20 April 2021); European Parliament, Resolution on Russia, the case of Alexei Navalny, the military build-up-on Ukraine’s border and Russian attacks in the Czech Republic, 2021/2642(RSP) 29 April 2021.
1613 E. Romanova, ‘Can’t we repeat?: Our correspondent - about the situation on the Russian-Ukrainian border’ (Novaya Gazeta, 8 April 2021).
1614 E. Romanova, ‘Can’t we repeat?: Our correspondent - about the situation on the Russian-Ukrainian border’ (Novaya Gazeta, 8 April 2021).
1615 K. Bronch-Osmolovskaya, A. Shchennikov and A. Asanova, ‘“The men had a little drink – and let’s bang”’ (Novaya Gazeta, 24 August 2021).
can enter [the territory of Donbas] within 72 hours, so there is no and cannot be [a Ukrainian] attack on the separatists.\textsuperscript{1616}

From October to November 2021, the increased presence of the Russian forces on the border with Ukraine led to renewed fears in Ukraine about a new Russian offensive.\textsuperscript{1617} According to Ukrainian reports, more than 100,000 RFAF soldiers were then located within close proximity to Ukraine’s border.\textsuperscript{1618} On 15 November 2021, NATO warned about “large and unusual concentrations of Russian forces close to Ukraine’s borders.”\textsuperscript{1619} As reported by CNN, the Director of the United States’ Central Intelligence Agency (‘CIA’) visited Moscow to warn Russia about its build-up of troops near Ukraine’s border.\textsuperscript{1620} Meanwhile, Bloomberg reported that US officials had notified the EU about a possible Russian invasion of Ukraine.\textsuperscript{1621}

In January 2022, Russia continued its military build-up – the highest since 2014\textsuperscript{1622} – by deploying its troops, tanks, and artillery along the Ukrainian border.\textsuperscript{1623} According to Western and Ukrainian intelligence, Russian tank units, motorised infantry units, artillery units and over 5,000 troops were amassed near the D/LPR, with additional tank units, artillery units, rocket units, missile units, motorised infantry units and around 80,000 troops deployed in the north, threatening to invade and seize more of the Ukrainian territory.\textsuperscript{1624} The escalation continues in February 2022, with around 130,000 Russian troops strategically placed along the Ukrainian border, threatening to invade any day and triggering the evacuation of foreign embassies and cancellation of flights to and from Ukraine.\textsuperscript{1625}

4.1.2.3.1.5 \textbf{CONCLUSION ON DIRECT INTERVENTION}

In conclusion, there is clear and convincing evidence that Russia directly intervened in Ukraine from at least 11 July 2014 through 18 February 2015 through cross-border artillery strikes. Thus, an IAC between Russia and Ukraine could be said to have existed in parallel to the NIAC between Ukraine and the D/LPR armed groups from 11 July 2014. Further evidence is required to support allegations of direct Russian intervention prior to 11 July 2014. While there is clear and convincing evidence that Russia continued its build-up of forces along the Russian-Ukrainian border after 18 February 2015, including as recently as mid-February 2022, without further investigation there is insufficient evidence to establish that these troops have resorted to the use of armed force against Ukraine.

However, as will be seen further below,\textsuperscript{1626} there is clear and convincing evidence that Russia has covertly deployed active service RFAF officers and servicemen to the D/LPR armed forces operating in Donbas, with the knowledge and instruction of their commanders, since September 2014. These deployments constitute direct intervention and a unilateral and hostile use of armed force against Ukraine, extending the IAC from 18 February 2015 through to the present.\textsuperscript{1627}

\begin{footnotesize}
\textsuperscript{1616} K. Bonch-Osmolovskaya, A. Shchenikov and A. Asanova, “The men had a little drink - and let’s bang!” (Novaya Gazeta, 24 August 2021)
\textsuperscript{1617} Financial Times, ‘Ukraine warned of ‘high probability’ of Russian military escalation this winter’ (14 November 2021); A. Nardelli, J. Jacobs and S. Wadhams, ‘U.S. Warns Europe That Russia May Be Planning Ukraine Invasion’ (Bloomberg, 11 November 2021); N. Bertrand, J. Scuito and K. Atwood, ‘CIA director dispatched to Moscow to warn Russia over troop buildup near Ukraine’ (CNN, 5 November 2021).
\textsuperscript{1618} DW, ‘Ukraine: NATO alarmed by Russian troop buildup on border’ (15 November 2021); Financial Times, ‘Ukraine warned of ‘high probability’ of Russian military escalation this winter’ (14 November 2021).
\textsuperscript{1619} NATO Website, ‘Press conference with NATO Secretary General Jens Stoltenberg and the Minister of Foreign Affairs of Ukraine, Dmytro Kuleba’ (15 November 2021).
\textsuperscript{1620} N. Bertrand, J. Scuito and K. Atwood, ‘CIA director dispatched to Moscow to warn Russia over troop buildup near Ukraine’ (CNN, 5 November 2021).
\textsuperscript{1621} A. Nardelli, J. Jacobs and S. Wadhams, ‘U.S. Warns Europe That Russia May Be Planning Ukraine Invasion’ (Bloomberg, 11 November 2021).
\textsuperscript{1622} M. Chance and L. Smith-Spark, ‘Tensions are high on Ukraine’s border with Russia. Here’s what you need to know’ (CNN, 22 January 2022).
\textsuperscript{1623} New York Times, ‘How Russia’s Military is Positioned to Threaten Ukraine’ (7 January 2022); Crisis24, ‘Russia: Russian troops remain deployed near border with Ukraine as of Jan. 6 /update 4’ (6 January 2022); V. Prystaňniuk, ‘Britain called unacceptable the build-up of Russian troops on the border with Ukraine and in the occupied Crimea’ (Suspine Krym, 8 January 2022).
\textsuperscript{1624} New York Times, ‘How Russia’s Military is Positioned to Threaten Ukraine’ (7 January 2022); M. Chance and L. Smith-Spark, ‘Tensions are high on Ukraine’s border with Russia. Here’s what you need to know’ (CNN, 22 January 2022).
\textsuperscript{1625} BBC, ‘Ukraine tensions: Russia invasion could begin any day, US warns;’ (12 February 2022); E. Knickmeyer, J. Heintz, and A. Madhani, ‘US: Over 130,000 Russian troops now stationed outside Ukraine’ (Associated Press, 13 February 2022); J. Mason and T. Balmforth, ‘US and allies tell citizens to leave Ukraine as Russia could invade “at any time”’ (Reuters, 12 February 2022).
\textsuperscript{1626} See Section 4.1.2.3.1.2 Officers and Servicemen of the Russian Armed Forces, including the GRU.
\textsuperscript{1627} See Sections 4.1.2.3.1.2 Officers and Servicemen of the Russian Armed Forces, including the GRU. See also, ICRC 2020 Commentary to Geneva Convention III, Common Article 2, para. 258: “When classic means and methods of warfare – such as the deployment of troops on the enemy’s territory, the use of artillery or the resort to jettisoners or combat helicopters – come into play, it is uncontroversial that they amount to an armed confrontation between States and that the application
Nevertheless, this evidence cannot be considered in isolation from the broader system of support and control Russia has provided to the D/LPR armed forces, as discussed in the following section. As will be demonstrated, within the broader context, evidence of Russia’s direct intervention does not merely result in the existence of an IAC in parallel with the existing NIAC. Direct intervention is also one of several indicators that Russia has exerted overall control over the D/LPR armed groups since July 2014, which has resulted in the internationalisation of the NIAC.

4.1.2.3.2 **OVERALL CONTROL: PARTICIPANTS IN THE INTERNAL ARMED CONFLICT ACT ON BEHALF OF THE STATE**

As described above, a NIAC between the territorial State and non-state armed groups may be internationalised where the participants in the internal armed conflict act on behalf of the controlling State. The DPR and LPR armed groups operating in Donetsk and Luhansk began displaying indicators of organisation and hierarchy from at least April 2014, which concretised by July 2014, as the different groups became consolidated under the centralised common command of the D/LPR leaders. To assess whether these organised and hierarchically structured armed groups were acting on behalf of Russia, it must be considered whether Russia has overall control over the D/LPR, i.e. whether Russia has had “a role in organising, coordinating or planning the military actions of the military group, in addition to financing, training and equipping or providing operational support to that group”.

The following analysis will show that, while Russia began to exert influence and control over the D/LPR forces as early as April 2014, this crystallised into overall control by at least July 2014. While there are some indications of overall control prior to July, as will be explained, the information is insufficiently corroborated to find that, in addition to financing, training, and equipping the D/LPR armed forces, Russia also had a role in organising, coordinating, or planning their military actions. From July 2014, numerous indicators of overall control exist which cumulatively provide clear and convincing evidence that Russia has been in overall control of the DPR and LPR forces since at least July 2014 until the present. As such, between July 2014 and the present, there has been an IAC between Russia (acting through the D/LPR armed forces) and Ukraine.

4.1.2.3.2.1 **DIRECT INTERVENTION**

As discussed above, Russia’s direct intervention in Ukraine (i.e., the territorial State) is an indicator that suggests that the D/LPR was under the overall control of Russia. While direct intervention may indicate overall control, it is not necessary for the troops of the controlling State to be present and participate in every single operation undertaken by the armed group.

Accordingly, the analysis contained in Section 4.1.2.3.1 (Direct Intervention in Support of Non-State Armed Groups), above, will also be considered when examining whether Russia had overall control over the D/LPR armed forces. As shown in this section above, there is clear and convincing evidence establishing that from at least 11 July 2014, Russia directly intervened on behalf of the non-state armed groups against the Ukrainian forces. Further, since 2015 there has been a continued presence of Russian troops strategically stationed along the Russia-Ukraine border. Moreover, as will be discussed below, Russia has continued to deploy active service RFAF officers and servicemen into the D/LPR armed forces operating in Donbas, with the knowledge and instruction of their commanders, since September 2014.
4.1.2.3.2.2 **Shared Goals Between Russia and the D/LPR**

Shared goals, including a commitment to shared military objectives, may indicate that the controlling State is more able, and motivated, to control the decisions of the armed formation. Similarly, armed groups that aim to fight on the side of the controlling State, to defend the controlling State's people and territory, to annex territory to the controlling State and/or who view the controlling State’s leadership as their own and regard themselves as culturally and economically part of the controlling State, are more liable to be able, and motivated, to be controlled. Other manifestations of an armed groups’ shared goals with a controlling State include flying the flag of the controlling State or widespread use of the controlling State’s currency.

Overall control may be easier to establish in situations where “the controlling State in question is an adjacent State with territorial ambitions on the State where the conflict is taking place, and the controlling State is attempting to achieve its territorial enlargement through the armed forces which it controls”. Irrespective of its official position on the matter, the fact that the controlling State harbours territorial ambitions, in relation to the area that is controlled by the armed group, may be indicative of the exercise of overall control. Territorial or geopolitical ambitions of the controlling State – as demonstrated through the official or unofficial statements of its leaders, most notably the head of State – may be indicative of the controlling State’s shared goals with the armed group, and thus its overall control. These statements are particularly relevant when the leader of the country is a dominant figure in an authoritarian government whose personal opinions can be more readily assumed to be representative of the position of the State.

As the following analysis will show, there is clear and convincing evidence that, between 2014 and at least 13 February 2022, Russia’s primary aim in relation to the Donbas was to control the territory through the D/LPR forces. This aligned with the goal of the D/LPR to control territory in Donbas. Thus, it amounted to an overarching joint territorial aim (and military objective) between Russia and the D/LPR to ensure that the D/LPR-controlled regions in Donbas remained under their control and outside the de facto control of Ukraine.

4.1.2.3.2.2.1 **The Novorossiya Project and Shared Objectives in 2014**

According to materials from the Ukrainian Government, beginning in 2013, Russia actively implemented activities aimed at the federalisation of Ukraine and the deeper integration of Ukrainian regions into the Russian Federation. To this end, in 2013, Russia conducted a targeted propaganda campaign aimed at “exploiting economic discontent and driving social fissures among Ukrainians”. From around November 2013, Russian propaganda intensified, particularly in Crimea and Donbas.

In early 2014, Russia actively encouraged the pro-Russian protest movements in eastern Ukraine and supported their separatist ambitions. Indeed, at this point in time, Russia’s official position signified sovereign ambitions over...
territory in southeast Ukraine.\textsuperscript{1646} Russian officials, including Putin, publicly supported the concept of Novorossiya ('New Russia'), i.e. the view that a large swath of the southeastern region of Ukraine (Novorossiya)\textsuperscript{1647} historically belongs to Russia and that the population there is Russian. For example, on 17 April 2014, Putin claimed that Russia needed to protect the rights of “ethnic Russians and Russian speakers” in “Novorossiya”.\textsuperscript{1648} Also noteworthy is a comment made by Putin on 17 April 2014, where he stated rhetorically “[w]ho knows” why the Soviet government surrendered Novorossiya to Ukraine.\textsuperscript{1650} Only a few weeks earlier, Putin had described Nikita Khrushchev’s decision to incorporate Crimea into Ukraine in 1954 in a remarkably similar vein.\textsuperscript{1651}

Subsequently, the Kremlin financed propaganda to promote the Novorossiya project, which aimed to assert Russian sovereignty over ‘Novorossiya’ territory.\textsuperscript{1652} Indeed, according to the leaked emails of Vladislav Surkov, a highly influential aide to Putin,\textsuperscript{1653} the Kremlin was involved in, and paid for, the effort to create an image of public support for this project, particularly within the self-proclaimed republics themselves.\textsuperscript{1654} In addition, Sergey Glazyev,\textsuperscript{1655} who was Putin’s advisor and advisor in south-eastern Ukraine at the time, was a key proponent of the Novorossiya project.\textsuperscript{1656}

However, already in May 2014 it was clear that the Novorossiya project was failing.\textsuperscript{1657} Except for some areas of the Donetsk and Luhansk oblasts, the rest of the predominantly Russian-speaking regions of the country confirmed their intention to remain within Ukraine following the wave of protests in eastern Ukraine.\textsuperscript{1658} Moscow assessed that its goal to gain formal sovereignty over the regions of Donetsk and Luhansk under the Novorossiya project was unlikely to be successful or spread to other regions of Ukraine without the direct intervention of Russian forces.\textsuperscript{1659} Accordingly, in the summer of 2014, the Kremlin began to shift its official position to preserving the remaining D/LPR forces and their territorial strongholds, including by directly intervening in the hostilities.\textsuperscript{1660} The Kremlin also began to distance itself from the Novorossiya movement it had previously supported.\textsuperscript{1661}
Many consider that the official announcement of the abandonment of the Novorossiya project took place the next year, on 20 May 2015, when Oleh Tsariov, a former member of the Ukrainian parliament and speaker of parliament of the Union of the DPR and LPR (called ‘Novorossiya’), announced that the Novorossiya project “was being suspended because it ‘doesn’t fit into’ the cease-fire agreement signed in Minsk in February”. As stated by the *Washington Post*, this statement revealed “a belated recognition on the part of separatists and perhaps the Kremlin that Novorossiya as a geopolitical project to break Ukraine has fallen well short of its objective.” The same month, the DPR’s Minister of Foreign Affairs stated that “[t]he Novorossiya project is frozen until a new political elite emerges in all these regions that will be able to head the movement. We don’t have the right to impose our opinion on [the Ukrainian cities of] Kharkiv, Zaporizhzhia and Odessa.”

However, it is during this period (i.e., from summer 2014 into 2015) that Russia increased its support to the D/LPR armed groups through, *inter alia*, military support, including control and direction; increased supplies; training; and economic assistance. According to one Russian lawmaker, “[t]he process of intensifying Moscow’s [military] support for the DPR and LPR and the process of abandoning the idea of Novorossiya went in parallel”. Indeed, as the subsequent sections will demonstrate, by July 2014, Russia’s support to the D/LPR had increased beyond mere assistance to include equipping and financing the group, as well as coordinating or helping in the general planning of its military activity, amounting to a relationship of overall control over the organised armed group.

### 4.1.2.3.2.2 Post-Minsk Agreements

In the second half of 2014 and into 2015, it is clear from the negotiations of the Minsk-II Agreements that Russia’s expressed policy toward the D/LPR changed as it moved away from sovereign ambitions over Ukrainian territory towards an official policy of reintegrating Donbass and Luhansk into Ukraine, while nevertheless ensuring the D/LPR remained in control of the territory to the exclusion of Ukraine. According to the analysis of multiple reputable organisations, this approach sought to ensure Russia could continue to use the ‘republics’ to destabilise Ukraine.
These goals were largely achieved by the Minsk-II Agreements, which Ukraine was forced to sign following Russia’s intervention in Debaltseve.1677 The Minsk-II Agreements envisaged amendments to the Ukrainian Constitution and the promulgation of legislation regarding the decentralisation of the country as well as special status for the Donetsk and Luhansk oblasts.1678 Significantly, the ‘Package of Measures for the Implementation of the Minsk Agreements’, referred to “areas of the Donetsk and Lugansk oblast of Ukraine”.1679 The Package also required the adoption of “a resolution of the Parliament of Ukraine specifying the area enjoying the special regime, under the Law of Ukraine on interim self-government order in certain areas of the Donetsk and Lugansk regions”; the “full resumption of socio-economic ties, including social transfers, such as pension, paymets and other payments (incomes and revenues, timely payments of all utility bills, reinstating taxation within the legal famework of Ukraine”; the “reinstatement of full control of the state border by the government of Ukraine throughout the conflict area”; and the “carrying out [of] constitutional reform in Ukraine with a new Constitution entering into force by the end of 2015, providing for decentralisation as a key element [...] as well as adopting permanent legislation on the special status of certain areas of the Donetsk and Lugansk regions.”1680

According to the International Crisis Group, “[f]or Moscow, the Minsk stipulation of special status for Donbas was a victory” since the status “envisioned decentralisation or federalisation that would allow the areas in question more autonomy from Kyiv than any other region in Ukraine”.1681 Analysis of Surkov’s leaked emails show that Surkov’s office was, at the time of the Minsk-II Agreements, focused on the constitutional amendments.1682 On 11 March, Surkov received proposals for amendments to the Ukrainian Constitution which were subsequently published by the D/LPR on 13 May 2015.1683 These constitutional amendment proposals included the assignment of special status to the D/LPR and the provision of their own ‘people’s militia’ and local executive and judicial authorities, which would be financed through the Ukrainian State (despite remaining under the de facto control of Russia).1684 Ukraine refused to incorporate the above amendments into its legislation.1685

In sum, it is clear from the Minsk-II Agreements that Russia no longer expressed sovereign ambitions over Donbas from the second half of 2014 into 2015, as demonstrated by the Package of Measures for the Implementation of the Minsk Agreements, which was agreed upon at the Russian Government’s insistence, and which refers to these territories as remaining within Ukraine (albeit with a special status).1686 Thereafter, it seems there was widespread confusion regarding Moscow’s official policy in Donbas, with many sources (including members of the DPR) indicating that even Russian ‘curators’ (i.e., advisors) could not clarify the picture to the D/LPR leaders.1687 This was also confirmed by Kurt Volker, the then US Special Representative for Ukraine Negotiations, who stated that “I think they are not really sure what to do.”1688

1679 Package of measures for the implementation of the Minsk agreements [emphasis added].
1680 Package of measures for the implementation of the Minsk agreements [emphasis added].
1682 See Section 4.1.2.3.2.4.9.2 Vladislav Surkov.
1686 Nonetheless, on 31 August 2015, the Ukrainian Parliament adopted draft constitutional amendments relating to the decentralisation of Ukraine and the special status of the Donetsk and Luhansk oblast. A second vote was needed before it can come into force, but it was unlikely that it could gather 300 out of the 450 votes necessary. See, A. Shandra and R. Seeley, “The Surkov Leaks: The Inner Workings of Russia’s Hybrid War in Ukraine” (RUSI, 16 July 2019), pp. 53-54; K. Mikhailov, “Ukraine’s Decentralization and Donbas ‘Special Status’ - What You Need to Know” (Euromaidan Press, 1 September 2015).
1687 Package of measures for the implementation of the Minsk agreements.
As will be discussed in the sections below, despite relinquishing its sovereign ambitions over Ukrainian territory, Russia continued to harbour territorial aims through its control over the D/LPR armed groups who, in turn, continued in their aim of controlling parts of Donbas.

4.1.2.3.2.2.3 CONTINUED TERRITORIAL AIM TO MAINTAIN THE D/LPR’S CONTROL OVER TERRITORY AND GREATER INTEGRATION WITH RUSSIA

While Russia has repeatedly claimed since the Minsk Agreements that it has no territorial ambition in the D/LPR controlled areas, its continued provision of military, financial and practical support to the D/LPR lead to an inference that Russia, at the very least, intended to maintain the D/LPR’s control over the territories to the exclusion of Ukraine. This territorial aim benefited Russian interests by allowing for the continued destabilisation of Ukraine and, thus, the obstruction of Ukraine’s ability to join alliances. In particular, Russia made clear its desire that Ukraine remain outside of NATO. Between 2014 and early 2022, NATO member countries signalled that Ukraine could not join the alliance while Donbas continued to be affected by conflict. In addition, RAND explained that the terms of the Minsk-II Agreements, which require Ukraine to grant Donetsk and Luhansk special status, to amend its constitution for greater decentralisation, and to reintegrate these regions into Ukraine, gave “Moscow its permanent frozen conflict in Ukraine, making the separatist republics of Donetsk and Luhansk technically Ukrainian territory, but providing Moscow a strategic hook in the country. If the agreements are not implemented, Russia still has a useful means for destabilisation and, at the very least, may have denied Ukraine a path to NATO or EU membership.” In 2018, the Atlantic Council also concluded that “Putin is trying to destabilize Ukraine through the so-called republics, using them as dependent tools in his game.” In July 2021, Putin published a treatise on Ukraine in which he stated that Ukraine is not and has never been an independent State and that, rather, Ukraine is an inalienable part of Russia.

In addition to Russia’s provision of support to, and control over, the D/LPR forces, which will be discussed throughout the remainder of this section, Russia’s territorial aims are manifested in numerous other ways. Critically, in the summer of 2019, Russian authorities began issuing Russian passports to the residents of the D/LPR. This came after the adoption of Putin’s Order ‘On the determination for humanitarian purposes of the categories of persons entitled to apply for admission to the citizenship of the Russian Federation in a simplified manner’ of 24 April 2019. This Order allowed D/LPR residents to receive Russian passports in a simplified manner, exempting them from the usual prerequisites of passing Russian citizenship exams and maintaining residency in Russia for more than five years prior

1690 See e.g., BBC News, ‘Russia intends to “de facto integrate” Donbas, the EU thinks!’ (13 May 2021); V. Koshechkin, ‘Kozak said the aim of the passports issuance for the DPR and LPR residents’ (Lenta, 20 July 2021); A. Tokarev, ‘Why Moscow does not want and will not incorporate Donbas’ (Vedomosti, 16 May 2021).

1691 See see Sections 4.1.2.3.2.3–4.1.2.3.2.7.


1693 In September 2021, Putin’s press-secretary stated the following: ‘The President of Russia has repeatedly stated our very clear and understandable consistent position regarding the continuation of the NATO military infrastructure approaching our borders: this is something that we do not like at all’, A. Rokitsa, “We don’t like that”: Putin’s office made a statement regarding the Ukraine’s aspiration to join NATO’ (RBK, 2 September 2021). The position remained at least into February 2022; Ministry of Foreign Affairs of the Russian Federation, “Briefing by Foreign Ministry Spokeswoman Maria Zakharova, Moscow, February 9, 2022” (9 February 2022); M Sheehey, ‘Russia and NATO: on different tracks’ in negotiations, Putin spokesperson says’ (Politico, 16 January 2023).

1694 TRT World, “Can Ukraine join NATO when it’s under Russian threat?” (7 April 2021); J. Seldin, “US Won’t Commit to NATO Membership for Ukraine” (Voice of America, 6 April 2021); S. Glaeser, “NATO’s flirtation with adding 2 more members runs the risk of starting a war the US can’t afford to fight” (Insider, 25 October 2021).

1695 The RAND Corporation is a research organisation that develops solutions to public policy challenges to help make communities throughout the world safer and more secure, healthier and more prosperous. RAND is nonprofit, nonpartisan, and committed to the public interest. See, RAND, ‘About us’.


1699 BBC News, ‘The Donbas residents started to receive Russian passports – after the oath and fingerprinting’ (14 June 2019); K. Tkachenko, ‘MIA started issuing Russian passports to the Donbas residents’ (BBC, 14 June 2019).

1700 Decree of the President of the Russian Federation No. 183 ‘On the determination for humanitarian purposes of the categories of persons entitled to apply for admission to the citizenship of the Russian Federation in a simplified manner’ (24 April 2019).
to application.\textsuperscript{1701} Officially, by 27 January 2022, more than 720,000 D/LPR residents had become Russian citizens.\textsuperscript{1702} Although the Kremlin claims that the decision has no relation to the possible inclusion of parts of Donbas into Russia,\textsuperscript{1703} some consider it a first step towards such integration.\textsuperscript{1704}

In sum, Russia's goal to control territory in Donbas through their control of the D/LPR and, in turn, to ensure the territory remained outside the control of the Ukrainian government is displayed by its consistent support for and control over the D/LPR armed groups since 2014.\textsuperscript{1705} In furtherance of the D/LPR's continued control over territory in Donbas, as well as by measures to further incorporate this territory into its orbit, including through its passportisation policy.

While Russia's goal remained limited, at least officially, to the control of territory in Donbas through their control of the D/LPR forces (i.e., a territorial aim), the D/LPR regularly expressed the additional aim of incorporation of the territory into Russia (i.e., accession aim). Indeed, Russia's official State policy during this period – between the Minsk-II agreements in February 2015 and 13 February 2022\textsuperscript{1706} – denied any ambition to formally annex Donbas into its own territory.\textsuperscript{1707} On the other hand, the D/LPR regularly demonstrated their continued desire to incorporate the territories under their control into the Russian Federation.\textsuperscript{1708} Despite these divergent views on annexation, the D/LPR leadership has maintained unwavering support for Russia, viewing the Russian leadership as its own and regarding itself as culturally and economically part of Russia.\textsuperscript{1709}

To begin with, much of the legislation enacted and enforced by the D/LPR on the territories under their control has been incorporated directly, or with some amendments, from Russian law (e.g., Criminal Code of the DPR\textsuperscript{1710}, Civil Procedure Code of the DPR\textsuperscript{1711}), signifying an intention to align domestic laws and policies with Russia. In relation to the economy, as of 2015, the Russian ruble has become the primary currency used in D/LPR territories.\textsuperscript{1712} Further, there is evidence that numerous enterprises that were based in the D/LPR have moved their operations to Russian territory.\textsuperscript{1713} As will be described below,\textsuperscript{1714} the economies of the D/LPR have become entirely dependent on Russia.

Russian cities have also been twinned with those in Donbas\textsuperscript{1715} and the D/LPR have adopted Russian education programs and fully incorporated Russian education standards, including early indoctrination of children and classes

\textsuperscript{1701} BBC News, “Putin simplified the issuance of Russian passports to the DPR and LPR locals” (24 April 2019); BBC News, “It is now easier for the DPR and LPR to obtain the Russian citizenship” (24 April 2019).
\textsuperscript{1702} Ria Novosti, “More than 720 thousand of Donbas residents obtained the Russian passports” (27 January 2022); Tass, ‘Around 400 thousand DPR residents obtained the Russian passports’ (13 February 2022).
\textsuperscript{1703} RBC, “Kozak excluded the possibility of affiliating Donbas when asked about passport to the Donbas residents” (20 July 2021); Interfax, “Putin’s office states: issuance of Russian passports to the Donbas residents does not imply for the further CDLR incorporation to Russia” (20 July 2021).
\textsuperscript{1704} P. Dickinson, “Russian passports: Putin’s secret weapon in the war against Ukraine” (Atlantic Council, 13 April 2021); N. Tarasenko, “Situation and sentiment in L/DPR as an argument for the Ukrainian politics” (2016) (9) Rezonans 3; BBC News, “Russia intends to ‘de facto integrate’ Donbass, the EU thinks” (13 May 2021).
\textsuperscript{1705} The same mechanism of passportisation had been already used in Abkhazia and South Ossetia (Georgian territories controlled since 2008 by Russia); N. Ishchenko, “Georgian scenario for Donbas: how Russia issued passports in Abkhazia and South Ossetia” (Yevropeyska Pravda, 25 April 2019).
\textsuperscript{1706} See Sections 4.1.2.3.2.3-4; 1.2.3.2.7.
\textsuperscript{1707} 13 February 2022 represents the end of the temporal period addressed in the context of the present Opinion.
\textsuperscript{1708} See, e.g., V. Koschechkin, “Kozak said the aim of the passports issuance for the DPR and LPR residents” (Lenta, 20 July 2021); A. Tokariev, “Why Moscow does not want and will not incorporate Donbas” (Vedomosti, 16 May 2021); BBC News, “Russia intends to “de facto integrate” Donbas, the EU thinks” (13 May 2021); “[Press secretary of the Russian President Dmitry Peskov, in response to the news about the EU document [warning about Russia’s ‘de facto integration’ of Donbas], said that Russia is not going to annex Donbas. ‘Russia did not plan and does not plan to absorb anyone, it has never done this’”).
\textsuperscript{1709} V. Koschechkin, “The ex-Head of DPR promised to incorporate Donbas into Russia” (Lenta, 20 October 2021); K. Kazantseva, “LPR predicts that Donbas to be incorporated to Russia” (Gazeta, 27 March 2021); A. Samoizhnev, “The Head of LPR promised to fight for the Donbas incorporation into Russia” (Rossiyskaya Gazeta, 27 March 2021).
\textsuperscript{1710} People’s Concil of DPR, “Vladimir Bideikva and MPs attended “Russia-Donbas: unity of priorities” Forum [Videol]” (15 July 2021); Rysskiy Tsentr, “A meeting took place in the DPR on further economic integration of Donbas into Russia” (15 December 2021); K. Goncharov, ““Trade ties”: Russia speeds up the slow annexation of the ‘DPR’ and ‘LPR’” (DW, 30 November 2021).
\textsuperscript{1712} Law of the DPR No. 278-IXC “Civil Procedure Code of DPR” (30 April 2021).
\textsuperscript{1713} J. Röpcke, “How Russia finances the Ukrainian rebel territories” (Bild, 16 January 2016); International Crisis Group, “Russia and the Separatists in Eastern Ukraine” (5 February 2016); UHHRU, “Human rights situation in Donbas” (2017), pp. 5-6; Decree of the Council of Ministers of the LPR No 02-04/239/15 “On the organisation of currency circulation on the territory of the Luhansk People’s Republic” (18 August 2015).
\textsuperscript{1714} UHHRU, “Human rights situation in Donbas” (2017), pp. 5-6; V. Kolbasin, “The great migration of plants: How the Ukrainian enterprises relocate to Russia” (Argumenty i Fakty, 22 December 2014); BBC News, “Media: How many Donbas plants were relocated to Russia?” (11 June 2016).
\textsuperscript{1715} See Section 4.1.2.3.2.6 Financial Assistance and Economic Dependency on the Russia Federation.

and activities to nurture patriotic feelings towards Russia.¹⁷¹⁶ Further, 150,000 residents of the D/LPR voted in the recent Russian parliamentary elections (i.e., the elections to the Russian State Duma) on 17 to 19 September 2021.¹⁷¹⁷ These residents were able to vote because they were granted Russian citizenship under the passportisation policy.¹⁷¹⁸ The D/LPR authorities organised transportation to voting polls in Russia for residents of their respective oblasts.¹⁷¹⁹ They also ensured that a special, simplified border control procedure was in place to facilitate this process.¹⁷²⁰ In addition, the leaders of the D/LPR, Pushilin and Pasechnik, also voted in the Duma elections,¹⁷²¹ in which, former Prime-Minister of the DPR, Aleksandr Borodai, was elected to the Duma as a member of the “United Russia” political party.¹⁷²²

During the initial seizure of State buildings in eastern Ukraine in April 2014, the separatist movements fixed Russian flags on the captured buildings.¹⁷²³ On 12 May 2014, the day after the purported referendum, Denis Pushilin, acting on behalf of the DPR, announced that they were requesting Russia to incorporate the DPR into its territory in order to “restore historical justice.”¹⁷²⁴ In November 2014, the then head of the LPR, Ihor Plotnytskyi, stated that he wanted the LPR to become part of Russia and that he supported the “synchronization of economics, politics, understanding and laws,” and declared that “joining Russia is just a matter of time.”¹⁷²⁵ In 2017, Oleksandr Zakharchenko, the then Head of the DPR, stated “Russia is our motherland and everything that we are doing is so that we can [...] become one people. [...] We have one aim – to return to our motherland.”¹⁷²⁶ The same sentiments were expressed by the current LPR leader, Leonid Pasechnik, who stated in 2018 that “[t]oday there are boundaries between Russia and Donbas, and formally we are different states. But in our hearts and minds we feel that we are not only part of the Russian world, but part of Russia itself.”¹⁷²⁷

Critically, where the goals and ambitions of the D/LPR and Russia have differed, Russia has shown sufficient control over the D/LPR leadership to ensure they continue to pursue Russia’s policies. Russia has exercised this control by removing members of the D/LPR leadership unaligned with Russia’s interests and installing leadership willing to act in accordance with these interests.¹⁷²⁸ For example, while Pushilin (who became leader of the DPR with the support of Russia during the 2018 elections) continues to make some statements supporting Novorossiya, he recognises that Russia does not support this goal and speaks more frequently of “integration” with Russia in terms of greater civic and economic cooperation.¹⁷²⁹ As such, Pushilin now mostly echoes Moscow’s official line that the D/LPR should pursue closer cooperation with Russia while remaining formally part of Ukraine.¹⁷³⁰

¹⁷¹⁶ S. Gorbatenko, “Russian is your native language: there is a new instrument for childrearing in the occupied Donbas” [Radio Svoboda, 31 August 2021]); IA REGNUM, “Studying in the LPR and DPR would be based on Russian programmes” [1 September 2017]; A. Hurska, “Ukraine’s Occupied Donbas Adopts Russia’s Youth Militarization Policies” (2019) 16 (77) Eurasia Daily Monitor; H. Coyne, “Moscow’s proxy ‘repulics’ assure that Donbas is and always was ‘Russian.’” [KHRPG, 4 January 2021].
¹⁷¹⁷ Ukrainska Pravda, “Russia calculated how many CDDLR residents had voted on the Duma elections” (19 September 2021); V. Shpinieva, “It is now known how many Donbas residents voted in the State Duma election” [Lenta, 20 September 2021].
¹⁷¹⁸ For more on Russia’s passportisation policy, see Section 4.3.1.3.2 The Effect of Russian Naturalisation on the Status of ‘Protected Persons’ in Donbas.
¹⁷¹⁹ E. Romanova, “Front-line voices” (Novaya Gazeta, 20 September 2021); M. Baranovskaya, “The “L/DPR” residents were delivered to the RF elections by buses and trains” [DW, 19 September 2021].
¹⁷²⁰ Tass, “DPR organized 875 bus voyages and 12 trains to RF for those who vote on the Duma elections” (15 September 2021); LUG-info, “Mir Luganshchine” cleared up the exit procedures for the LPR residents to visit Rostov region for voting” (13 September 2021).
¹⁷²¹ Ria Novosti, “The Head of DPR voted on Duma elections” (17 September 2021); Ria Novosti, “The first buses with those who want to vote on the elections rided out from LPR” (17 September 2021).
¹⁷²² State Duma Website, “Borodai Aleksands Yuryevich”.
¹⁷²³ BBC News, “Ukraine: Pro-Russians storm offices in Donetsk, Luhansk, Kharkiv” (7 April 2014); M. Shtekel, “Witneses of 2014 “Russian Spring”: Ukrainian cities are not as easy to take as earlier” [Radio Svobodo, 14 April 2021].
¹⁷²⁵ Ukrainska Pravda, “The “LPR” militants: incorporation into Russia is a question of time only” (3 November 2014); Dozhd, “The “LPR” stated the intention to become the part of Russia” (3 November 2014).
¹⁷²⁷ International Crisis Group, “Rebels without a Cause: Russia’s Proxies in Eastern Ukraine” (2019), p. 12; LUG.info, “The Donbas residents feel not only as the part of Russian world, but part of Russia itself – Pasechnik PHOTO”.[MK, 20 September 2018].
¹⁷²⁸ See Section 4.1.2.3.2.4.10 Russia’s Ability to Instate and Remove the Political Leadership.
4.1.2.3.2.4 CONCLUSION

As the above analysis demonstrates, during the first half of 2014, through its promotion of the Novorossiya project, Russia harboured sovereign ambitions over territory in eastern Ukraine. As these ambitions became increasingly unrealistic, Russia (at least outwardly) abandoned this objective and no longer demonstrated a desire to annex territory in eastern Ukraine. Nonetheless, the circumstances addressed above, in addition to the facts described throughout Sections 4.1.2.3.2.3–4.1.2.3.2.7, point to the inevitable conclusion that, ultimately, Russia has intended to control this territory through the D/LPR armed groups and, by extension, to keep the territory outside of Ukraine’s control. Russia has also intended to maintain the D/LPR’s ever-closer ties (politically, economically, and culturally) to the Russian Federation. To this end, it can be inferred that the D/LPR and Russia share the same territorial and military objective of ensuring that the D/LPR-controlled regions in Donbas remain under their control and outside the de facto control of Ukraine.1731 These overlapping objectives demonstrate, at a minimum, a shared goal to maintain Ukraine’s lack of control and Russia’s control over Donbas exercised through the D/LPP forces.

With these shared aims in mind, the remaining indicators can be analysed with a view to understanding how Russia’s assistance to the D/LPR, considered as a whole, was of a nature that the only logical conclusion that can be reached is that Russia exercised overall control over the D/LPR armed groups from July 2014 through to the present.

4.1.2.3.2.3 TRANSFER OF INTELLIGENCE AND MILITARY OFFICERS AND PERSONNEL FROM RUSSIA

The transfer of the controlling State’s own officers and personnel into the military and political structures of the armed group is another factor indicative of overall control. This practice allows the controlling State to exert influence on the decision-making process of the armed group and to ensure compliance with its instructions.1732 International jurisprudence reveals various ways that this may occur and be probative of influence or control. For example, it can be achieved through the appointment of individuals that once belonged to governmental bodies or the military of the controlling State to command positions within the armed group.1733 The transfer of individuals can also comprise former officers of the controlling State, including those who voluntarily resign to take up positions in the armed group, but who retain a connection to the armed forces of the controlling State (i.e., having received official authorisation, they are regarded as temporarily detached or they continue to receive a salary).1734 It can also comprise those who occupy command positions both in the controlling State and the armed group, simultaneously.1735 In addition, it may include the transfer of personnel, even at junior levels, from the armed forces of the controlling State to the non-state armed forces.1736

As the following sections will demonstrate, various reports indicate that, from March to April 2014, former members of the FSB and GRU as well as RFAF servicemen went to Donbas to assist the D/LPR armed forces, with many taking up commanding positions and participating in the takeovers of administrative buildings in eastern Ukrainian cities.1737


1732 Blaškić Trial Judgement, para. 110; Naletilić and Martinović Trial Judgement, para. 201.

1733 Prlić Trial Judgement (Volume III), para. 546; Tadić Appeal Judgement, para. 150; Naletilić and Martinović Trial Judgement, para. 201.

1734 Blaškić Trial Judgement, paras. 101, 114; Tadić Appeal Judgement, para. 150; Perišić Trial Judgement, paras. 795, 796, 840, 1602.

1735 Prlić Trial Judgement (Volume III), paras. 547-548.

1736 Blaškić Trial Judgement, para. 115.

However, while this may be indicative of overall control, the evidence currently available lacks sufficient corroboration to establish that these individuals remained part of the Russian military or security services, or that their activities in Donbas were commanded or coordinated by relevant Russian organs or the Kremlin.

Nevertheless, after the establishment of the D/LPR’s law enforcement agencies around July 2014, there is evidence that currently serving FSB officials were transferred into these D/LPR agencies. From this point on, the evidence is sufficiently corrobated by independent and reliable sources and sufficiently consistent with the entirety of Russia’s assistance to the D/LPR, to mitigate against a finding that the FSB officials were acting in a private capacity or otherwise operating ultra vires.

Moreover, from September 2014, alongside the creation of the 1st and 2nd Army Corps, Russia formalised the sending of RFAF officers and servicemen to support the D/LPR through the State’s 12th Reserve Command (later known as the 8th Army of the Southern Military District). Officers and personnel from the RFAF remain incorporated into the D/LPR armed forces to this day. In May 2021, Lieutenant General Serhii Naieiv of the Joint Forces of the UAF stated that around 2,100 “military advisors and instructors” from the officers of the FSB were present in the D/LPR.

The evidence shows that this transfer of personnel has allowed Russia to provide the D/LPR with crucial operational support and assistance and to play a major role in the general planning and coordination of the D/LPR’s military activities in Donbas from at least July 2014. The present section focuses on the transfer of intelligence and military officers, personnel and servicemen from Russia. A subsequent section will describe the role of Russian officers and advisors in the planning, coordination, and direction of the D/LPR’s activities.

4.1.2.3.2.3.1 Russian Federal Security Service (‘FSB’)

4.1.2.3.2.3.1.1 Presence of FSB Officers: 2013 – April 2014

According to information from the GoU, the main agent networks of the FSB and GRU in Ukraine were created between 2010 and 2013. Between February and April 2014, additional ‘recruiters’, diversionists and coordinators belonging to Russian secret services arrived in Donbas. Control over the FSB’s network was carried out by a unit of the FSB in the Russian Black Sea Fleet (‘BSF’). According to the Ukrainian Government, from March 2014, the FSB organised “pro-Russian demonstrations, recruit[ed] militants to the [D/LPR] forces, [facilitated the] infiltration of migrants and smugg[ed] weapons through the border,” and ultimately acted as the “power controlling the situation inside” the territories under the control of the D/LPR. Despite no reason to doubt the reliability of this evidence,
there is no independent evidence to fully corroborate these claims. As such, it is considered that the clear and convincing standard has not been met in respect of this information.

More specifically, as discussed above, the Ukrainian Government alleges that Russian special forces participated in the seizure of the Regional State Administration buildings in Donetsk and Kharkiv and the SSU buildings in Donetsk and Luhansk on 6 and 7 April 2014. However, this information lacks sufficient corroboration and is insufficient to preclude a determination that they were private individuals and/or FSB officers acting ultra vires.

### 4.1.2.3.2.3.1.2 TRANSFER OF FSB OFFICERS: SUMMER 2014 – PRESENT

Evidence suggests that after the establishment of D/LPR structures in summer 2014, serving FSB officers took up key roles within the D/LPR's law enforcement agencies. Whilst most of the evidence analysed below comes from Ukrainian sources, these sources are largely consistent and corroborate one another. Moreover, by this point in time, and considering the totality of evidence, the scale of Russia's involvement – including its direct intervention and its role in training and equipping the D/LPR forces – militates against a finding that these FSB officers could have been acting alone, without Russia's acquiescence, or otherwise ultra vires.

Numerous sources confirm that the FSB has integrated officers into the D/LPR's Ministries of State Security ('MGBs'). For example, according to investigations undertaken by Bellingcat, the Insider and Der Spiegel, Russian authorities issued a series of sequentially numbered passports to FSB undercover operatives, including “Sergey Lukashevich”, who reportedly served as the Minister of State Security of the DPR in 2015. In August 2017, the NGO Information Resistance reported that the DPR MGB was acting on the instruction of the Russian FSB in relation to the processing of a case against a detained journalist, Stanislav Aseyev. After his release, Aseyev confirmed that “Ispanets”, a Russian FSB officer, held the position of Deputy Minister of the DPR MGB until approximately 2018, after which he took up the same position in the LPR. It appears as if Aseyev was referring to Anatoly Antonov, who the Ukrainian SSU claims is FSB officer Rashyd Sadykov. According to the SSU, in 2017, at the initiative of the FSB, Sadykov was appointed First Deputy Minister of the DPR MGB and later the Minister of the LPR MGB. Another former MGB detainee, Ukrainian scientist, Ihor Kozlovskii, also stated that “[t]he FSB oversees the MGB. This is practically an open secret, that is, everyone knows about it. Even the local administration of the ‘DPR’ is not very capable of influencing the MGB.”

There is also evidence that representatives of the FSB hold senior positions within the DPR Prosecutor General’s Office (‘PGO’). For example, one DPR militant, who, in early years of the conflict worked in the DPR law enforcement,
stated that all the commanding officers were from the Russian Federation. Another DPR state official who worked for the government until 2017, stated that his superior was a representative of the Russian special services at the time.

The continued presence of FSB officers in the D/LPR is corroborated by several Ukrainian sources. In particular, there are multiple accounts from Ukrainian personnel who were detained by the D/LPR security forces who recall being interrogated in the presence of members of the FSB between April 2014 and 2015. Other Ukrainians detained between 2017 and 2019 confirm that FSB officers continued to operate with the security services in the D/LPR. Finally, according to the Ukrainian Joint Forces, a video in their possession depicts LPR snipers conducting an operation on 26 to 28 February 2020 in which one of the snipers (the operator of technical means of intelligence) is identified as a serving FSB officer, Aleksandr Petrov ‘Rusak’.

Further information of the role of the FSB agents directing and supervising the D/LPR armed forces is contained in Section 4.1.2.3.2.3.2 (The Coordinating Role of Russia from July 2014).

4.1.2.3.2.3.2 Officers and Servicemen of the Russian Armed Forces, including the GRU

As the following sections explain, there is some evidence, emanating predominately from the GoU, that officers and personnel of the Russian Army were deployed in the D/LPR forces from around April 2014 to assist in the latter’s military effort. However, this evidence is insufficiently corroborated to establish that any deployed individuals were active members of the RF AF or that they retained any operable connection to the RF AF during the period of April through August 2014.

The deployment of RF AF officers was formalised around September 2014 through the 12th Reserve Command (‘RC’), later renamed the 8th Combined Arms Army of the Southern Military District of the Russian Ministry of Defence, and from this point there is clear and convincing evidence of their assignment to the D/LPR.

Officers from the 12th RC/8th Army have participated in the war in Ukraine, while remaining in active service with the RF AF, with the knowledge and instruction of their commanders. In sum, the evidence shows clearly and convincingly that RF AF officers are transferred into commanding positions in the D/LPR armed forces and this enables Russia to control the decision-making process of their armed forces and ensure compliance with its instructions, while the transfer of servicemen provides critical assistance to the D/LPR’s military effort.

4.1.2.3.2.3.2.1 Members of the Russian Armed Forces, including GRU Officers: Spring 2014

According to the GoU, servicemen of the RF AF started to arrive in Donbas in the spring of 2014. Initially, these servicemen comprised a ‘few’ officers from special units of the GRU and the Russian law enforcement agencies. According to the GoU, a GRU unit in the Rostov region of the Russian Federation exercised control over

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1763 Information provided by the Government of Ukraine.
1764 Information provided by the Government of Ukraine.
1765 Information provided by the Government of Ukraine; information provided by Vostok SOS; information provided by Luhansk Regional Human Rights Center “Alternative”. Former detainees interviewed by the Ukrainian CSOs also mentioned that in detention they had been interrogated by individuals, who introduced themselves as FSB officers: Coalition of Civic Organisations and Initiatives ‘Justice for Peace in Donbas’, “Those who survived hell: victims’ testimonies about places of illegal detention in Donbas” (2015), pp. 46, 73; M. Andrushyevska and V. Khokalo, “Isolation. Voices from the basement” (ECR Group 2021), pp. 47, 51.
1766 A. Vagner, “It were Russians, the detailed staff of FSB” (VZ, 18 February 2020); Krym.Realii, “Donetsk “MSS” as a branch office of FSB: story of a Ukrainian detained in “DPR”” (16 October 2019); Novosil Donbasa, “A polite man.” The ex-detainee of “Isolation” told about the Russian officer among the “DPR” fighters” (16 March 2021).
1767 Ukrinform, “IFD Headquarters proves involvement of FSB snipers in war in Donbas” (8 May 2020). Bellingcat discovered but not yet named FSB officers in charge of the DPR prisons, see B. Tkachuk, “Structure controlled by the FSB”: Bellingcat investigators found the evidence of the Russian special services involvement with the “isolation” torture center” (Hromadske, 13 November 2021).
1768 Information provided by the Government of Ukraine. See also, Annex E (Senior Russian Officers Present in Donbas Since 2014); O. Harbar and others, “Armed Conflict in Ukraine: Military Support of Illegal Armed Formations ‘DPR’ and ‘LPR’ by Russian Federation” (UHHRU 2018), p. 10.
1769 Information provided by the Government of Ukraine; O. Hudetska, “SSU officer on the role of Russia, Alexander Efremov and the leadership of regional security forces in shaking up separatism” (Insider, 9 October 2014).
1770 Information provided by the Government of Ukraine; information provided by Vostok SOS; M. Shitkel, “SSU published the pictures and names of the Russian Spetsnaz fighters fighting on Donbas against Ukraine” (Radio Svoboda, 21 May 2015); O. Gunel, “GRU participated in the Donbas conflict – new Bellingcat data” (DW, 30 April 2021); B. Butkevych, “Colonel Oleg Zhivotov: ‘We did not surrender Luhansk SSU’” (Ukrainian Tyzhden, 25 March 2016); O. Hudetska, “SSU officer on the role of Russia, Alexander Efremov and the leadership of regional security forces in shaking up separatism” (Insider, 9 October 2014); N. Dvali, “Former head of
the GRU network in Donbas during the early phases of hostilities. However, this fact lacks further corroboration and will not be considered further.

From spring 2014, according to intelligence collected by the GoU, current and former members of the GRU were integrated into the D/LPR armed groups and were involved in conducting reconnaissance and sabotage operations, seizing administrative buildings, attacking Ukrainian military facilities, and ambushing military convoys. They held key positions within the armed groups, including deputy commands, junior officers and specialists for the operation and maintenance of weapons and military equipment. Again, at present, this allegation lacks sufficient corroboration and will not be considered further.

While the evidence contained in Annex C (Participation of Russian Citizens in the Seizure of the Donetsk and Luhansk Regional Administration Buildings: April 2014) corroborates the presence of former GRU officers in Donbas from March to April 2014, there is insufficient evidence to conclude that these individuals were active GRU officers or that they acted at the behest of the Russian Federation. For example, former GRU officer, Igor Bezler (‘Bies’), allegedly arrived in Donetsk as early as March 2014 and presented himself as a lieutenant colonel of the RFAF in Horlivka on 14 April 2014. However, beyond his claim, there is insufficient evidence to show that he was part of the RFAF or that he acted at the behest of the GRU.

The evidence of the involvement of individuals from the GRU in the takeover of Luhansk has been considered above. In sum, there is evidence that officers of the FSB and the GRU participated in the seizure of the SSU building on 6 April, and that FSB officers were physically present in the captured Regional SSU buildings in Luhansk during April 2014, participating in the questioning of captured witnesses. However, there is insufficient evidence that these individuals were directed to the area as agents of the Russian Federation (or that the Russian Federation was aware of their presence in the area) at this point in the conflict.

For more information on the direction and supervision provided by GRU officers, see Section 4.1.2.3.2.4.2 (The Coordinating Role of Individuals from the FSB and GRU during Spring 2014).

4.1.2.3.2.4.2 TRANSFER OF RUSSIAN MILITARY PERSONNEL FROM THE 12th RESERVE COMMAND FROM SEPTEMBER 2014

From September 2014, Russia formalised a procedure through which officers and personnel of the RFAF were transferred into the forces of the D/LPR. After the entry into force of the Minsk-I Agreement in September 2014, the 12th RC of the Southern Military District in Novocherkassk, Rostov region, served as the base for the transfer of Russian military personnel into Ukraine from Russia. This occurred at a similar time to the establishment of the 1st (Donetsk) and 2nd (Luhansk) Army Corps. The 12th RC was subsequently renamed the Centre for Territorial Troops (CTT) of

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the Southern Military District (Military Unit No. 64722) in August 2015, and then the 8th Army of the Southern Military District in September 2017.

Documentary evidence that the Russian personnel transferred into Donbas received official authorisation for their deployment is not available. However, considered as a whole, and within the context of Russia’s overall contributions to the D/LPR forces, there is clear and convincing evidence (as explained in the following sections) to corroborate the GoU’s allegation that RFAF officers and servicemen were transferred through the 12th RC, the CTV, and later the 8th Army, and integrated into the D/LPR armed formations as commanding and staff officers. Meanwhile D/LPR soldiers, sergeants and officers of lower ranks were recruited locally or were foreign (mostly Russian) mercenaries.

Vladimir Starkov, a Major of the RFAF, confirmed that officers and personnel transferred to the D/LPR through the 12th RC/8th Army simultaneously maintained their positions in the Russian Federation. He explained that the 12th RC was mandated to participate in the conflict with Ukraine, and that Russian servicemen sent to Donbas were officially appointed to positions in the 12th RC and, from there, were assigned to positions as advisors in the D/LPR. Starkov testified that he was sent to Donbas by the 12th RC, stating: "at the time of my arrest, I was serving in the Armed Forces of the Russian Federation. Rank – Major – in a subdivision of the city of Novocherkassk. But in fact, I served in unit 08805 in the city of Donetsk, Ukraine." He added that: "[y]ou are officially appointed to the position of the 12th command in the city of Novocherkassk [...] . [W]hen you arrive there, you are presented with the fact that you will serve in the ‘DPR’ and ‘LPR’."

He detailed three officers who had refused to go to the D/LPR and were immediately put under pressure. Additionally, Starkov indicated that when he was in the DPR, the commander of the 1st Army Corps was a Russian General.

In addition, there is evidence that RFAF personnel continued to receive salaries after their deployment to the D/LPR. This was established by Vladimir Starkov, who testified that they were promised triple their salary (although did not in fact receive this sum) by the RFAF. Similarly, a former militant testified that all senior positions in the 2nd Army Corps, as well as lower-ranking positions of commanding officers of the units of the 2nd Army Corps, were filled by career officers of the RFAF who received three times their usual salary (from the RFAF). Additionally, a Ukrainian citizen who was detained by Bezler in June 2014 testified that a new curator from Russia arrived in the local police department in October of that year and arranged positions and salaries for RFAF personnel, including monthly salaries of 30,000 rubles for Lieutenants and 20,000 rubles for warrant officers.

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1782 Sprotyv.info, ‘What is the 12th RC, or how the county-lier manages its army on the occupied Donbas’ (5 November 2017).
1783 Sprotyv.info, ‘What is the 12th RC, or how the county-lier manages its army on the occupied Donbas’ (5 November 2017).
1784 Information provided by the Government of Ukraine; Annex E (Senior Russian Officers Present in Donbas Since 2014).
1785 Information provided by the Government of Ukraine; Annex E (Senior Russian Officers Present in Donbas Since 2014).
1786 Information provided by the Government of Ukraine.
1787 Gordon, ‘The RF serviceman Starkov detained on Donbas: You are presented with a fait accompli that you will serve in “L/DPR”’ (29 July 2015).
1789 RBC, ‘“Russian major” described the procedure of sending servicemen to Donbas’ (13 August 2015); Novoye Vremya, ‘Regular Russian serviceman described in detail the scheme of sending Russian soldiers to Donbas’ (25 July 2015).
1791 Gazeta.ru, ‘The “major” detained on Ukraine informed media on 2 thousand Russian servicemen on Donbas’ (13 August 2015).
1792 Gordon, ‘The RF serviceman Starkov detained on Donbas: You are presented with a fait accompli that you will serve in “L/DPR”’ (29 July 2015); information provided by the Government of Ukraine.
1793 Gordon, ‘The RF serviceman Starkov detained on Donbas: You are presented with a fait accompli that you will serve in “L/DPR”’ (29 July 2015).
1794 Gordon, ‘The RF serviceman Starkov detained on Donbas: You are presented with a fait accompli that you will serve in “L/DPR”’ (29 July 2015).
1795 Information provided by the Government of Ukraine; RBC, ‘“Russian major” described the procedure of sending servicemen to Donbas’ (13 August 2015); Novoye Vremya, ‘Regular Russian serviceman described in detail the scheme of sending Russian soldiers to Donbas’ (25 July 2015).
1796 Information provided by the Government of Ukraine. See also, Novoye Vremya, ‘Triple salary and a Sberbank card. The Head of the SSU spoke about the details of the salary project of the Russian Army in Donbas’ (25 July 2015); Ukrainska Pravda, ‘For participation in war in Donbas Russian servicemen receive triple salary’ (9 August 2015); D. Kurennaya, ‘Mercenaries of the “/DPR”- how much the locals receive compared to the Russians’ (Donbas.Reali, 1 July 2019).
1797 Information provided by the Government of Ukraine. See also, NV, ‘Triple salary and a Sberbank card. The Head of the SSU spoke about the details of the salary project of the Russian Army in Donbas’ (25 July 2015); Ukrainska Pravda, ‘For participation in war in Donbas Russian servicemen receive triple salary’ (9 August 2015); D. Kurennaya, ‘Mercenaries of the “/DPR”- how much the locals receive compared to the Russians’ (Donbas.Reali, 1 July 2019).
4.1.2.3.2.3 Russian Officers transferred into Commanding Positions in the 1st and 2nd Army Corps

There is an abundance of evidence that numerous Russian officers were transferred to commanding positions in the 1st and 2nd Army Corps through the 12th RC.\textsuperscript{1797} Transferred officers included, \textit{inter alia}: Major General Andrey Gurulev (then officially commander of the 58\textsuperscript{th} Combined Arms Army of the Southern Military District\textsuperscript{1798}), who oversaw the 1st and 2nd Army Corps through the 12th RC from autumn 2014 to spring 2015; Colonel General Andrey Serdyukov,\textsuperscript{1799} who replaced Major General Gurulev in spring 2015; Major General Mikhail Zusko, who was commander of the 1st Army Corps of the DPR in 2014;\textsuperscript{1800} and Lieutenant General Sergei Kuzovlev aka Tambov, who was the commander of the 2nd Army Corps of the LPR under the name of Sergei Ignatov from October 2014 until approximately March 2015.\textsuperscript{1801} Annex E (Senior Russian Officers Present in Donbas Since 2014) contains a list of additional senior officers of the RFAF who were present in Donbas and held senior positions in the 1st and 2nd Army Corps. Annex F (Testimonies of D/LPR Militants Corroborating the Presence of Russian Officers in Donbas) also contains numerous testimonies of D/LPR militants detained by the UAF that corroborates the information regarding the presence of Russian officers in the 1st and 2nd Army Corps and the fact that they were sent to Donbas through the 12th RC (8\textsuperscript{th} Army).

Several intercepted phone conversations were published by the SSU and Ukrainian intelligence which reveal the roles of Gurulev, Kuzovlev and Zusko. In these conversations, Kuzovlev and Zusko reported to Gurulev and referred to him using Russian official military language. For example, at the beginning of one conversation, Zusko represented himself to Gurulev as ‘Comrade Commander, General Orlov’ (Orlov being his cover name).\textsuperscript{1802} In this conversation Gurulev gave Zusko instructions to ensure that all fighters voted in the elections in the D/LPR that were taking place that day, and asking for a status report the next morning.\textsuperscript{1803} In a conversation between Gurulev and Kuzovlev, the latter also referred to Gurulev as ‘Comrade Commander’ and reported to him on certain issues, including the weather and difficulties in organising the units in autumn 2014.\textsuperscript{1804}

As Section 4.1.2.3.2.4.5 (Subordination of the 1st and 2nd Army Corps to the Russian Armed Forces), below, demonstrates, these commanding officers played a key role in coordinating, planning and organising the 1st and 2nd Army Corps.

4.1.2.3.2.4 Continued Presence of RFAF Officers and Servicemen since 2015

The presence of officers and servicemen in the ranks of the D/LPR extended beyond the main hostilities in 2014-2015 and continues to the present. According to the Ukrainian Ministry of Defence, since 2016, around 450 Russian snipers have been appointed to the 1st and 2nd Army Corps of the D/LPR, with 50 based in Ukrainian territory at any given time.\textsuperscript{1805} As of July 2017, there were allegedly 3,900 Russian military personnel remaining in the D/LPR.\textsuperscript{1806} In 2019, the Ukrainian authorities stated that Russian officers held all leading military positions in the D/LPR forces, and there

\textsuperscript{1797} See Annex E (Senior Russian Officers Present in Donbas Since 2014).

\textsuperscript{1798} The Ministry of Defence of Russian Federation, ‘Gurulev Andrey Viktorovich’.

\textsuperscript{1799} Information provided by the Government of Ukraine; CRIME, ‘Intelligence said how the Russian army created “DPR”’ [audio] (14 April 2016); Defence Intelligence of Ukraine, ‘Servicemen of the Russian Armed Forces who took part in combat actions in Ukraine’; I. Komakhidze, ‘Corrupt Russian General Gurulev Exposed by Soldiers of Russian Army 136th Brigade’ [InformNapalm, 19 September 2017].

\textsuperscript{1800} Defence Intelligence of Ukraine, ‘Servicemen of the Russian Armed Forces who took part in combat actions in Ukraine’; Ukraine Crisis Media Center, ‘The Administration of the President presented the undeniable evidence of Russian armed aggression against Ukraine’ (31 August 2018); M. Kuznetsov, ‘Russian command sends army drone systems to Donbas – photo evidence’ [InformNapalm, 19 April 2017].

\textsuperscript{1801} Information provided by the Government of Ukraine; Argument, ‘Russian war criminals: Major General O. Tsekov, General S. Yudin and Major General S. Kuzovlev’ (5 April 2016); Novoye Vremya, ‘GUR established the further future of AFRF generals who participated in Donbas aggression’ (4 April 2016); Defence Intelligence of Ukraine, ‘Servicemen of the Russian Armed Forces who took part in combat actions in Ukraine’.

\textsuperscript{1802} GUR Youtube Channel, ‘Call between AFRF General Major A. Gurulev and General Major M. Zusko’ starting from 00:05; GUR Youtube Channel, ‘Evidence of the organization of Russian armed aggression against Ukraine’.

\textsuperscript{1803} GUR Youtube Channel, ‘Call between AFRF General Major A. Gurulev and General Major M. Zusko’ starting from 00:05; GUR Youtube Channel, ‘Evidence of the organization of Russian armed aggression against Ukraine’.

\textsuperscript{1804} GUR Youtube Channel, ‘Call between AFRF General Major A. Gurulev and General Major M. Zusko’, GUR Youtube Channel, ‘Evidence of the organization of Russian armed aggression against Ukraine’.

\textsuperscript{1805} GUR Youtube Channel, ‘Call between AFRF General Major A. Gurulev and General Major M. Zusko’, GUR Youtube Channel, ‘Evidence of the organization of Russian armed aggression against Ukraine’ starting from 00:30.

\textsuperscript{1806} Defence Intelligence of Ukraine, ‘About Fifty Russian Snipers Are Constantly in the Territory of Ukraine’ (1 March 2021).
were between 2,100 and 2,300 individuals from the RFAF’s special forces and military instructors from the RFAF in Donbas.\(^{1807}\)

In the summer of 2020, the Ukrainian authorities confirmed that there remained 2,100 military personnel of the Russian Federation deployed in Donbas, including 650 servicemen occupying command and staff posts, and the rest deployed as operational/combat support, as well as logistic support units, military advisers and instructors.\(^{1808}\) In 2021, a Ukrainian state representative indicated there were still 2,100 Russian servicemen in Donbas.\(^{1809}\) Russia provides these servicemen with fake identification documents and passports issued by the D/LPR to conceal the participation of members of the RFAF.\(^{1810}\)

This information is corroborated by various accounts from Russian sources. For instance, as described above, 1811 witness testimony made before a Russian first-instance court describes that Russian troops were stationed on Ukrainian territory controlled by the D/LPR in 2018 and 2019. In a case concerning the commission of bribery by a company that provided food services to servicemen of the Russian Southern Military District, the witness testified that food was delivered to military units of the RFAF deployed on D/LPR-controlled territory in Ukraine during 2018 and 2019.\(^{1812}\) While the presence of Russian military units, operating as such in Donbas, presently lacks corroboration, the information does serve to corroborate accounts of a Russian troop presence on the territory.

The information is also corroborated by Girkin who, in 2017, confirmed that active service Russian General Asapov commanded the 1st Army Corps;\(^{1813}\) and, in 2021, described that “Moscow, and specifically the Ministry of Defence of the Russian Federation, is fully responsible for the entire state of the [D/LPR] army corps.”\(^{1814}\)

4.1.2.3.2.3.3 RUSSIAN VOLUNTEERS AND MERCENARIES

The D/LPR armed forces also include Russian mercenaries and volunteers.\(^{1815}\) From the time that the protests began in spring 2014, hundreds if not thousands of Russian nationals and persons with residence in Russia voluntarily travelled to Donbas to join the local armed groups.\(^{1816}\) In August 2014, Oleksandr Zakharchenko, then Prime Minister and future head of the DPR, stated that there were around 3,000-4,000 Russian volunteers among the militants.\(^{1817}\) By the end of 2014, the Ukrainian government claimed that around 10,000 mercenaries fought in Donbas.\(^{1818}\)

The recruitment of fighters in Russia to assist the D/LPR occurred through a number of networks, some of which were reportedly coordinated by Russian special services,\(^{1819}\) including private military organisations such as PMC Wagner.

\(^{1807}\) L. Klischuk, “Navy told how many Russian servicemen are now in Crimea and Donbas” (Novynaria, 13 May 2019); Focus, “The number of Russian regular officers has fundamentally increased in Donbas.” (GUR) (27 February 2019).

\(^{1808}\) OSCE, “Presentation by Lieutenant-General Leonid Holopatiuk, Chief of Main Department of Military Cooperation and Verification of the Armed Forces of Ukraine” (6 July 2020), p. 3; Permanent Mission of Ukraine to the International Organisations in Vienna, “Statement by the Delegation of Ukraine at the 963rd FSC Plenary Meeting on Russia’s ongoing aggression against Ukraine and illegal occupation of Crimea” (9 December 2020), p. 4; L. Landman and O. Polishchuk, “Donbas: where the guns do not stay silent” (ACLED, 13 April 2020); Slovo i Dilo, “It is now known how many regular Russian soldiers are on Donbas” (7 December 2020); V. Shramovych, “Army is beyond politics, we have what to do” (BBC News, 17 April 2019); Y. Leshchenko, “The number of Russian servicemen on Donbas is bigger than the size of some European armies” (Ukraine in OSCE) (2N, 2 July 2020); Ukrinform, “Ukraine in OSCE: there are 2100 regular servicemen of Russia in Donbas” (12 November 2020); BBC News, “Russia pulls in troops to the border and warn NATO against sending troops to Ukraine” (3 April 2021).

\(^{1809}\) Ukritinform, “Russia concentrated 28 thousand servicemen to the CDOUL” (12 May 2021); S.UA, “The General of the AFU: There are almost 28 thousand Russian mercenaries on the occupied Donbas” (12 May 2021); Slovo i Dilo, “Shomchak said the number of Russian servicemen on Ukrainian borders” (1 April 2021).

\(^{1810}\) 24 Channel, “How many Russian officers fight in Donbas every year: intelligence data” (21 December 2020); Gazeta.ua, “Russian commanders provide their servicemen with fake IDs” (8 January 2019); S. Dorosh, “How many Russians died in Donbas?” (BBC Ukraine, 15 June 2017).

\(^{1811}\) See Section 4.1.2.3.1.2.3 Russian Intervention after the Minsk II Agreements (post-February 2015).

\(^{1812}\) Case No1-82/2021, Judgement of 10 November 2021, Kirovsky City District Court of Rostov-na-Donu (Russia).

\(^{1813}\) Censor, “Terrorist Girkin admitted that Russian General Asapov killed in Syria had commanded the occupiers in Donbas” (26 September 2017); M. Tsvetkova, “‘Fog’ of Ukraine’s war: Russian’s death in Syria sheds light on secret mission” (Reuters, 29 January 2018).

\(^{1814}\) “New sanctions from the US, war with Ukraine, and the singer Manifa” (Radio Komsomolskaya Pravda) (9 March 2021), starting at 49.23.


\(^{1816}\) A. E. Kramer, “Russians Find Few Barriers to Joining Ukraine Battle” (New York Times, 9 June 2014); S. Rosenberg, “Who enlists volunteers for the war in Ukraine” (BBC, 23 June 2014); Ukrainska Pravda, “‘Volunteers’ in Russia want the status of the participant of hostilities for Donbas” (1 February 2016).

\(^{1817}\) The Nemtsov Report, p. 24; RBC, “‘Volunteers’ in Russia want the status of the participant of hostilities for Donbas” (28 August 2014).


and ‘E.N.O.T. corp’, nationalist or extreme leftist groups, and public and online recruiting campaigns.\textsuperscript{1820} The enlistment of ‘volunteers’ was carried out openly on social networks in Russia.\textsuperscript{1821} Many of the volunteers were Russian citizens who had previously served in the Soviet and/or Russian armed forces and intelligence services.\textsuperscript{1822}

Evidence indicates that the Russian Federation was involved in the recruitment and deployment of many of these volunteers from spring 2014. Reports confirm that the Russian intelligence services organised and coordinated the recruitment and operations of volunteers from Russia to fill the ranks of the D/LPR forces in Ukraine.\textsuperscript{1823} For example, in spring 2014, Dmitry Utkin (a retired GRU officer) and his group (which had previously operated in Crimea) remained under GRU control as they moved to Luhansk, where they started calling themselves Wagner.\textsuperscript{1824} Numerous reports indicate that the Wagner group is controlled by the Russian GRU.\textsuperscript{1825}

According to Russian newspaper, Novaya Gazeta,\textsuperscript{1826} and confirmed by the head of the military company Roman Telenkevych,\textsuperscript{1827} the private military company ‘E.N.O.T. corp’ participated in the events in Crimea, Donetsk and Luhansk in 2014. Members of ‘E.N.O.T. corps were registered as assistants to the investigator of the Moscow Interregional Investigation Department for Transport of the Investigative Committee and technical specialists of the FSB of the Russian Federation.\textsuperscript{1828} According to the testimonies of ‘E.N.O.T.’ members, Denis Karaban (an E.N.O.T. member) was a serviceman of the GRU and “repeatedly helped the ‘ENOTs’ when they went on ‘humanitarian missions’ to Donbas.”\textsuperscript{1829} In an interview on 3 February 2016, E.N.O.T. members stated that from the creation of their company they cooperated with the Russian Minister of Internal Affairs and other law enforcement agencies.\textsuperscript{1830}

A number of independent and reliable sources indicate that the recruitment of Russian mercenaries to eastern Ukraine took place through the Russian armed forces conscription offices (‘commissariats’).\textsuperscript{1831} According to these sources, former soldiers were summoned to conscription offices and offered to fight in Ukraine for remuneration.\textsuperscript{1832}

The Government of Ukraine also alleges that the recruitment, training and transfer of these mercenaries and volunteers was promoted by Russia to assist the D/LPR.\textsuperscript{1833} They received training at camps located along the Russia-Ukraine border before being deployed and integrated into the D/LPR forces.\textsuperscript{1834} Some observers in eastern Ukraine

\textsuperscript{1820} F. Holcomb, ‘The Kremlin’s Irregular Army: Ukrainian Separatist Order of Battle’ Russia and Ukraine Security Report 3 (September 2017), p. 7; Newsweek, ‘How Russians are Sent to Fight in Ukraine’ (1 June 2015); USA Today, ‘Ukrainian rebels set up recruiting office in Moscow’ (7 August 2014); RFE/RL, ‘Ukrainian recruiting: Yenots are in camp’ (24 December 2014).

\textsuperscript{1821} M. Vilkhov, M. Butchenko, ‘Phenomena of the ”People’s Republics” of Donbas’ (Carnegie Moscow Center, 12 April 2016); V. Makarenko, ‘Farms for ”wild geese”’ (Novaya Gazeta, 11 June 2014); S. Khomenko, ‘”SRT”: Kharkiv failed republic’ (BBC Ukraine, 8 April 2015); Information provided by the Government of Ukraine.

\textsuperscript{1822} US Department of the Treasury, ‘Treasury Designates Individuals and Entities Involved in the Ongoing Conflict in Ukraine’ (25 June 2014).


\textsuperscript{1824} N. Reynolds, ‘Putin’s Not-So-Secret Mercenaries: Patronage, Geopolitics, and the Wagner Group’ (Carnegie Moscow Center, 8 July 2019).


\textsuperscript{1828} E. S. Sukhanin, ‘Continuing War by Other Means: The Case of Wagner, Russia’s Premier Private Military Company in the Middle East’ (Jamestown Foundation, 13 July 2018); Bellingcat, ‘Wagner Mercenaries with GRU-issued Passports: Validating SBU’s Allegiance’ (30 January 2019). Oleg Ivanivnikov has been connected to the downing of MH17, see Section 4.2.3.3.1.2 The Formation of Government Ministries.

\textsuperscript{1829} Y. Polukhina, ‘”Yenots” in a cage’ (Novaya Gazeta, 22 February 2019).

\textsuperscript{1830} O. Pavlichenko, O. Martyenko (eds), ‘Armed conflict in Ukraine: military support of the illegal armed formations of the ”DPR” and the ”LPR” by the Russian Federation’ (UHRU, 2018), p. 28.

\textsuperscript{1831} Y. Polukhina, ‘”Yenots” in a cage’ (Novaya Gazeta, 22 February 2019).

\textsuperscript{1832} Kommersant, ‘In the PMC, it was not without the GRU’ (19 December 2019).

\textsuperscript{1833} Cited in O. Pavlichenko, O. Martyenko (eds), ‘Armed conflict in Ukraine: military support of the illegal armed formations of the ”DPR” and the ”LPR” by the Russian Federation’ (UHRU, 2018), p. 28.

\textsuperscript{1834} Information provided by the Government of Ukraine; Nemtsov report, p. 24; V. Makarenko, ‘Farms for ”wild geese”’ (Novaya Gazeta, 11 June 2014); M. Butchenko, ‘Russian mercenaries for Donbas are enlisted in military commissariats’ (Novoye Vremya, 25 June 2014); Ukrinform, ‘Russia sends professional mercenaries to Donbas’ (10 May 2014).

\textsuperscript{1835} Ukrinform, ‘Russia sends professional mercenaries to Donbas’ (10 May 2014); M. Butchenko, ‘Russian mercenaries for Donbas are enlisted in military commissariats’ (Novoye Vremya, 25 June 2014).

\textsuperscript{1836} Information provided by the Government of Ukraine.

claim that “Russia is actively backing the recruitment drive, using both money and ample tanks, armoured cars, and other armaments as an enticement.”

Similarly, Cossack units also participated in the fighting in Donbas. Cossack units are known to be used and financed by Russia in conflicts to conceal Russian involvement. There is also evidence that Russia promised amnesty to convicted prisoners in Russia in exchange for fighting on the side of the separatists. For example, the Daily Beast wrote in 2017 that, prior to war in Donbas, Russian Arseny Pavlov aka ‘Motorola’, a former commander of the DPR’s Sparta battalion, had some troubles with the police in Russia and was forced to choose between Russian prison and war in Ukraine.

4.1.2.3.2.4 CONCLUSION

In sum, there is currently insufficient clear and convincing evidence to establish that FSB/GRU or RFAF officials were transferred to Donbas by the Russian Federation prior to July 2014. However, there is clear and convincing evidence that: 1) from at least July 2014, FSB officials were transferred into key roles within the D/LPR law enforcement agencies; 2) from at least September 2014, Russia formalised the sending of RFAF officers and servicemen through the 12th RC, later known as the 8th Arm, of the Southern Military District, and these RFAF officials remain incorporated into the structures of the 1st and 2nd Army Corps to this day; and 3) Russian volunteers and mercenaries joined the D/LPR armed groups and the Russian State was involved in their recruitment and deployment. Accordingly, from at least July 2014, there is clear and convincing evidence that Russia transferred intelligence and military officers and personnel into the D/LPR armed groups. As the following section will discuss, this transfer of officials has facilitated Russia’s direction and supervision of the D/LPR’s military activities.

4.1.2.3.2.4 THE RUSSIAN FEDERATION’S DIRECTION AND SUPERVISION OF THE D/LPR

Direction and supervision provided to the armed groups by the controlling State is a critical indicator of overall control. Indeed, for overall control to be established, it must be shown that the controlling state was involved in “coordinating or helping in the general planning of its military activity,” or, in other words, in “organising, coordinating or planning the military actions of the military group.” Nonetheless, overall control does not require the issuing of specific orders or the direction of each individual operation. Direction and supervision can be evidenced by, for instance, joint meetings amongst the respective leadership cadres, or the preparation of reports concerning activities by the armed group for the controlling State’s authorities.

As the following sections will demonstrate, networks of FSB agents, RFAF officers and Russian curators organised, supervised and directed the military, the security services and the political leadership in the D/LPR. While
there is some indication that this began as early as April 2014, from July 2014 there is clear and convincing evidence that Russia played a (significant) role in the “organising, coordinating or planning the military actions” of the D/LPR armed groups. Each will be discussed in turn below.

4.1.2.3.2.4.1 ORGANISATION, SUPERVISION AND DIRECTION OF MILITARY ACTIVITIES AND THE SPECIAL SERVICES

In relation to the command structure of the armed groups, the fact that the controlling State could appoint officers to command positions of the armed group is indicative of the supervisory role exercised by the controlling State that consequently plays a role in their direction and command.\textsuperscript{1849} Similarities between the military ranks and structures of the controlling State and the armed group may also be indicative of overall control by evidencing an interconnectedness that shows the armies cannot be considered separate in a genuine sense.\textsuperscript{1850} Further, in relation to military activities, evidence that the controlling State directed and supervised the activities and operations of the armed group,\textsuperscript{1851} or issued orders through the commanding officers of the controlling State during some (as opposed to all) of the military operations conducted by the armed group,\textsuperscript{1852}\textsuperscript{1853} would also be indicative of overall control. A demonstration that the strategies and tactics of the armed group reflected those devised by the controlling State would also be instructive.\textsuperscript{1854}

This does not necessarily mean, however, that the controlling State has to be the ultimate decision-making authority and commander of each and every military operation conducted or planned by the armed group.\textsuperscript{1855} Demonstrating the controlling State’s direction and coordination in decision-making and the general planning of the military operations of the armed group will suffice.\textsuperscript{1856} Evidence that the controlling State’s officials were present at planning meetings would be probative of this type of involvement.\textsuperscript{1857} Proving that the armed group followed military strategies and tactics devised by the controlling State would likely be dispositive of this question.\textsuperscript{1858}

As the following sections show, there is some indication that, during the first period of the conflict in spring and summer 2014, the Russian Federation exerted military influence over the D/LPR armed forces, primarily through FSB and GRU officers, that might be characterised as the organisation and coordination of military activities. There can be little doubt that this influence evolved into control that constituted overall control by July 2014. In sum, from at least July 2014, the Russian Federation’s direction and command in the decision-making, general planning and coordination of the D/LPR forces and their military action demonstrates its overall control.

From July 2014, Russia increased its direction and supervision over the D/LPR forces through key military supervisors such as ‘Vladimir Ivanovich’ (aka General Andrey Burlaka), Nikolai Fedorovich Tkachev, Igor Anatolyevich Egorov and Oleg Vladimirovich Ivannikov, who all had commanding roles within the armed groups during the summer of 2014.\textsuperscript{1859} Crucially, between August 2014 and February 2015, the RFAF coordinated, planned, and at least occasionally instructed/ordered the D/LPR armed groups during joint operations, including in Ilovaisk, Donetsk airport, Mariupol and Debaltseve. From around September 2014, Russia was able to control the organisation, planning and coordination of the military activities of the 1st and 2nd Army Corps through the 12th RC/8th Army of the Southern Military District.
4.1.2.3.2.4.2 **THE COORDINATING ROLE OF INDIVIDUALS FROM THE FSB AND GRU DURING SPRING 2014**

According to the GoU, during the early months of the conflict in Donbas, the RAAF (as the main planner, organiser, and coordinator), GRU, FSB and Russian top politicians (including Glazyev) played a role in the organisation and coordination of the demonstrations held by local pro-Russian groups.  

The evidence of the alleged role played by the FSB and GRU officers in Donetsk and Luhansk – including through the creation of the so-called ‘Army of the South-East’ and the seizure of the SSU building in Luhansk on 6 April 2014 – has been discussed in Section 4.1.2.3.2.3.1.1 (Presence of FSB Officers: 2013 – 2014). As mentioned in that section, the evidence is sufficiently corroborated by independent and reliable sources, but is insufficient to establish that the Russian Federation played a role in coordinating or planning the military activities of the D/LPR through these individuals, as they may have been acting on an individual basis or ultra vires. Further information is needed to establish that these individuals were acting at the behest of the Russian Federation and the extent of their role in organising, directing, or supervising the D/LPR.

4.1.2.3.2.4.3 **THE COORDINATING ROLE OF RUSSIA FROM JULY 2014**

From July 2014, Russia increased its direction and supervision over the D/LPR forces. As Annex G (The Coordinating Role of Russian Officers: July 2014 – 2017) demonstrates, there is clear and convincing evidence that, from at least July 2014, numerous Russian officers were present in the D/LPR supervising, coordinating, and planning the military activity of the D/LPR armed groups. This is corroborated by evidence collected by the JIT which has received testimonies of DPR members who confirmed that the FSB and GRU controlled the “daily management” of the D/LPR militants during the summer of 2014, while their leaders regularly visited Moscow for consultations.

The evidence contained in Annex G (The Coordinating Role of Russian Officers: July 2014 – 2017) indicates that, at least in July 2014, the key military supervisor in Donbas was ‘Vladimir Ivanovich’, identified by the SSU, Bellingcat, the Insider and the BBC as FSB Colonel General Andrey Burlaka. Available information shows that Burlaka “played a critical role in the chain of command between ostensibly local militants and the Russian government”. Burlaka appeared to deal with questions of military support, provision of weapons and internal struggles within the military groups, as demonstrated by the fact that he was referred to by Alexander Borodai, the then Prime Minister of the DPR, as the “commander of the operation” and the fact that he was able to give orders to Borodai and Igor Babushkin.

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1860 Information provided by the Government of Ukraine; Tyszchen, ‘Colonel Oleg Zhivotov: We did not surrender Luhansk SBU’ (25 March 2016); I. Romaliyska, ‘Yanukovych will be f*cked by people in this Sevastopol!’ Wiretapping of Putin’s adviser. Part 2’ (Censor, 28 December 2017); I. Romaliyska, ‘Chronicle of the capture of the Crimea. Wiretapping of Putin’s adviser. Part 1’ (Censor, 21 December 2017); I. Romaliyska, ‘The RSA has been already seized in Kharkiv. Donetsk. RSA in Odessa needs to be seized. Wiretapping of Putin’s adviser. Part 3’ (Censor, 18 January 2018). I. Romaliyska, ‘If we block Zaporizhzha, we will win. This is a dam, bridges and energy. Crimea is not viable without energy. Wiretapping of Putin’s adviser. Part 4’ (Censor, 30 January 2018).

1861 Information provided by the Government of Ukraine.

1862 See Section 4.1.2.3.2.1.2 Army of the South-East

1863 Information provided by the Government of Ukraine; N. Dvali, ‘Ex-head of the Lugansk SBU Petrucheyev: Terrorist groups of the GRU of Russia are already in Kyiv and are waiting for a signal’ (Gordon, 2 July 2014); Tyszchen, ‘Colonel Oleg Zhivotov: We did not surrender Luhansk SBU’ (25 March 2016); Insider, ‘SBU officer on the role of Russia, Alexander Efremov and the leadership of regional security forces in shaking up separatism’ (9 November 2014).

1864 See Section 4.1.2.3.2.3.1.1 Presence of FSB Officers: 2013 – April 2014


1866 I. Barabanov and others, ‘Burlaka on the Don. Who is “Vladimir Ivanovich” whom the MH17 investigation is looking for’ (BBC News, 28 April 2020); Insider, ‘Crosses all boundaries. The key defendant in the case of the downed Boeing is the deputy head of the FSB Border Service, General Burlaka’ (28 April 2020); Bellingcat, ‘Key MH17 Figure Identified As Senior FSB Official: Colonel General Andrey Burlaka’ (28 April 2020); Security Service of Ukraine, ‘SBU detained a freelance GRU officer who was one of the curators of the DNR leadership’ (7 July 2020).

1867 Bellingcat, ‘Key MH17 Figure Identified As Senior FSB Official: Colonel General Andrey Burlaka’ (28 April 2020).

1868 Politie, ‘MH17 Witness Appeal November 2019’, Bellingcat, ‘Key MH17 Figure Identified As Senior FSB Official: Colonel General Andrey Burlaka’ (28 April 2020).

From the context of the conversation, it is clear that Borodai means the commander of the operations in Donbas generally when he described Vladimir Ivanovich as the “commander of the operation”.

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Girkin, the then Minister of Defence of the DPR. Several other FSB and GRU officers were also inserted in the leadership of the D/LPR in order to command and coordinate the actions of the militants. These include at least three Russian agents: Colonel Nikolai Fedorovich Tkachev ('Dolphin'), FSB Colonel Igor Egorov ('Elbrus'), and GRU officer Oleg Vladimirovich Ivannikov ('Orion'), who all had commanding roles within the armed groups during summer 2014. In July 2014, Tkachev established a joint general staff which was aimed at coordinating the actions of all the pro-Russian military groups.

Further, several intercepted communications from July 2014 indicate that other high-ranking Russian military officials, including Russian Minister of Defence Sergey Shoygu and the then commander of the Russian Southern Military District General Serdyukov, might have provided assistance to armed groups coming to eastern Ukraine. Nevertheless, out of an abundance of caution, and in the absence of further evidence, definitive conclusions will not be drawn concerning their role during that period of the conflict and they will not be considered further.

Crucially, there is clear and convincing evidence that between August 2014 and February 2015, the RFAF coordinated, organised, and, on occasion, directly instructed the D/LPR armed groups during the military operations directly involving the RFAF. In sum, there is evidence that the D/LPR units received direct instructions and orders from the RFAF during large-scale operations, including: the battles for Donetsk airport; the clashes at Spartak from 28 September 2014 to 21 January 2015 (where the RFAF led the attacks and Russian officers and generals commanded and coordinated of the actions of local militants); the attack on Mariupol (which was allegedly ordered by the Russian Ministry of Defence and where the Russian military instructed and supervised the operation), and Debaltseve (where Russian Generals commanded and coordinated the hostilities).

4.1.2.3.2.4 **RUSSIA'S INFLUENCE OVER KEY MILITARY PERSONNEL IN 2014**

In addition, Russia exercised influence over key military personnel in Donbas and used these individuals to ensure it maintained control and direction over the D/LPR's military operations. While there are indications that this began in spring 2014, considering the evidence as a whole, it is only from July 2014 that there is clear and convincing evidence that these officials could not have been operating alone or otherwise _ultra vires_.

In Donetsk, Russia was able to supervise and direct the DPR's military activities through its influence over the D/LPR's key military leadership, namely: Alexander Borodai (the then Prime Minister of the DPR), Igor Girkin (then the Supreme Commander and Minister of Defence of the DPR), Sergey Dubinsky (then Deputy Commander of the DPR armed forces) and Igor Bezler (then a DPR commander and a former GRU officer).

In Luhansk, Russia was able to supervise and direct the LPR's military activities through its influence over key military personnel including: Valerii Bolotov (the first Head of the LPR and Commander of the Army of the South-East) and Ihor Plotnytskyi (then the LPR's Minister of Defence, and, subsequently, the Head of the LPR).
4.1.2.3.2.4.1 ALEXANDER BORODAI

Alexander Borodai was the Prime Minister of the DPR between May 2014 and August 2014. On 3 July 2014, in an intercepted phone conversation, Borodai stated: “I’m carrying out the orders and protecting the interests of one and only state, the Russian Federation.” Whilst such rhetoric must be approached with caution, there is also cogent evidence that Borodai was in regular contact with Russian officials throughout his tenure as Prime Minister, including in relation to the military activities of the DPR armed forces. For example, in July 2014, Borodai called the Russian Federation and asked Vladimir Ivanovich for support during an attack near Maryinka, Ukraine. Similarly, in summer 2014, Sergey Dubinsky told an unknown individual that Borodai was currently in Moscow and that, when he returned, they (i.e., the DPR forces) would know Russia’s decision on certain things relating to political appointments and military actions. In an intercepted phone communication on 11 July 2014 published by the JIT, Vladislav Surkov asked Borodai to prepare a list of necessary expenses, as well as necessary supplies for the winter period, the beginning of the school year and necessary social payments. In September 2021, Borodai was elected to the Russian Duma (Parliament) as a member of the ‘United Russia’ political party.

4.1.2.3.2.4.2 IGOR GIRKIN

Igor Girkin played a key military role in the D/LPR. Igor Girkin commanded a group of 50 individuals that took control of Sloviansk, Kramatorsk and other towns in eastern Ukraine in April 2014. From April 2014, he referred to himself as the commander of the Donbas People’s Militia and had various armed units under his command. On 12 May 2014, following the DPR’s referendum, he declared himself ‘Supreme Commander’. He was the defence minister of the DPR between May and August 2014.

While the Ukrainian SBU, as well as US and EU intelligence services, have claimed that Girkin was an active member of the Russian GRU Intelligence Directorate, there is insufficient evidence to substantiate this claim. As concluded by both the MH17 prosecutors who accuse Girkin of downing MH17 as well as by Bellingcat, Girkin was a retired FSB colonel. This is confirmed by Girkin himself and Alexander Borodai, as well as by Girkin’s leaked emails.
Nonetheless, various sources confirm he received orders from multiple Russian officials between June and August 2014, as well as material, logistical and military support from the GRU. According to Girkin himself, all major personnel decisions during his time in Donbas were made, or at least approved, by Vladislav Surkov, Assistant to the President of the Russian Federation for Ukraine, Abkhazia and South Ossetia. In addition, evidence from intercepted telephone calls and email exchanges also reveal, *inter alia*: the close cooperation between Girkin and those associated with the Russian government; that Girkin was ordered to phone Sergey Aksyonov (the *de facto* head of Crimea) by a man using a Russian telephone number (13 April 2014); that Girkin received orders from ‘Vladimir Ivanovich’ (31 July 2014) who was identified as Russian FSB Colonel General Burlaka; and, in the summer 2014 (June or July 2014), during the defence of Sloviansk, Girkin reportedly talked to Moscow about the withdrawal of his troops from the town, which Moscow did not permit.

Girkin’s removal from leadership in August 2014 was ordered by the Russian government. Girkin has confirmed that he “was ordered to transfer command to Zakharchenko” who, along with Borodai, had been to meet with Surkov and was “apparently chosen” for the position.

4.1.2.3.2.4.3 SERGEY DUBINSKY

Sergey Dubinsky (a retired high-ranking GRU officer, and an accused person in the MH17 case) was the deputy commander of the DPR armed forces from May 2014. In summer 2014, in an intercepted phone conversation between Dubinsky and an unknown individual, Dubinsky stated “they” (i.e., the DPR armed forces) were waiting for Moscow’s decision on whether to withdraw from Sloviansk. In another conversation in July 2014, he stated that he and “number one” (presumably, Girkin) had spoken to Moscow and that they “got to the top.” After some problems with DPR militants in July 2014, Dubinsky called a Russian number and suggested that “the problem be submitted to a head of the intelligence service of the Russian ground forces in Bataisk”, where the GRU base was located.

Andrey Nikolayevich, a non-official GRU officer, also contacted Dubinsky on an unknown date, and connected him to Surkov. Andrey Nikolayevich requested that Dubinsky send his *curriculum vitae* to Bortnikov (the head of the FSB). Dubinsky responded that ‘Vladimir Ivanovich’ had all the necessary materials.

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1911 Insider, ‘Igor Girkin (Strelkov): Surkov led bandits to power in the Donetsk and Luhansk republics’ (8 December 2017). See also, Section 4.1.2.3.2.4.9.2 Vladislav Surkov.
1914 See Section 4.1.2.3.2.4.3 The Coordinating Role of Russia from July 2014, above.
1915 Politie, ‘MH17 Witness Appeal November 2019’; I. Barabanov and others, ‘Burlaka on the Don. Who is “Vladimir Ivanovich” whom the MH17 investigation is looking for?’ (BBC News, 28 April 2020); Insider, ‘Crosses all boundaries. The key defendant in the case of the downed Boeing is the deputy head of the FSB Bord Service, General Burlaka’ (28 April 2020); Bellingcat, ‘Key MH17 Figure Identified As Senior FSB Official: Colonel General Andrey Burlaka’ (28 April 2020).
1917 See Section 4.1.2.3.2.4.10 Russia’s Ability to Instinct and Remove the Political Leadership. See also, Politie, ‘MH17 Witness Appeal November 2019’.
1918 Politie, ‘Sergey Nikolayevich Dubinskiy (Khmuriy)’; D. Romein, ‘Identifying Khmuriy, the Major General Linked to the Downing of MH17’ (Bellingcat, 15 February 2017); Graty, ‘MH17 trial hearing’ (9 June 2014); ‘MH17 Court Hearings. Livestream 9 June 2021 Part 3’ (9 June 2021), starting at 19:40.
1920 G.-J. Dennekamp, ‘Audio tapes of thousands of overheard conversations, a reconstruction of the MH17 disaster’ (NOS, 11 April 2021).
1921 G.-J. Dennekamp, ‘Audio tapes of thousands of overheard conversations, a reconstruction of the MH17 disaster’ (NOS, 11 April 2021).
1922 SSU Youtube Channel, ‘SSU detained a freelance GRU officer who was one of the curators of the DNR leadership’ (7 July 2020), 1:15 – 1:25, 2:15 – 3:20.
1923 SSU Youtube Channel, ‘SSU detained a freelance GRU officer who was one of the curators of the DNR leadership’ (7 July 2020), 1:15 – 1:25, 2:15 – 3:20.
1924 SSU Youtube Channel, ‘SSU detained a freelance GRU officer who was one of the curators of the DNR leadership’ (7 July 2020), 3:20 – 3:26. See also, Section 4.1.2.3.2.4.3 The Coordinating Role of Russia from July 2014, above.

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IGOR BEZLER

Igor Bezler is allegedly a retired GRU officer who, together with Igor Girkin, participated in the takeover of Crimea and the events in Donbas, including the capture of Horlivka, Makiiivka and Yenakieve (Donetsk oblast) between 13 April and 14 May 2014.

While there is insufficient evidence to establish that Bezler was acting as a GRU officer whilst in Donbas, there are several indications of his connection with Russia, particularly during summer 2014. For example, after the downing of MH17 on 17 July 2014, the Ukrainian SSU published intercepted phone conversations between Bezler and GRU Colonel, Vasilli Geranin, in which Bezler claimed to have shot down MH17. In another intercepted phone call from July 2014, Khodakovskii, the commander of the DPR’s Vostok battalion, told Borodai that Bezler’s group had been sent to Donbas by Moscow, so he was Moscow’s problem. In another intercepted phone call, Borodai stated that he had relayed the problem to the commander of the operation, Vladimir Ivanovich, who ordered the elimination of Bezler. Bezler left Donbas in autumn 2014.

VALERII BOLOTOV

Valerii Bolotov was the commander of the Army of the South-East (which was allegedly created and directed by the FSB and GRU) and the head of the LPR from 18 May 2014 to 14 August 2014.

Intercepted phone conversations of a highly influential Ukrainian politician close to the Kremlin, Viktor Medvedchuk, from June 2014 reveal Russia’s influence over Bolotov’s military activities during this period. In particular, in a conversation from 12 June, Medvedchuk’s aide stated that Bolotov was not independent and quoted Bolotov saying that he had direct contact with Russia and that he was in contact with Shoygu (Russian Minister of Defence). In a conversation on 15 June, Medvedchuk’s aide again quoted Bolotov, who had stated that he was in permanent communication with Matvienko (Valentina Matvienko – Chairwoman in the Russian Federation Council), Surkov and Naryshkin (Sergey Naryshkin – Chairman of the Russian State Duma in 2011-2016). In another conversation on 16 June, after Bolotov put conditions on their meeting, Medvedchuk’s aide proposed he find the person in Moscow with whom “Bolotov works” so that that person can call Bolotov and tell him to change his mind.

1915 P. van Huis, ‘The MH17 Trial Part 1: New Material From The Four Defendants’ (Bellingcat, 20 April 2020); L. Yyaparova, ‘“No one goes anywhere with a bottle of poison. On the contrary, they go to court.” GRU veteran and former commander of the Donbas militia Igor Bezler is suing Bellingcat. If he wins, the site could be blocked in Russia’ (Meduza, 1 March 2020).
1917 See Section 4.1.2.2.2.1.1 Serious and Frequent Armed Clashes and Control of Territory in Donetsk. See also, Fakty, “Sergey Chernyshev: ‘Beat him until he starts spitting blood,” ordered “Bes”, shooting me both knees”’ (8 August 2017); Y. Polukhina, ‘Inglorious hybrids’ (Novaya Gazeta, 17 July 2020); Hromadske, ‘Bezler, like Strelkov, will never return to the DPR – Rubash’ (9 November 2014).
1918 See Section 4.1.2.3.2.1 Members of the Russian Armed Forces, including GRU Officers: Special and Frequent Armed Clashes and Control of Territory in Donetsk.
1921 Bellingcat, ‘Key MH17 Figure Identified As Senior FSB Officials: Colonel General Andrey Burlaka’ (28 April 2020).
1922 G. Aleksandrov, ‘Five years ago, the bloodiest war in Europe of the 21st century began in Donbass. Meduza reveals how it ended for separatist leaders’ (Meduza, 26 May 2019); Y. Polukhina, ‘Inglorious hybrids’ (Novaya Gazeta, 17 July 2020).
1923 Information provided by the Government of Ukraine; N. Dvuk, ‘Ex-head of the Lugansk SBU Petrychevich: Terrorist groups of the GRU of Russia are already in Kyiv and are waiting for a signal’ (Gordon, 2 July 2014); Tzyndhen, ‘Colonel Oleg Zhivotov: “We did not surrender Luhansk SBU”’ (25 March 2016); Insider, ‘SSU officer on the role of Russia, Alexander Efremov and the leadership of regional security forces in shaking up separatism’ (9 November 2014). See also, Sections 4.1.2.2.1.2.1 Army of the South-East and 4.1.2.3.2.4.9.2 Vladislav Surkov.
1925 See Section 4.1.2.3.2.4.9.2 Vladislav Surkov.
1926 Bihus info Youtube Channel, ‘ALL audio tapes of Medvedchuk. Part 1’ (13 June 2021), 2:02:00 - 2:02:22.
IHOR PLOTNYTSKYI

Ihor Plotnytskyi was a commander of the Zorya battalion (which was created on 5 May 2014 as a unit of the Army of the South-East), the first Minister of Defence of the LPR (May to August 2014), and a leader of the LPR (November 2014 to November 2017).

During his time in the LPR, there are indications that Plotnytskyi was heavily influenced by Russia. For example, a Bellingcat investigation concluded that Plotnytskyi was subordinate to, and supervised by, Oleg Ivannikov, who was “with very high certainty” a GRU officer and military supervisor in the LPR’s Ministry of Defence. Moreover, according to Bellingcat, Ivannikov sent recommendations to Surkov regarding Plotnytskyi and recommended that Plotnytskyi remain in the position of so-called ‘Minister of Defence’. Bellingcat’s conclusions are corroborated by “sources familiar with the events in Luhansk”, including an interview with Evstatiy Botvinyev (a former battalion commander of Russian and separatist militants in the LPR). A report from a D/LPR commander stated that ‘Andrey Ivanovich’ recommended Plotnytskyi as a potential political leader of the LPR to Surkov. As will be discussed below, Plotnytskyi was allegedly chosen by Surkov as the head of the LPR in November 2014.

SUBORDINATION OF THE 1ST AND 2ND ARMY CORPS TO THE RUSSIAN ARMED FORCES

The military influence and control of Russia over the armed groups in Donbas was furthered after the formalisation of the DPR and LPR forces into the 1st and 2nd Army Corps and the signing of the Minsk-II Agreement in February 2015. As described below, multiple sources corroborate that Russia’s 12th RC/8th Army of the Southern Military District played a role in organising, coordinating and planning the activities of the 1st and 2nd Army Corps.

While the GoU suggests that, from 2015 until the present, the 1st and 2nd Army Corps have been “subordinated” to the 12th RC/8th Army of the Southern Military District, there is insufficient information available to support this conclusion. Nevertheless, with the incorporation of Russian commanding officers into the leadership of the 1st and 2nd Army, Russia has been able to control the organisation, planning and coordination of military activities of the 1st and 2nd Army Corps through the 12th RC/8th Army of the Southern Military District from at least February 2015. This finding is an important indicator of Russia’s continued overall control. The following outlines the primary evidence considered in support of these conclusions.

In relation to subordination, the GoU and representatives of the UAF suggest that, since 2015, the 1st and 2nd Army Corps have been directly and operatively subordinated to the RAAF through the 8th Army of the RAAF. Moreover, they suggest that the D/LPR’s leadership and the command of its regiments, brigades and staffs are made up of RAAF...
officers and generals sent on a rotational basis from Russia.\textsuperscript{1940} According to the Ukrainian military, this provides the Russian leadership with “complete” control over the D/LPR armed forces and allows the Kremlin to escalate fighting “within hours after their orders”.\textsuperscript{1941} Similarly, information from the GoU suggests that the command of the RFAF created the 1\textsuperscript{st} and 2\textsuperscript{nd} Army Corps to operate and control the D/LPR forces. According to this information, the command of these Corps was assigned to the 12\textsuperscript{th} RC and direct command was exercised by high-ranking RFAF commanders on a rotational basis.\textsuperscript{1942} However, while there is partial corroboration for these claims from the same source, without additional information on the precise evidence these claims are based upon or the underlying methodology and sources used to come to these conclusions, it is not possible to conclude that there is clear and convincing evidence that the 1\textsuperscript{st} and 2\textsuperscript{nd} Army Corps were created by and directly subordinated to the RFAF.

Nonetheless, as examined in Section 4.1.2.2.1.2 (The Formalisation of Groups into a Single Command: July 2014 – February 2015) and Annex E (Senior Russian Officers Present in Donbas Since 2014), there is clear and convincing evidence that, from September 2014 onwards, the 12\textsuperscript{th} RC/8\textsuperscript{th} Army of the Southern Military District, has served as the base for the transfer of Russian military personnel into commanding positions in the 1\textsuperscript{st} and 2\textsuperscript{nd} Army Corps.\textsuperscript{1943} The fact that Russian military officers from the 12\textsuperscript{th} RC/8\textsuperscript{th} Army of the Southern Military District have assumed commanding positions in the D/LPR forces is critical to the finding that Russia continued to control the coordination, planning and command of the D/LPR’s military activities after their formalisation.\textsuperscript{1944} For example, in autumn 2014, Major General Mikhail Zusko (who was the commander of the 1\textsuperscript{st} Army Corps of the DPR in 2014) informed Major General Andrey Gurulev (at that point in time, officially the commander of the 58\textsuperscript{th} Combined Arms Army of the Southern Military District)\textsuperscript{1945} that, according to instructions, he “had put everything in a state of military readiness. Everyone is in the trenches, on the positions.”\textsuperscript{1946} According to an investigation by Bellingcat, Sergei Kuzovlev aka ‘Tambov’ (a Russian Lieutenant General who commanded the 2\textsuperscript{nd} Army Corps)\textsuperscript{1947} led the Debaltseve offensive against the Ukrainian forces in January 2015.\textsuperscript{1948}

Second, a captured Major of the RFAF, Vladimir Starkov, testified during his detention by the UAF in summer 2015 that Russian servicemen were sent on a rotational basis from Russia to Starkov, he knew of three officers who refused to go to Ukraine who were then immediately put under pressure and asked whether they would disobey an order from the Minister of Defence.\textsuperscript{1949} Importantly, Starkov confirmed that the 12\textsuperscript{th} RC was mandated by the RFAF to participate in the conflict with Ukraine,\textsuperscript{1950} and that the 1\textsuperscript{st} and 2\textsuperscript{nd} Army Corps were headed by an RFAF General whose Deputy of Weapons/Armament (‘Ruzhkovich’) was a Colonel...
from the Russian Federation. He testified that the units of the D/LPR had local commanders who had “Russian advisers”, and that there were up to 3,000 Russian military personnel in eastern Ukraine at the time.

Third, in 2015, GRU officers, Aleksandr Aleksandrov and Yevgeniy Yerofeyev, confirmed that there was a Russian joint command which directed all operations in the D/LPR. They identified RFAF commander ‘Tambov’ (a generic nickname for commanders of the 2nd Army Corps), as a key coordinator in this command who held meetings not far from Lysychansk, Luhansk oblast.

Fourth, an LPR brigade commander in 2014-2015, stated that Russian army officers directly commanded the 2nd Army Corps of the People’s Police, including during the fighting with the Ukrainian anti-terrorist operation (‘ATO’) forces.

Fifth, the US Institute for the Study of War concluded, based on numerous sources (including a report by Ukrainian military intelligence, the StopTerror Project and the Financial Times), that the command structures of the D/LPR (i.e., the command structures of the 1st and 2nd Army Corps) are “overseen on both tactical and strategic levels by Russian military staff”.

Sixth, InformNapalm has reported – based on intelligence and analytical data collected by InformNapalm – that the D/LPR Army Corps was established by Russia and “modelled on the typical Russian army structure making it possible to integrate them into the overall structure of Russia’s South Military District”. According to InformNapalm, there is a “dual command structure” whereby the Russian supervisors duplicate all the command positions at the brigade and battalion levels and are the de facto commanders, rather than the locals who are formally in command. They report that between September 2014 and February 2015, RFAF Generals began to reorganise the 1st and 2nd Army Corps according to the model of the RFAF.

Seventh, Igor Girkin has repeated on several occasions that the RFAF has a role in commanding the 1st and 2nd Army Corps. To begin with, in 2017, Girkin claimed that Valery Asapov, in his official capacity as General of the Russian army, served as a commander of the 1st Army Corps and that it was not a secret for Ukraine. In March 2021, SBU Youtube Channel, 'The SBU has provided new incontrovertible evidence of Russian military involvement in hostilities in Ukraine' (29 July 2015), 08:48 – 09:28.


Information provided by the Government of Ukraine; RBC, 'SSU shared a video of the second captured member of the special forces of GRU' (19 May 2015); RFE/RL, 'SSU published a video of interrogation of the captured Russian serviceman' (19 May 2015).

InformNapalm, 'The Mystery of 'Tambov' Call Sign or What Today's Bloomberg Report Does not Mention?' (7 March 2015); O. Polishchuk, 'Three and a half verticals: how power is structured in the LDPF' (DNews, 25 October 2017).

Information provided by the Government of Ukraine.

Information provided by the Government of Ukraine.

Institute for the Study of War, 'Who we are'.

F. Holcomb, 'The Kremlin’s Irregular Army: Ukrainian Separatist Order of Battle' (Institute for the Study of War, 2017), p. 10 citing A. N. ‘Ukrainian Military Intelligence identifies top Putin’s generals conducting war in Ukraine’ (Euromaidan Press, 9 March 2016); Stop Terror, ‘Command Structure of Russian Occupation Forces’ (August 2016); R. Coalson, ‘Who Are the Russian Generals That Ukraine Says are Fighting in the Donbas (Updated)’ (RFE/RL, August 28, 2015); Financial Times, ‘Ukraine gathers evidence to try to force Russia to court’ (12 September 2016).

InformNapalm – volunteer initiative emerged as a response to the Russian aggression in Ukraine in March 2014. It was started by journalist Roman Burko (Ukraine) and military expert Irakli Komakhidze (Georgia); InformNapalm conducts investigations into Russia’s role in conflict in Crimea and eastern Ukraine. InformNapalm, 'Official web-site'.

InformNapalm, 'Intelligence data on 1st and 2nd Army Corps of Russian Federation in occupied Donbas - InformNapalm.org (English)' (8 September 2020).

InformNapalm, 'Intelligence data on 1st and 2nd Army Corps of Russian Federation in occupied Donbas - InformNapalm.org (English)' (8 September 2020); O. Harbar and others, 'Armed Conflict in Ukraine: Military Support of Illegal Armed Formations' (UKHRU 2018), p. 10; F. Holcomb, 'The Kremlin’s Irregular Army: Ukrainian Separatist Order of Battle' (Institute for the Study of War, 2017), p. 10 citing A. N. ‘Ukrainian Military Intelligence identifies top Putin’s generals conducting war in Ukraine’ (Euromaidan Press, 9 March 2016); Stop Terror, ‘Command Structure of Russian Occupation Forces’ (August 2016); R. Coalson, ‘Who Are the Russian Generals That Ukraine Says are Fighting in the Donbas (Updated)’ (RFE/RL, August 28, 2015); Financial Times, ‘Ukraine gathers evidence to try to force Russia to court’ (12 September 2016).


The following corroborates his position in the RFAF: Sakhalin.Info, ‘Command will be changed in the 88th Army Corps stationed in the Sakhalin Region’ (31 July 2015); Main Intelligence Directorate of the Ministry of Defense of Ukraine, ‘Servicemen of the Russian Armed Forces who took part in hostilities on the territory of Ukraine’. DonPress, 'Strelkov confirmed the participation of General Asapov in the war in Donbas' (26 September 2017).
Girkin commented on the situation in the D/LPR armies to Russian media, stating that: “Moscow, and specifically the Ministry of Defence of the Russian Federation, is fully responsible for the entire state of the army corps.”

Finally, representatives of the Permanent Mission of Ukraine to the International Organisations in Vienna have also suggested that this level of command and control by Russia continues to the present. This is corroborated by evidence from a militant who served in the reconnaissance divisions of DPR and LPR’s 1st and 2nd Army Corps who claimed in January 2021 that the D/LPR forces shelled several districts under the order of Russian curators and local commanders in order to discredit Ukrainian forces. The commander of the LPR military unit was an FSB officer, Major Barovinski aka Korsar. He stated that between the end of 2020 and 2021, many RFAF officers were going to Donbas and occupying high positions including in battalions, regiments and platoons.

While the above allegations are not sufficient alone, in combination – with a particular focus on the significant evidence that RFAF personnel were transferred into commanding positions in the 1st and 2nd Army Corps, evidence from Russian personnel who served in Donbas, and the independent intelligence data collected by InformNapalm – the evidence is sufficiently clear and convincing to conclude that Russia’s 12th/8th Army of the Southern Military District has and continues to play a role in organising, coordinating, and planning the activities of the D/LPR’s 1st and 2nd Army Corps.

4.1.2.3.2.5 INFLUENCE OVER SECURITY FORCES AND LAW ENFORCEMENT

Following the establishment of the D/LPR’s security and law enforcement agencies between summer 2014 and 2015, there are indications that Russia has controlled their activities through its FSB agents that have been embedded into command positions in the D/LPR controlled regions. Indeed, as discussed above, there is clear and convincing evidence that FSB agents have been deployed into the D/LPR’s security and law enforcement agencies. However, the available information does not establish to a clear and convincing standard that these FSB agents have exercised control over the D/LPR’s security and law enforcement agencies. Consequently, while this information – which predominantly emanates from media reports and Ukrainian sources – will be considered, much can be inferred from the deployment of these FSB agents into command positions, less weight has been attached to this information when assessing whether Russia has overall control over the D/LPR armed groups.

As described above, multiple media sources report that the activities of the DPR’s MGB (created on 17 July 2014), the LPR’s MGB (created on 9 October 2014) and the DPR’s Prosecutor’s Office (created on 15 July 2014) are supervised by curators and instructors from the FSB. In addition to supervising the employment of...
the staff of the MGBs and Prosecutor’s Office’s; the FSB curators have also allegedly issued recommendations to the D/LPR’s MGBs, and, according to Information Resistance, have participated in meetings with the MGB’s high-ranking officials. According to Ukrainian intelligence, special groups of the FSB, permanently deployed in Luhansk, tightly control the activities of the MGBs, and the tasking of the MGBs is issued by the Central Office of the FSB in Moscow. Further corroborating evidence from independent and reliable sources is required in order to assess the veracity of these claims to a clear and convincing standard.

Additional indicators of the cooperation between Russian special services and the D/LPR law enforcement organs – including the FSB’s involvement in conducting interrogations and the exchange of data – have been provided in interviews with more than 35 Ukrainian soldiers (and, in some cases, civilians) who were detained by the D/LPR forces. These former detainees were interviewed by Ukrainian government or CSOs. Some witnesses described the position of their FSB interrogators as “superior” to the members of the D/LPR. Other witnesses also described being transferred from the MGBs to the FSB, or vice-versa. These testimonies have been assessed as largely consistent and indicative of a superior/subordinate relationship between Russia and the D/LPR. Nevertheless, further corroborating evidence from independent and reliable sources is required in order to determine whether this cooperation amounted to de facto direction and supervision.

In sum, while the evidence demonstrates that the FSB officers deployed to the D/LPR’s security, further investigation is needed to establish that they played a role in directing and supervising the law enforcement agencies in order to contribute to a finding of overall control.

4.1.2.3.2.6 Influence over the political leadership

Overall control can also be wielded by the controlling State through the control and influence the State exercises over the political aspects of the armed group’s activities. Political control can be exercised directly if the State “decisively influence[s]” the political decision-making processes of the armed group and the appointment of its senior officials. This type of relationship between the leaders of the controlling State and the armed group may be evidenced by regular meetings and consultations on decision-making. Similarly, if the controlling State is able to arrange for the forcible removal from the armed group of political cadres that oppose its policies and replace them with those more compliant and willing to follow its instructions and work towards the same objectives, that would be indicative of the State’s exercise of overall control over the armed group. Political control can also be inferred from more contextual circumstances. For instance, the fact that the controlling State acted, and was regarded, as the representative of the armed group in the international arena would speak powerfully to its subordination and the State’s overall control.

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1978 Dmitry Tymchuk’s Facebook page, ‘Operational data of the “Information Resistance” group’ (11 May 2016); Dmitry Tymchuk’s Facebook page, ‘Operational data of the “Information Resistance” group’ (7 July 2016).
1979 Censor, “Russian curators from the FSB of the Russian Federation ordered the “DPR” security officials to look for “Ukrainian saboteurs” among the holders of biometric passports,” (20 December 2017); D. Volchek, “Special sevices turned away from us.” Confession of a Ukrainian intelligence officer” (Krym.Realii, 3 July 2021); O. Polischuk, “Division of ORDLO. Politics to Surkov, social services to Kozak, income to the FSB, and Lefortovo to Medvedchuk” (DsNews, 3 September 2019).
1981 TSN, ‘Counterintelligence told about a FSB officer who manages the “LPR” torture center’ (19 September 2019); O. Polischuk, ‘Division of ORDLO. Politics to Surkov, social services to Kozak, income to the FSB, and Lefortovo to Medvedchuk’ (DsNews, 3 September 2019).
1982 Information provided by the Government of Ukraine; information provided by Vostok SOS; Donbas.Realii, ‘Donetsk “MGB” as a FSB branch: Story of a Ukrainian arrested in the “DPR”’ (16 October 2019); A. Vagner, ‘“These were the Russians, FSB officers sent here.” Story of a prisoner.’ (Radio Svoboda, 16 February 2020); BBC News, ‘SSU: There are hundreds of testimonies that Ukrainians were tortured in the “D-LPR” territory’ (25 June 2018); LB, ‘Blogger freed from captivity said that he was interrogated by a FSB officer in Donetsk’ (27 September 2014).
1983 Information provided by the Government of Ukraine.
1984 Information provided by Vostok SOS; Radio Svoboda, ‘ATO press-center: insurgents are the most active in the Debaltseve direction, it is silent in the Mariupol direction’ (25 January 2015); Ukrainska Pravda, ‘journalist: a “DPR’s MGB” officer has Moscow accent” (28 November 2016).
1985 Prilî Trial Judgement (Volume III), para. 560.
1986 Prilî Trial Judgement (Volume III), para. 565.
1987 Bliška Trial Judgement, paras. 116-119; Kordić & Čerkez Trial Judgement, para. 139.
1988 Kordić & Čerkez Trial Judgement, para. 139; Bliška Trial Judgement, paras. 116-117.
As the following will demonstrate, starting from the beginning of the conflict in April 2014, there is evidence that Russia exerted influence over the political leadership in Donbas, including Girkin, Bolotov and Borodai. While there is clear and convincing evidence of this influence, available information does not allow for a clear determination of whether this amounted to “decisive influence” and, therefore, ‘over control’ until July 2014. However, in July 2014, in addition to Russia’s increasing influence over the D/LPR’s political leadership, Russia appointed Vladislav Surkov as a ‘curator’ in Donbas. There is clear and convincing evidence that Surkov decisively influenced and controlled the D/LPR’s political processes, including by: influencing the appointment of its senior officials, defining internal politics and approving legislative acts. The evidence also establishes that, to ensure that its instructions were followed, Russia forcibly removed those who opposed its policies and replaced them with those willing to follow its instructions and work towards the same objectives. Finally, the evidence shows that Russia has been able to influence the D/LPR during international negotiations, most notably, the Minsk Agreements.

4.1.2.3.2.6.1 INFLUENCE OVER THE POLITICAL LEADERSHIP IN 2014 – 2015

There is clear and convincing evidence that from around May 2014, Russia – primarily through its network of curators – exerted influence over the D/LPR’s political leadership and this influence evolved into control during the summer of 2014. This control is demonstrated by Russia’s ability to, *inter alia*, define the D/LPR’s internal politics and the formation of its governmental structures.

One of the primary ways Russia exerted its control over the political leadership was through its links with the early leaders of the D/LPR. In the DPR, there are indications from the JIT that both Alexander Borodai (then Prime Minister of the DPR) and Igor Girkin (then Supreme Commander and Minister of Defence of the DPR) were “in fact directed from within the Russian Federation”. There is clear and convincing evidence to support this claim. For example, during an undated intercepted communication (likely to be around May 2014) Borodai told a militant that they would be establishing a government, and that Moscow had “surprised” him, indicating they had decided he, Borodai, would be Prime Minister.

Other intercepts from May 2014 also demonstrate that Moscow approved members of the DPR’s Security Council. These conversations correspond to the contents of an email attachment addressed to Surkov which contained a list of candidates for the DPR government. In a conversation on 15 May 2014 between Pushilin and Borodai’s assistant, the latter stated that “Moscow approved the closed list” of the Security Council and that one individual would not be included because “Moscow didn’t approve him”.

During another intercepted phone conversation from July 2014, Borodai stated that he was “carrying out orders and protecting the interests of one and only state, the Russian Federation.” Another intercepted phone conversation from July 2014, reveals that Oleksii Chesnakov (Deputy Secretary of the General Council of the ruling political party

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1990 See Section 4.1.2.3.2.4.9 Russian Curators/Advisors: 2014 – Present.
1991 Gordon, ‘Former head of Luhansk SBU Petriulevich: it was Russian presidential aide Glazyev who stirred up an insurgency in eastern Ukraine after trying the ‘Putin send troops!’ scenario in Crimea’ (14 July 2017); P. Gabarev, ‘The Torch of Novorossiya’ (St. Petersburg, 2016); A. Zverev, ‘Ex-rebel leaders detail role played by Putin aide in east Ukraine’ (Reuters, 11 May 2017).
1993 See Section 4.1.2.3.2.4.1.1 Alexander Borodai.
1994 See Section 4.1.2.3.2.4.1.2 Igor Girkin.
1996 In May 2014, Alexander Borodai, a Russian citizen, was nominated ‘Prime Minister’ of the DPR. See Section 4.1.2.3.2.4.4.1 Alexander Borodai.
‘United Russia’) coordinated with Borodai during summer 2014, discussing how Girkin should publicly describe his and the DPR’s connections to the Russian President, Vladimir Putin. Borodai also received instructions from Vladislav Surkov, an advisor to the Russian President from 2013 to 2020.

Similarly, as discussed above, in the LPR, there is clear and convincing evidence that Valerii Bolotov – appointed head of the LPR after the referendum on 11 May 2014 – was directed by Russia. There is also evidence that Russia controlled Bolotov’s political decisions. For example, in an intercepted phone conversation on 27 May 2014, Pavel Karpov – identified as Surkov’s assistant – explained to Bolotov that he should announce the future parliamentary elections that would take place on 14 September 2014 and explained what Bolotov should stay in his public statement. According to Girkin, Bolotov also surrendered his power in the LPR at the direction of Surkov.

4.1.2.3.2.6.2 Russian Curators/Advisors: 2014 – Present

The main way in which Russia exerts political control and influence in Donbas is through its network of ‘curators’, who hold positions as advisors in Moscow and the government institutions in Donetsk and Luhansk, thereby establishing a direct connection between the Russian Federation and the leadership of the D/LPR. According to reports from the International Crisis Group, the Russian Federation’s access to the leadership of D/LPR through this network of curators allows Moscow to punish, reward or neutralise the D/LPR leadership and is, thus, arguably the most important means of control that the former has over the latter.

The main curators overseeing the political sphere in the D/LPR have been Sergey Glazyev until July 2014, Vladislav Surkov between July 2014 and 2020, and Dmitry Kozak from 2020 until the present (prior to which he oversaw the economy). As will be discussed below, while Sergey Glazyev influenced some of the decisions of the lead organisers in Donbas from as early as April 2014, the available evidence is insufficient to conclude he decisively influenced or controlled the decision-making of the organisers. However, taken as a whole, there is clear and convincing evidence that, by July 2014, when Surkov became Russia’s curator in Donbas in July 2014, Surkov was able to decisively influence and control the D/LPR’s political processes, including by influencing the appointment of senior officials, defining internal politics and approving legislative acts.

4.1.2.3.2.6.2.1 Sergey Glazyev

Sergey Glazyev was a Russian curator in the Donbas oblast from March to July 2014, a key proponent of the Novorossiya project and Putin’s advisor between 2012 and 2019. Evidence, including telephone conversations intercepted and recorded by Ukrainian intelligence, suggests that he gave instructions to some of the lead organisers of the Donbas protests in the first half of April 2014 and spoke of the provision of financial and military support by Russia pending their success.
According to Glazyev’s intercepted phone calls, he communicated with the protest leaders in Donetsk, Luhansk, Odesa, Kharkiv and Zaporizhzhia in March 2014.\(^{2015}\) In a conversation on 1 March 2014 with Anatoly Petrovich,\(^{2016}\) Glazyev stated that he had a direct “instruction from the leadership – to raise people in Ukraine”.\(^{2017}\) In March 2014, there is evidence that Glazyev spoke to local journalist, Anna Zakharova, and head of the Regional Council, Valerii Holenko, encouraging them to denounce the legitimacy of the Ukrainian authorities and to file a request with Russia for protection against “fascists”.\(^{2018}\) According to Dmitry Sapazhnikov (the former head of the DPR’s special forces units), Pavlo Hubaryov (the so-called ‘people’s governor’ in the DPR) began to consider seizing power in Donbas after he received a call from Glazyev.\(^{2019}\) In July 2014, Glazyev was replaced by Surkov as curator in Donbas.\(^{2020}\)

While there is evidence that Glazyev influenced some of the lead organisers of the events in Donbas from as early as March 2014, there is insufficient evidence to establish that his influence was a decisive factor in the protests or takeovers that occurred, or that it indicated overall control over the D/LPR leadership. In addition, while it is known that Glazyev was an advisor to Putin, there is insufficient evidence to establish that he was acting on behalf of the Russian Federation (as opposed to independently or ultra vires) when directing the protest leaders.

4.1.2.3.2.6.2.2 VLADISLAV SURKOV

One of the most prominent Russian curators was Vladislav Surkov,\(^{2021}\) an advisor to the Russian President in 2013 to 2020,\(^{2022}\) who reportedly facilitated contact between the D/LPR and Moscow from July 2014 until 2020 and controlled the political sphere in the D/LPR.\(^{2023}\) The D/LPR leadership have themselves acknowledged this role of Surkov.\(^{2024}\) For example, Alexander Borodai claimed that Surkov provided considerable assistance to the DPR and that he was “our man in the Kremlin”,\(^{2025}\) while Aleksandr Zakharchenko stated that, from the very first days of the crisis, Surkov assisted the DPR “in all matters”.\(^{2026}\) Igor Girkin has also confirmed that Surkov was the curator “on human and political issues”,\(^{2027}\) “was the centre of decision-making”,\(^{2028}\) and “was Donbas’s curator”.\(^{2029}\) According to anonymous high-ranking DPR officials, Surkov defined the internal politics of the DPR and decided on the appointment to senior positions.\(^{2030}\) In May 2017, three former top militants reportedly confirmed to Reuters that Surkov “decides how the pro-Moscow administration of eastern Ukraine is run and who gets what jobs”.\(^{2031}\) Five separate, undisclosed sources (including one close to the presidential administration and another who worked for Surkov in the Kremlin) stated that

\(^{2015}\) I. Romaliyska, “Chronicle of the capture of Crimea. Wiretapping of Putin’s adviser. Part 1” (Censor, 28 December 2017); I. Romaliyska, “‘Yanukovych will be f*cked by people in this Sevastopol!’ Wiretapping of Putin’s adviser. Part 2” (Censor, 28 December 2017); I. Romaliyska, “In Kharkiv they have already taken the regional council, in Donetsk they have taken it. You need to take it in Odesa.” Wiretapping of Putin’s adviser. Part 3” (Censor, 18 January 2018); I. Romaliyska, “If we blockade Zaporizhzhia, we win. It’s a dam, bridges and energy. Without energy, Crimea is not viable.” Tapes of Glazyev. Part 4” (Censor, 30 January 2018).

\(^{2016}\) His role is unknown.

\(^{2017}\) Meduza, ‘Conversations “Sergey Glazyev” about the Crimea and the riots in eastern Ukraine. Decryption’ (22 August 2016).

\(^{2018}\) I. Romaliyska, “If we blockade Zaporizhzhia, we win. It’s a dam, bridges and energy. Without energy, Crimea is not viable.” Tapes of Glazyev. Part 4” (Censor, 30 January 2018).


\(^{2022}\) President of Russia, ‘Vladislav Surkov appointed Assistant to the President’ (20 September 2013); President of Russia, ‘Vladislav Surkov dismissed from the post of Assistant to the President’ (18 February 2020).


\(^{2024}\) For example, Borodai claimed that Surkov provided considerable assistance to the DPR and that he was “[their] man in the Kremlin”; Alexandr Zakharchenko stated that from the very first days of the crisis Surkov had assisted the DPR in all the questions. According to some anonymous sources among the high-ranking DPR officials, Surkov defines the internal politics of the DPR and decides on the appointment to senior positions. See Aktualnyye Komentarii, ‘Borodai: Surkov is our man in the Kremlin’ (16 June 2014); Gordon, ‘The head of the “DPR” Zakharchenko admitted that Surkov is helping him’ (9 November 2015); Reuters, ‘Former rebel leaders talk about Vladislav Surkov’s role in eastern Ukraine’ (11 May 2017).

\(^{2025}\) A kualnyye Komentarii, ‘Borodai: Surkov is our man in the Kremlin’ (16 June 2014).

\(^{2026}\) Gordon, ‘The head of the “DPR” Zakharchenko admitted that Surkov is helping him’ (9 November 2015).

\(^{2027}\) The Nemetsov Report, p. 42.


\(^{2029}\) Dikiy Ukr TV YouTube Channel, ‘Sniezko-Girkin At the presentation of the book “Mozgovoy”: About Mozgovoy, Plotnitsky and Surkov’ (28 March 2021), starting at 1:27.

\(^{2030}\) A. Zverev, ‘Ex-rebel leaders detail role played by Putin aide in east Ukraine’ (Reuters, 11 May 2017); Politie, ‘MH17 Witness Appeal November 2019’. See also, Section 4.1.2.3.2.4.10 Russia’s Ability to Instate and Remove the political Leadership.\(^{2031}\)

\(^{2031}\) A. Zverev, ‘Ex-rebel leaders detail role played by Putin aide in east Ukraine’ (Reuters, 11 May 2017).
Surkov held regular meetings with the separatists in Russia and the D/LPR. As will be discussed below, Surkov also played a key role in the Minsk negotiations and in talks in other international fora.

 Intercepted phone conversations from 2014 to 2015 between Surkov and Ukrainian politician Viktor Medvedchuk also reveal Surkov’s influential role in Donbas. For instance, in 2014, Surkov participated in an exchange of prisoners between the D/LPR and Ukraine. Also in 2014, in a discussion with Medvedchuk about the discrepancies between the number of Ukrainian prisoners the Ukrainian authorities considered to be detained in the D/LPR and the number of detained Ukrainian prisoners provided by the D/LPR authorities, Surkov referred to the D/LPR authorities as “our protégés.”

 Surkov’s leaked emails provide some further insight into his role as curator, particularly his role in approving the political leadership in the D/LPR. Indeed, there are several instances in 2014 where Surkov received emails with lists of suggested candidates for appointment to political posts in the D/LPR, including from an employee of Konstantin Malofeev (a Russian oligarch who played an active role in Donbas and who was closely connected to Girkin and Borodai). On 13 May 2014, Surkov received a list of recommendations for political posts in the DPR, including Denis Pushilin, Igor Girkin, Aleksandr Zakharchenko and Oleksandr Khodokovskii. On 16 May 2014, three days later, the DPR announced its government, which included: Girkin as the Minister of Defence; Khodakovskii as the Head of State Security; Zakharchenko as the commandant of Donetsk and Pushilin as the Chairman of the Supreme Council (Parliament). An intercepted phone conversation between Pushilin and Borodai’s assistant makes it clear that Pushilin was included in Moscow’s approved list.

 Surkov also played a role in approving the legislative acts of the D/LPR governments. For example, on 14 May 2014, Surkov received an extract from the D/LPR’s ‘declaration of confederation’ in advance of its publication, which was subsequently signed by the D/LPR 10 days later. On 3 July 2014, in a telephone conversation between Surkov and Borodai, Surkov reveals that he had previously sent to Borodai’s assistant a draft of the proposed ‘Constitutional Act of Novorossiya’, which was subsequently voted on and adopted by the DPR parliament. However, Surkov had sent the wrong version. Thus, Surkov told Borodai that the DPR parliament should vote again on the correct version. On 11 March 2015, Surkov received an email from an unknown recipient with proposed changes to the Ukrainian Constitution (as part of the Minsk Agreements) providing special status to the D/LPR. Two months later these proposals were published by the D/LPR with minor corrections.

 There is evidence that Surkov maintained decisive influence and control over the political leadership of the D/LPR until 2020. For example, in October 2015 it was reported that Surkov held a meeting involving a number of Russian deputy ministers concerning, inter alia: plans to increase tax collection in the D/LPR; forming an energy market in the D/LPR; the delivery of coal from the D/LPR to Ukraine and by transit through the Russian Federation; restoring the private

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2032 A. Zverev, “Ex-rebel leaders detail role played by Putin aide in east Ukraine” (Reuters, 11 May 2017).
2033 See Section 4.1.2.3.2.4.11 Russia’s Role as the D/LPR’s Representative in the International Arena.
2036 A. Shandra, R. Seely, “The Surkov Leaks. The inner workings of Russia’s hybrid war in Ukraine” (RUSI, July 2019), pp. 26-29. In a more general context, see Insider, “Marshall Malofeev. How a Russian raider captured the South-East of Ukraine” (27 May 2014); A. Chalenko, “Oleksandr Borodai: I told Mayor Lukyanchenko that Russia has come to Donetsk forever” (Ukraina.ru, 4 April 2018).
2038 Ukrainska Pravda, “The separatists’ pseudo-cabinet included people close to the “regional”” (16 May 2014); E. Sergina, S. Smirnov, “Oleksandr Borodai, former consultant of Marshal Capital, elected as Prime Minister of Donetsk Republic” (Vedomosti, 16 May 2014); RBC, “Political scientist from Russia became the Prime Minister of the DPR” (16 May 2014).
2039 Politie, “MH17 Witness Appeal November 2013”.
2041 For an explanation of Novorossiya, see Section 4.1.2.3.2.2.1 The Novorossiya Project and Shared Objectives in 2014.
2043 Politie YouTube Channel, "Witness appeal November 2019 - Conversation Surkov and Borodai, reinforcements from Russia" (13 November 2019), starting at 8:51.
2044 A. Shandra, R. Seely, “The Surkov Leaks. The inner workings of Russia’s hybrid war in Ukraine” (RUSI, July 2019), p. 54; Ria Novosti Ukraine, “DPR and LPR propose to constitutionally fix the non-bloc status of Ukraine” (13 May 2019).
sector; and increasing pensions. In 2017, it was reported that Surkov controlled Igor Plotnitsky, the then leader of the LPR. In October 2018, Surkov met officially with Denys Pushilin (then acting head of the DPR), after which Pushilin stated “[w]e received guarantees of support from Russia in everything related to security and improving the standard of living of citizens.”

In November 2018, as reported by Russian media reports, Surkov orchestrated the appointment of Pushilin as head of the DPR and was able to control the political process through him. Previously, in September 2018, according to the Insider, most of the DPR ministers and a considerable number of influential deputies of the DPR’s People’s Council were sent to a secret meeting in Rostov-on-Don (Russia) led by Surkov. At this meeting, Alexei Chesnakov (described as the ‘mouthpiece of Surkov’) announced the need to appoint officials to the DPR, including Pushilin as the head of the DPR.

In winter 2020, Russia dismissed Surkov as its Donbas curator and replaced him with Dmitry Kozak, who was also appointed Deputy Head of the Presidential Administration. Putin’s press-secretary made the announcement, stating that Kozak “in his new position will deal with Ukrainian affairs and integration issues”.

In 2020, Dmitry Kozak replaced Surkov as the curator of Ukraine and the author of the concept of “sovereign democracy” and supported the independence of the DPR, Kozak supported a more pragmatic and negotiable approach and paid attention to economic considerations.

Currently, Kozak is said to define politics in the DPR/LPR, and also represents Russia in the ‘Normandy Format’ negotiations and the Trilateral Contact Group (‘TCG’) in his role as curator. Kozak determines the “principles of

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2054. A. Shandra, R. Seely, "The Surkov Leaks. The inner workings of Russia’s hybrid war in Ukraine" (RUSI, July 2019), p. 34.
2055. TASS, "Vladislav Surkov leaves the Kremlin. He is the curator of Ukraine and the author of the concept of ‘sovereign democracy’" (11 February 2020).
2056. K. Savoskina, V. Lazutin, "Curator of Crimea and chief negotiator for Donbas: what is known about the new deputy head of the Presidential Administration of Russia" (Novomskie, 26 January 2020); Kommersant, "Dmitry Kozak is going to a new approach to Ukraine" (25 January 2020); V. Portnikov, "New course or new curator?" (Radio Svoboda, 4 February 2020); Eurotopics, "New Kremlin curator for Ukraine: will there be peace in Donbas?" (27 January 2020); Otkrytye Media, "Vladislav Surkov leaves the Kreml. He is the curator of Ukraine and the author of the concept of ‘sovereign democracy’" (25 January 2020); Krym.Realii, "Russia has changed curators in ORDLO - Ukrainian intelligence" (1 August 2020); V. Solovoy, "Under the laws of war. Why peace talks in Donbas only exacerbate the conflict" (Carnegie Moscow Centre, 6 April 2021).
2057. K. Savoskina, V. Lazutin, "Curator of Crimea and chief negotiator for Donbas: what is known about the new deputy head of the Presidential Administration of Russia" (Novomskie, 26 January 2020); Kommersant, "Dmitry Kozak is going to a new approach to Ukraine" (25 January 2020); V. Portnikov, "New course or new curator?" (Radio Svoboda, 4 February 2020); Eurotopics, "New Kremlin curator for Ukraine: will there be peace in Donbas?" (27 January 2020); Otkrytye Media, "Vladislav Surkov leaves the Kreml. He is the curator of Ukraine and the author of the concept of ‘sovereign democracy’" (25 January 2020); Krym.Realii, "Russia has changed curators in ORDLO - Ukrainian intelligence" (1 August 2020); V. Solovoy, "Under the laws of wartime burden. Why peace talks in Donbas only exacerbate the conflict" (Carnegie Moscow Centre, 6 April 2021).
2058. K. Savoskina, V. Lazutin, "Curator of Crimea and chief negotiator for Donbas: what is known about the new deputy head of the Presidential Administration of Russia" (Novomskie, 26 January 2020); Kommersant, "Dmitry Kozak is going to a new approach to Ukraine" (25 January 2020); V. Portnikov, "New course or new curator?" (Radio Svoboda, 4 February 2020); Eurotopics, "New Kremlin curator for Ukraine: will there be peace in Donbas?" (27 January 2020); Otkrytye Media, "Vladislav Surkov leaves the Kreml. He is the curator of Ukraine and the author of the concept of ‘sovereign democracy’" (25 January 2020); V. Riaboshapka, I. Tymofeyev, "Surkov’s dismissal: does L/DNR face a personnel shake-up?" (Segodnya, 25 January 2020). See also, Section 4.1.2.3.2.6.2.3 Provision of Support to the D/LPR Economies.
domestic and foreign policy” and is responsible for “implementing the strategic course” of the D/LPR.2059 He is assisted in his work by the subordinate Department for Cross-Border Cooperation of the Administration of the President of the Russian Federation, headed by Alexei Filatov.2060

4.1.2.3.2.6.2.4 THE DIRECTORATE FOR CROSS-BORDER COOPERATION

The Directorate for Cross-Border Cooperation was established within Russia’s Presidential Administration in October 2018 to deal with, inter alia, Russia’s cooperation with the D/LPR.2061 Officials within the Directorate are commonly referred to as ‘curators’ of Donbas by Russian media reports.2062 According to Kostantin Zatulin, the First Deputy Chairman of the Russian State Duma Committee on Commonwealth of Independent States Affairs, the Directorate’s work was initially determined by Surkov, with whom it worked closely.2063 For example, Zatulin indicated that “[t]he department operate[d] in strict connection with the presidential aide, Vladislav Surkov, who [was] in charge of it” and that Oleg Govorun, the first Head of the Directorate, followed Surkov’s instructions.2064 Currently, it works under Kozak’s supervision.2065

The Deputy Head of the Directorate, Maksym Polyakov, has also been described as a Donbas ‘curator’ by Russian media.2066 This is supported by phone conversations from 2014, intercepted by the Ukrainian SSU, between Polyakov and individuals in Donbas in which they discussed the upcoming Donbas elections.2067 Aleksey Filatov, who replaced Govorun as Head of the Directorate in 2019, is also a Donbas curator and assists Dmitry Kozak.2068

4.1.2.3.2.6.3 RUSSIA’S ABILITY TO INSTAWE AND REMOVE THE POLITICAL LEADERSHIP

As further evidence of Russia’s direction and supervision over the D/LPR’s political leadership, Russia has the power to order changes in personnel. As expanded upon below, there is clear and convincing evidence that the Kremlin has orchestrated purges of disloyal or independent D/LPR leaders and consolidated power around Kremlin approved leaders.2069

In the DPR, Igor Girkin, who was the defence minister of the DPR between May and August 2014, stated that he “was ordered” to pass power to Aleksandr Zakharchenko.2070 According to Girkin, he left the leadership of the DPR as a result of pressure from the Kremlin stating that he “was threatened that the supplies from Russia would be stopped, and no fight is possible without the supplies”.2071 Similarly, in September 2015, Andrei Purgin, speaker of the de facto
parliament and second-ranking DPR official, was removed from office and briefly imprisoned by the Donetsk MGB.\textsuperscript{2072} According to some reports, the decision to remove Purgin was adopted by Surkov and the FSB.\textsuperscript{2073} Zakharchenko became head of the DPR in 2014. According to Girkin, Surkov selected Zakharchenko for this appointment.\textsuperscript{2074} However, according to the International Crisis Group, Zakharchenko’s relationship with Russia grew increasingly tense and he was killed in a bombing in Donetsk in August 2018.\textsuperscript{2075} Thereafter, Denis Pushilin, a politician known for unquestioning loyalty to Moscow, was elected in the virtually uncontested 2018 elections.\textsuperscript{2076} The International Crisis Group reported that, during these elections, Russia forced the exclusion of popular leaders whose policies did not suit Russian interests, such as Aleksandr Khodakovsky\textsuperscript{2077} and Pavel Gubarev.\textsuperscript{2079}

In relation to the LPR, Igor Girkin has claimed that Valerii Bolotov “surrendered power in the republic” under the order of ‘Surkov’ (a derogatory reference to Surkov).\textsuperscript{2080} Bolotov was replaced by Ihor Plotnytskyi (the Head of the LPR between 2014 and 2017) who was chosen by Surkov according to sources quoted by Bellingcat.\textsuperscript{2081} In 2017, Plotnytskyi was replaced by Leonid Pasechnik in what was reported by the International Crisis Group to have been a “Russian security services-backed coup.”\textsuperscript{2082} In the November 2018 elections, the Kremlin continued to support Pasechnik who won with 60.8% of the vote.\textsuperscript{2083}

4.1.2.3.2.6.4 \textbf{RUSSIA’S ROLE AS THE D/LPR’S REPRESENTATIVE IN THE INTERNATIONAL AREA}

There are numerous fora in which the conflict in Donbas is discussed at the international level. These include the TCG for the peaceful settlement of the situation in eastern Ukraine, which was formed in June 2014 and contains representatives from Ukraine, the Russian Federation and the Organisation for Security and Co-operation in Europe (’OSCE’). Two representatives from the D/LPR are also included in TCG meetings; however, they are not recognised as parties to the negotiations by Ukraine.\textsuperscript{2084} In addition, the Normandy Format, consisting of Russia, Ukraine, France and Germany (i.e., the ‘Normandy States’), was created on 6 June 2014 with the aim of resolving the crisis in Donbas.\textsuperscript{2085} The Normandy States and the TCG negotiated the Minsk-I and II Agreements, as well as several ceasefire agreements.\textsuperscript{2086}
agreements.\textsuperscript{2086} Finally, between 2016 and 2018, Russia has also engaged in bilateral meetings with US representatives regarding the peaceful resolution of the situation in eastern Ukraine.\textsuperscript{2087}

The evidence is inconclusive as to whether Russia represents the D/LPR during meetings of these international fora; however, it is telling that no representatives from the D/LPR are included in the Normandy Format or bilateral meetings between Russia and the US. Moreover, Russia is regularly represented by the Donbas ‘curators’ during international meetings. For example, Surkov played a key role in the Minsk Agreements,\textsuperscript{2088} played a central role in the TCG meetings as the Kremlin’s special representative until he was dismissed in 2020,\textsuperscript{2089} and represented Russia during bilateral meetings with the US.\textsuperscript{2090} Recently, Dmitry Kozak has represented Russia in the Normandy Format.\textsuperscript{2091}

Further, there is evidence that Russia was able to influence the D/LPR during the Minsk Agreements. The Minsk Agreements aimed to halt the war in eastern Ukraine and were signed by representatives of Ukraine and Russia as well as the OSCE and leaders of the D/LPR (without official title).\textsuperscript{2092} While the D/LPR leadership were present in Minsk to sign the documents, they were not involved in preparatory meetings held under the Normandy Format (which involved Russia, Ukraine, France, and Germany).\textsuperscript{2093}

The first Minsk protocol (i.e., the ‘Minsk-I Agreement’) was signed on 5 September 2014\textsuperscript{2094} following the RFAF’s offensive in Ilovaisk.\textsuperscript{2095} The Minsk-I Agreement was signed by representatives of Russia, Ukraine, the OSCE, as well as Zakharchenko (then Head of the DPR) and Plotnytskyi (then Head of the LPR).\textsuperscript{2096} A senior DPR official has stated that Moscow controlled “every phase, every comma” of the Minsk agreements,\textsuperscript{2097} and Zakharchenko stated that Russia “oblided them to agree”.\textsuperscript{2098}

The second Minsk protocol (i.e., the ‘Minsk-II Agreement’) was signed on 11 February 2015\textsuperscript{2099} in response to the RFAF’s offensive in Debaltseve.\textsuperscript{2100} The negotiations took places between the Presidents of Ukraine and Russia, with

\begin{thebibliography}{99}
\bibitem{2086} OSCE, “Statement of the Trilateral Contact Group as of 17 July 2019” (18 July 2019); OSCE, “Press Statement of Special Representative Sajdik after the regular Meeting of Trilateral Contact Group on 18 December 2019” (19 December 2019); OSCE, “Press Statement of Special Representative Grau after the regular Meeting of Trilateral Contact Group on 22 July 2020” (23 July 2020); OSCE, “Press Statement of Special Representative Sajdik after the regular Meeting of Trilateral Contact Group on 03 March 2021” (4 March 2021); President of Ukraine, “A regular meeting of the Trilateral Contact Group was held in the format of a video conference” (28 May 2020).
\bibitem{2088} The information was first published in E. Pond, “The end of deterrence?”, 13 Eurasia Daily Monitor 103 (27 May 2016); Ukraine Crisis Media Center, “Volker vs Surkov. What awaits Ukraine?” (24 August 2017); RFE/RL, “Russia ‘Will Study’ New U.S. Proposals For Ukraine” (27 January 2018).
\bibitem{2089} A. Maiorova (ed.), ‘Donbas in Flames’ (Prometheus, 2017), p. 31.
\end{thebibliography}
the leaders of France and Germany acting as mediators.\textsuperscript{2103} Zakharchenko and Plotnytskyi, the leaders of the D/LPR, initially refused to support the Minsk-II Agreements, but changed their minds after a long conversation with Putin.\textsuperscript{2102}

During both the Minsk-I and II negotiations, Surkov played a key role by advising Russia and the D/LPR.\textsuperscript{2103} Intercepted phone conversations from 2014 and 2015 between Surkov and Medvedchuk further reveal that Surkov was dealing with the implementation of the Minsk Agreements by Ukraine and had influence over D/LPR political figures, in particular with regard to the D/LPR’s exchange of detainees with Ukraine.\textsuperscript{2106}

4.1.2.3.2.6.5 **CONCLUSION**

There is some indication that from as early as April 2014, FSB officials, RFAF officers and Russian curators influenced the D/LPR’s military, security services and political leadership. However, prior to July 2014, the evidence is insufficient to meet the clear and convincing standard, leaving open the possibility that these individuals acted on an individual basis or ultra vires. Further, while there is evidence that FSB officials were transferred into the D/LPR’s law enforcement agencies from July 2014, further investigation is required to establish whether they exercised control to the clear and convincing evidentiary standard. However, there is clear and convincing evidence that, from July 2014, Russia’s influence over the military and political activities of the D/LPR armed groups evolved into overall control. When considered in the context of Russia’s direct intervention and expanding support and assistance, the totality of evidence demonstrating the role Russian officials and curators played in organising, coordinating or planning the military and political actions of the D/LPR, is clear and convincing. Thus, from at least July 2014, the Russian Federation’s direction and coordination in the decision-making, general planning and coordination of the D/LPR forces demonstrates its overall control.

4.1.2.3.2.7 **TRAINING OF THE D/LPR FORCES BY THE RUSSIAN FEDERATION**

The provision of training and capacity building by the controlling State to the armed group is another indicator of overall control.\textsuperscript{2105} This includes not only the military formations of the armed group, but also its police forces.\textsuperscript{2106}

In addition to the provision of supplies and logistical assistance,\textsuperscript{2107} Russia also helped train the D/LPR armed groups and other volunteers who joined them. Training by Russian forces began at the outset of the conflict in eastern Ukraine, as early as April 2014,\textsuperscript{2108} and has continued to the present.\textsuperscript{2109} Russia has established a vast network of training camps and military instructors to train the forces of the D/LPR.

Evidence suggests that training of D/LPR forces took place primarily in 2014 and 2015 on Russian territory and was supervised and delivered by Russian military and special service officers instructed by the Russian Federation.\textsuperscript{2110} Satellite images show the rapid establishment of training camps along the Russia-Ukraine border soon after the occupation of Crimea and at the onset of the conflict in Donbas.\textsuperscript{2111} Most of the camps are located in Russia’s Rostov
and Belgorod oblasts, which provide easy access to the D/LPR-controlled territory.1112 From these camps, hundreds of Russian troops, along with military equipment, have travelled in large convoys into eastern Ukraine.1113 Some of the camps—in particular camps in the towns of Kuibyshevo and Pavlovka—also served as staging points for Russia’s cross-border artillery attacks against the Ukrainian forces in the summer of 2014.1114 According to the Ukrainian SSU, as of August 2015, the D/LPR used 54 training camps located in Russia and 30 in the occupied territory of Crimea.1115 Another 58 training camps were located in Donetsk.1116 The existence of training camps in Russian territory near the border with Ukraine have been confirmed by satellite imagery as well as photographs from the social media accounts of soldiers.1117

Information collected by the SSU demonstrates the scale and organisation of the training camps. For example, a training camp located in Millerovo in Rostov, Russia had trained 2,500 LPR and 3,500 DPR militants by the beginning of 2015 and an additional 1,900 militants underwent training throughout the rest of 2015.1118 Trainees received D/LPR military uniforms and Ukrainian weapons seized from Crimea.1119

This information is further corroborated by SSU interrogations of individuals who had travelled from Ukraine to Russia to participate in military training and returned to Ukraine to engage in combat against the UAF.1120 When in Russia, some of these suspects alleged that they met with FSB officers who requested their personal information.1121 According to the available information, the military training was conducted either by Russian military personnel, representatives of the GRU, or men in uniform without insignia.1122

Training has continued until the present, primarily by Russian instructors on the territory of the D/LPR. For example, in January 2016, Ukrainian intelligence authorities confirmed that Russian military instructors from the CTT (formerly the 12th RC and now the 8th Army of the RFAF’s Southern Military District) were involved in supervising and guiding combat training for the D/LPR forces, the largest of which was battalion tactical training at the training ground in the Torez area of Donbas.1123 In May 2016, representatives of the CTT went to Donbas to conduct comprehensive inspections into the training of the D/LPR forces.1124

In July 2017, it was reported by the NGO Information Resistance that a group of instructors from the Kazan Higher Tank Command School (a higher education institute of the Russian Ministry of Defence) arrived in Donbas to assist with the creation of a separate tank brigade of the 1st Army Corps.1125 In July 2018, the Ukrainian Ministry of Defence reported that Russian instructors had commenced training newly appointed platoon commanders, artillery spotters and snipers in the D/LPR.1126 In March 2019, they reported that training of armed groups had been conducted with

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1112 Kostyuchenko, “We Were Fully Aware of What We Brought Ourselves to and What Could Happen,” op cit.
1114 LB, “SBU learned about 195 training camps of fighters of ‘DNR-LNR’” (28 August 2015); information provided by the Government of Ukraine.
1116 Kostyuchenko, “We Were Fully Aware of What We Brought Ourselves to and What Could Happen” op cit.; D. Pashinsky, “I Serve the Russian Federation!” Soldiers Deployed During the Annexation of Crimea Speak” (Meduza, 16 March 2015); I. Pivznev, “BBC: Murmansk contractors complain about being forced to travel to Ukraine” (TV Rain, 13 February 2015); Senior Administration Official, “Background Briefing on Ukraine” (US Department of State, 20 June 2014); M. Czapierski and others, “‘Hiding in plain sight. Putin’s war in Ukraine’” (Atlantic Council, May 2015), p. 23.
1117 Information provided by the Government of Ukraine; InfomromNapalm, “Sub-Unit Of The 14th Special Purpose Group From Khabarovsk On The Border With Ukraine” (9 October 2014).
1118 Information provided by the Government of Ukraine; L. Stek, “Crimean weapons for militants in the Donbas” (Radio Svoboda, 29 January 2018); Eugen Teize, “British researcher: Someone does not want us to know where the weapons in the Donbas” (Deutsche Welle, 11 November 2021).
1119 Information provided by the Government of Ukraine.
1120 Information provided by the Government of Ukraine.
1121 Information provided by the Government of Ukraine.
1122 Information provided by the Government of Ukraine.
1123 Ukrainka Prawda, “Intelligence: The militants are being trained by Russian military instructors” (22 January 2016); J. Danetska, “In Torez fighters began to carry out demonstration trainings under the guidance of the Russian instructors - GUP” (UNN, 22 January 2016).
1124 Ukrainian Embassy in Islamic Republic of Iran, “Features of the situation in the temporarily occupied territories of Ukraine April 30 - May 06, 2016” (18 May 2016); Ukrainian Military Pages, “The leadership of the Russian Center, which manages hostilities in eastern Ukraine, has been identified” (10 May 2016).
1125 Censor, “A group of instructors from the Kazan Higher Tank Command School of the Russian Federation arrived in occupied Donetsk” - 19 (26 July 2017); Dmitry Tymchuk Facebook Page, “Operational data of the ‘Information Resistance’ group” (26 July 2017); ZN, “ORDLO militants received 30 tons of shells and 15 new infantry fighting vehicles from Russia” (26 July 2017).
1126 ZN, “Russian instructors of militants intensified training of ‘replenishment’ - intelligence” (11 June 2018).
teachers from the St. Petersburg Artillery Academy and other instructors who train servicemen of the RF AF in Russia.

The Ukrainian Ministry of Defence also reported that from 8 June 2020, intensive combat training of formations and units of the 1st and 2nd Army Corps was conducted at training sites in the D/LPR controlled territory by Russian instructors. On 24 August 2021, the GoU reported that the commander of the 8th Army of the Southern Military District, Lieutenant-General Sychevoi Andrii Ivanovych, arrived in the D/LPR with the aim of inspecting and conducting combat and operational training for the formations and military units of the 1st and 2nd Army Corps. Finally, in July 2021, Ukrainian intelligence reported that a group of Russian officers from units of the 8th Army of the Southern Military District arrived in the D/LPR to conduct training sessions for sabotage and reconnaissance units.

In sum, there is clear and convincing evidence that Russia has provided training to the D/LPR armed forces from 2014 until the present. This has included the training of the D/LPR’s troops at training grounds in Russia, and the training of the D/LPR’s troops by Russian officers in Donbas.

4.1.2.3.2.8 **Financial Assistance and Economic Dependency on the Russia Federation**

The armed group’s dependency on the various forms of financial assistance provided by the controlling State for the pursuit of its activities, including military operations, is another key indicator of the existence of a relationship of overall control. Financial assistance could include the payment of salaries (even if partially) of the members of the armed group by the controlling State, as well as direct transfer of funds to the armed group.

During the early years of the conflict in 2014 and 2015, Donbas experienced economic collapse from the destruction and pillaging of much of its industrial infrastructure and the cessation of trade between the D/LPR controlled areas and Ukraine. This led the economy to shrink by two-thirds. Further, as the region was cut off from the international financial transaction system, the D/LPR’s banking system also collapsed. In the winter of 2014, Ukraine also ceased paying salaries and pensions in the areas controlled by the D/LPR. Under these conditions it became increasingly essential for the Russian Federation to financially support the D/LPR authorities to ensure their survival and prevent economic collapse, which has led some commentators to conclude that that D/LPR gradually became completely economically dependent on Russia.

While exact figures of Russia’s financial assistance are hard to uncover (particularly considering that concerted efforts were taken to ensure a level of secrecy on behalf of Russia), the estimates detailed within this section, from a

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2127 UkrainikaPravda, ‘Like a scalpel: Russian guided ammunition is used in Donbas’ (4 March 2019); L. Stek, “I have never seen such a projectile.” The use of new Russian weapons is being recorded in Donbas. [Krym.Realii, 5 March 2019]; L. Stek, “High-precision” evidence: the use of new Russian weapons was recorded in Donbas. [Krym.Realii, 4 March 2019].

2128 Espreso, “Instructors from the Russian Federation arrived in the occupied Donbas to conduct military exercises, - intelligence” (9 June 2020); Armiyainform, “The Russian occupation forces continue to increase combat training in Donbass, - intelligence” (9 June 2020); Informator, “New instructors from the Russian Federation have arrived in ORDLO for carrying out military exercises, - intelligence” (9 June 2020); LB, “Ministry of Defense of Ukraine: Russian military personnel arrived in Donbass to instruct sappers and snipers” (5 June 2020); V. Gurzhiy, ‘Groups of Russian instructors arrived to militants for conducting exercises - reconnaissance’ [UNN, 9 June 2020].


2130 Ukrainian Military Intelligence Facebook page, Post (21 July 2021).

2131 Tadić Appeal Judgement, para. 155; Tadić Trial Judgement, para. 588.

2132 Tadić Appeal Judgement, para. 150; Prlić Trial Judgement (Volume III), para. 555.

2133 Prlić Trial Judgement (Volume III), paras. 556-557.

2134 S. Fisher, ‘The Donbas Conflict. Opposing Interests and Narratives, Difficult Peace Process’ [SWP, April 2019], p. 17; I. Kupriyanova, ‘Experts: Donbas will face economic collapse without budget subsidies’ (GW, 6 November 2014); Texty, ‘GW: The economy of the DPR is collapsing, the republic has lost markets’ (31 December 2015).


2137 J. Röpcke, ‘How Russia finances the Ukrainian rebel territories’ [Bild, 16 January 2016]; S. Homenko, ‘Donbas lost the right to pensions’ [BBC, 24 November 2014]; Lenta, ‘Refusal to pay pensions to residents of Donbas explained by their pro-Russian sentiments’ [5 February 2020].


2139 Y. Kovachuk, ‘What do the LNR and DNR live on?’ [Regnum, 7 February 2019]. See also, J. Röpcke, ‘How Russia finances the Ukrainian rebel territories’ [Bild, 16 January 2016]; DW, ‘Media: Russia spends about 1 billion euros a year on financing Donbas’ (17 January 2016).
variety of sources, are largely consistent and provide clear and convincing evidence of Russia’s financial assistance. As the following sections will demonstrate, Russia provided economic support from as early as spring 2014 to assist with the establishment of the D/LPR. Russia’s financial contributions and economic assistance to the D/LPR became increasingly systematised towards the end of 2014 and the beginning of 2015 when Ukraine ceased providing social payments and economic support to the D/LPR controlled territories. Russia’s financial and economic assistance are fundamental to the functioning of the D/LPR and ensure its continuation. This provides Russia significant leverage to ensure its instructions and policies are carried out by the D/LPR leadership.2140

4.1.2.3.2.8.1 RUSSIAN ECONOMIC SUPPORT DURING SPRING AND SUMMER 2014

From the earliest stages of the conflict in spring 2014, Russia financially assisted the establishment of the D/LPR and their military activities which enabled the D/LPR armed groups to take control of territory in Donbas. A series of leaked emails and telephone calls reveal that Surkov was instrumental in financing the D/LPR in the spring and summer of 2014.2141 According to one of Surkov’s leaked emails, dated 26 May 2014, it was suggested that Russia would “bankroll” the D/LPR up to 8.8 billion dollars per year until 2017.2142 Similarly, on 1 September 2014, Boris Litvinov, then head of the DPR’s Supreme Council, stated that “a significant part of the needs is financed by Russia”.2143

There is also information from numerous sources – including the report ‘Putin. The War’ prepared by Russian politician Boris Nemtsov, and containing testimonies from D/LPR militants and detained Russian servicemen – which indicate that Russia provided money for salaries to the local militants in the early stages of the conflict.2144 The report ‘Putin. The War’ estimates that during the first 10 months of the war, Russia spent around 46 billion rubles on maintenance of Russian volunteers, mercenaries and local militants in Donbas. These estimates are based on evidence provided by the Head of the Fund of Veterans of Special Forces of Sverdlovsk region, Vladimir Yemifov, that the cost of sending one Russian ‘volunteer’ was 350,000 rubles per month.2145 The testimonies of D/LPR militants include individuals who served in the D/LPR, who describe that they received their salaries in Russian rubles from the Headquarters (where only Russia citizens worked between 2014 and 2015). The report also includes the testimony of militants who had completed military training organised by the RFAF in Russia and received payments from the Russian instructors prior to their deployment to Ukraine.2146

4.1.2.3.2.8.2 INSTITUTIONALISATION OF ECONOMIC ASSISTANCE BY END OF 2014/BEGINNING OF 2015

By the end of 2014 / beginning of 2015, there is clear and convincing evidence that Russia’s financial assistance to the D/LPR increased and became more systematic and institutionalised. This occurred after Ukraine ceased providing social payments in November/December 20142147 and was further encouraged by the D/LPR authorities’ limited success in collecting taxes from businesses operating in the territories under their control.2148

2140 International Crisis Group: “a proxy leadership financially and politically dependent on Moscow”; “The de facto D/LPR leadership is financially and politically beholden to Moscow” in ‘Rebels without a Cause: Russia’s Proxies in Eastern Ukraine’ (16 July 2019), pp. 1, 11; COE PACE Committee: ‘Regarding the “DPR” and the “LPR”, effective control is based on the well-documented crucial role of Russian military personnel in taking over and maintaining control of these regions, and on the complete dependence of the “DPR” and “LPR” on Russia in logistical, financial and administrative terms.’ Legal remedies for human rights violations on the Ukrainian territories outside the control of the Ukrainian authorities. Doc. 14139 (26 September 2016), p. 1.

2141 A. Shandra and R. Seely, ‘The Surkov Leaks. The Inner Workings of Russia’s Hybrid War in Ukraine’ (RUSI, July 2019), p. 33; Politie YouTube Channel, “Witness appeal June 2019: Chain of responsibility in the Russian Federation 4 (6)” at 02:00. See also, Section 4.1.2.3.2.4.9.2 Vladimir Surkov.

2142 A. Shandra and R. Seely, ‘The Surkov Leaks. The Inner Workings of Russia’s Hybrid War in Ukraine’ (RUSI, July 2019), p. 33; N. Mehed, “Russia annually finances “LPR” for 30 billion rubles - the SBU” (DW, 18 January 2020)

2143 Ekonomichna Pravda, ‘Russia finances the “DNR” with hryvnia, which remained in the Crimea’ (1 September 2014).

2144 Information provided by the Government of Ukraine; The Nemtsov Report, p. 47.

2145 The Nemtsov Report, p. 47.

2146 The Nemtsov Report, p. 47; Information provided by the Government of Ukraine.

2147 See Section 4.1.2.3.2.6 Financial Assistance and Economic Dependency on the Russia Federation.

2148 Rinat Akhmetov’s businesses reportedly employed up to 120,000 people before they were expropriated, and supply- ing humanitarian aid to more. See N. Mirimanova, Business Opportunities Lost ... and Found: Small and Medium Sized Enterprises from Donbass Responding to the Conflict (Centre for Humanitarian Dialogue, November 2016); N. Mirimanova, Economic Connectivity across the Line of Contact in the Donbas, Ukraine: An Under-utilised Resource for Conflict Resolution (Centre for Humanitarian Dialogue, September 2017); S. Fisher, ‘The Donbas Conflict: Opposing Interests and Narratives. Difficult Peace Process’ (SWP, April 2019), p. 15.
Since April 2015, Russia has paid pensions, benefits and wages in both the DPR and LPR. The level of financial aid provided by Russia has far exceeded the money collected in taxes by the D/LPR. Alexander Khodakovsky, an influential Member of the DPR parliament, confirmed in September 2015 that 70% of the Republic’s budget stemmed from Russia’s “financial aid.” As a signal of the close economic ties between Russia and the D/LPR, the LPR officially declared the ruble its ‘State currency’ in September 2015. The DPR followed suit, also in September 2015.

In October 2016, Borodai confirmed that the D/LPR “exist[s] with the serious support of the Russian Federation”. According to estimates made in 2016, Russia spent about 1 billion euros per year and 79 million euros per month on salaries of public sector employees in the D/LPR and social security payments for the local population in Donbas. The GoU estimated Russia’s total non-military expenditures for the D/LPR in 2016 to be 2 billion US dollars. In 2017, it was estimated that the LPR covered only 27% of its budget, with the remaining funds coming from Russia. In 2019, it was reported that Russia spent around 2 billion US dollars annually to subsidize the D/LPR. In 2020, the International Crisis Group estimated that Russia spent 1.5–2 billion US dollars on the D/LPR per year, excluding military costs. In 2020, the Ukrainian SSU estimated Russia annually spends 30 billion rubles (487.5 million US dollars) on D/LPR.

Initially, it was reported that the Kremlin primarily used banks in the Georgian region of Abkhazia to move money into Donbas. Later, it was asserted that Russia finances D/LPR through the International Bank of Settlements (‘IBS’), which was created in 2015 and registered in South Ossetia. Offices of the IBS were subsequently opened in the DPR and LPR in 2018 and authorised to carry out monetary operations. Similarly, a Washington Post article suggests that the IBS is also used by D/LPR and Russian businesses to facilitate financial transactions. According to the Ukrainian SSU, this banking system provides the structures that are needed to divert billions of rubles from the Russian State budget and other sources and to redesignate them to the D/LPR. According to the Washington Post, the rerouting of cash and trade through South Ossetia (which Russia recognised as an independent State in 2008) enables Russia to avoid western sanctions and criticism it would incur by officially recognising the D/LPR.

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2150 Y. Polyanska, “New ‘confessions’ of Putin and Russia’s funding of the “DPR” and “LPR” (Krym. Realii, 13 October 2016).

2151 J. Röpcke, “How Russia finances the Ukrainian rebel territories” (Bild, 16 January 2016).

2152 Decision of the Council Of Ministers of the DPR No 02-04/239/15 “On the Organisation of Monetary Circulation in The Territory of The Luhansk People’s Republic” (18 August 2015); Luhanski Informatsionnii Centr, “The Russian ruble will become the main monetary unit of the LPR from September 1 - Council of Ministers” (19 August 2015).

2153 Wilson Centre, “The DPR Council of Ministers enacted the decision to open a branch of the International Settlement Bank in the Republic” (26 September 2018); SWP, “Kremlin sanctions: Leaders of Russian-backed separatists in eastern Ukraine were allowed to open a bank branch in South Ossetia” (21 September 2018).
In addition, according to the German newspaper, Bild, money is transported to the D/LPR controlled territories in heavily guarded trains once a month. While Bild primarily obtained this information from Ukrainian sources, it was able to provide some corroboration of the existence of trains carrying supplies from Russia to the Donbas based on a picture posted by pro-Russian militants in April 2015 that showed them at the Sukhodilsk train station with carriages of the Russian train company, containing crates of ammunition, in the background.

4.1.2.3.2.8.3 Provision of Support to the D/LPR Economies

In addition to financial support for the payment of salaries, pensions and benefits, Russia also ensures the economies of the D/LPR continue to operate, including through the provision of raw materials essential for the Donetsk and Luhansk oblasts whose economy is predominantly industrial. Prior to his appointment as Donbas curator in 2020, Dmitry Kozak oversaw the provision of economic assistance to the D/LPR. Since then, Dmitry Kozak has also overseen the ‘Inter-ministerial Commission for the Provision of Humanitarian Aid for the Affected Areas in the Southeast of the Regions of Donetsk and Luhansk’, which is responsible for humanitarian measures and also for (shadow) economic interaction with the territories. The Commission is comprised of 20 representatives of the Russian Government, including the Deputy Ministers of Economic Development (chairman), Finance, the Interior, Foreign Affairs, Healthcare, Industry and Trade, Energy, Transport, Justice and Civil Defence; and the Deputy Director of the FSB. According to the source, the Commission is aimed at securing Russia’s long-term control over the D/LPR, contrary to the Minsk Agreements.

2167 J. Röpcke, ‘How Russia finances the Ukrainian rebel territories’ (Bild, 16 January 2016); DW, ‘Media: Russia spends about 1 billion euros a year on financing Donbas’ (17 January 2016).
2168 J. Röpcke, ‘How Russia finances the Ukrainian rebel territories’ (Bild, 16 January 2016).
2169 Centre for Economic Strategy, ‘Summary of the Diagnostic report of economic development problems of Donetsk and Luhansk regions for the Donbas Economic Transformation Strategy’ (1 April 2021); BBC, ‘The economy of the unrecognized LPR and DPR is closely linked to Russia’ (15 June 2015); Radio Svoboda, ‘Russians pay. Donetsk and Luhansk were given social benefits, and pensions were next’ (31 January 2022).
2170 See Section 4.1.2.3.2.4.9.3 Dmitry Kozak.
2171 Kommersant, ‘Dmitry Kozak is going to a new approach to Ukraine’ (25 January 2020); OpenMedia, ‘Vladislav Surkov leaves the Kremlin. He is the curator of Ukraine and the author of the concept of “sovereign democracy”’ (25 January 2020); Segodnya Politika, ‘Surkov’s dismissal: does L/DNR face a personnel shake-up?’ (25 January 2020); BihuS.info YouTube Channel, ‘All audio taps of Medvedchuk. Part 3’ (13 July 2021), starting at 3:36:00; BihuS.info YouTube Channel, ‘All audio taps of Medvedchuk. Part 3’ (13 July 2021), starting at 5:04:14.
2175 J. Röpcke, ‘Putin’s shadow government for Donbas exposed’ (Bild, 29 March 2016).
2176 J. Röpcke, ‘Putin’s shadow government for Donbas exposed’ (Bild, 29 March 2016).
2177 J. Röpcke, ‘Putin’s shadow government for Donbas exposed’ (Bild, 29 March 2016).
2178 J. Röpcke, ‘Putin’s shadow government for Donbas exposed’ (Bild, 29 March 2016).
2179 J. Röpcke, ‘Putin’s shadow government for Donbas exposed’ (Bild, 29 March 2016).
2180 J. Röpcke, ‘Putin’s shadow government for Donbas exposed’ (Bild, 29 March 2016).
To the contrary, another source close to the Russian federal government explained in 2018 that the Commission met less than once every six months. Instead, the source explained that Dmitry Kozak and Sergey Nazarov, Deputy Minister of Economic Development of the Russian Federation and head of the Commission, held regular meetings to resolve specific issues separate from the Commission.\(^{2181}\) However, while the precise influence and purpose of the Commission is unclear, as the following analysis demonstrates, there is clear and convincing evidence that Russia provides critical support to the D/LPR economies.

The D/LPR rely on Russia for the supply of gas, fuel and oil.\(^{2182}\) Since January 2015, when Ukraine banned all supply of oil to the occupied areas of Donetsk and Luhansk, the D/LPR have relied exclusively on Russia for oil supplies.\(^{2183}\) In February 2015, after ‘Naftogaz Ukraine’ stopped supplying gas through the gas pipeline to Donbas,\(^{2184}\) Russian Prime Minister, Dmitry Medvedev, instructed Gazprom, a Russian majority State-owned company, and the Russian Energy Ministry to prepare proposals for gas supplies to Donbas as a form of humanitarian aid.\(^{2185}\) As a result, and on the same day, Gazprom started supplying fuel to the D/LPR controlled territories via the gas measuring stations located on the border between the Rostov region of Russia and Ukrainian territory.\(^{2186}\) Between 2015 and 2016, this amounted to the supply of about 12 billion cubic meters of gas, worth 2.91 billion US dollars, to the D/LPR.\(^{2187}\) Starting from 2020, Gazprom refused to provide information about gas supplies to D/LPR due to alleged legal issues.\(^{2188}\) Gazprom informed Russian media outlet Kommersant that “they stopped disclosing the volumes of supplies to the LPR and DPR due to the absence of a contract with Naftogaz, refusing to comment further”.\(^{2189}\)

Since 2015, Russia has also supplied electricity to the D/LPR.\(^{2190}\) After Ukraine ceased supplying electricity to the LPR in April 2017 and to the DPR in July 2017,\(^{2191}\) the only source of electricity in the LPR was the Peremoga-Shakhty line from Russia.\(^{2192}\) The Peremoga-Shakhty line was practically unused prior to the conflict, but supplied up to 600MW of electricity daily by June 2015.\(^{2193}\) According to the available information, Russia has also supplied electricity to the LPR at least through to September 2019. Experts estimate that Russia’s contribution has amounted to 2.2-2.5 billion kWh per year, or about 3-3.75 billion rubbles.\(^{2195}\) Since they assumed control over parts of Donetsk oblast, the DPR has been able to continue to supply its own electricity through Starobeshchevskaya and Zuevskaya thermal power plants (‘TPPs’) which operate there.\(^{2196}\)

\(^{2181}\) RBC, “The new old curators: Why Moscow is not abandoning Donbas” (15 June 2018).

\(^{2182}\) V. Mykhnenko, “Causes and Consequences of the War in Eastern Ukraine: An Economic Geography Perspective” (2020) 72 Europe-Asia Studies 528; DW, “Media: Russia spends about 1 billion euros a year on financing Donbas” (17 January 2016); J. Röpcke, “So finanziert der Kreml die ukrainischen Rebellen: Milliarden aus Moskau” (Bild, 16 January 2016).


\(^{2184}\) Forbes, “‘Naftogaz’ explained the termination of gas supplies to Donbas” (19 February 2015).

\(^{2185}\) Forbes, “Gazprom starts gas supplies to the border with Donbas” (19 February 2015).

\(^{2186}\) Forbes, “Gazprom starts gas supplies to the border with Donbas” (19 February 2015); UHHRU, Human rights situation in Donbas (2017), pp. 5-6.

\(^{2187}\) Kommersant, “Not recognized - not gas” (15 June 2020); Glavkom, ‘Over the year, Gazprom supplied DNR/LNR with 1.727 billion cubic meters of gas’ (16 February 2016); M. Nesterenko, “Gazprom increased gas supplies to the ‘DNR’ and ‘LNR’” (UFR, 14 February 2017); Krasnaya Linia, ‘Gazprom delivered 2.4 billion cubic meters of gas to Donbas in 2017’ (18 February 2018); RNS, “Gazprom increased gas supplies to Donbas in 2019” (14 February 2020).

\(^{2188}\) Prior to 2020, Gazprom supplied gas to the D/LPR pursuant to a contract with Ukrainian company Naftogaz (which was signed prior to Naftogaz stopping its supply to the D/LPR) and send bills to Naftogaz, which remained unpaid. When the contract expired in 2019, Gazprom no longer had an official and legal route to send gas to the D/LPR territories. Consequently, it has stopped disclosing the quantities of gas supplied. Kommersant, “Not recognized - not gas” (15 June 2020).

\(^{2189}\) Kommersant, “Not recognized - not gas” (15 June 2020).

\(^{2190}\) RBC, “RBK investigation: on whose money Donbass lives” (15 June 2015).

\(^{2191}\) Economična Pravda, “Ukrenergo has completely cut off electricity supply to ORDO” (26 July 2017); H. Kostanyan and A. Remizov, “The Donbas Blockade: Another blow to the Minsk peace process” (CEPS, June 2017), p. 9; Economična Pravda, “Ukrenergo completely cut off power supply to LPR” (25 April 2017).

\(^{2192}\) UHHRU, Human rights situation in Donbas (2017), pp 5-6; StopCor, “Total blackout: electricity will be cut off in the occupied territories of Luhansk region” (8 October 2016).

\(^{2193}\) UHHRU, Human rights situation in Donbas (2017), pp 5-6.

\(^{2194}\) RBC, “The economy of the unrecognized LPR and DPR is closely linked to Russia” (15 June 2015).

\(^{2195}\) Kommersant, “Ukraine will be written off in energy losses” (13 June 2018).

\(^{2196}\) Information provided by the Government of Ukraine.

\(^{2197}\) Kommersant, “Ukraine will be written off in energy losses” (13 June 2018) DPR receives electricity from Starobeshchevskaya and Zuevskaya TPPs. Starobeshchevskaya TPP belongs to Ukrainian company ‘Donbasenergo’. Zuevskaya TPP belongs to Ukrainian company DTEK Shkidenenergo. Starting from March 2017 control over Starobeshchevskaya and Zuevskaya TPPs switched to DPR authorities. D. Rysun, “New owner of Donbasenergo Maxim Yefimov: I don’t really want to communicate with NABU” (Ekonomična Pravda, 20 August 2018); Economična Pravda, “Akimenkov’s thermal power plant in the occupied territories will be the first to suffer due to the blockade - expert” (17 February 2017).
Since the imposition of the trade embargo by Ukraine in 2017, the D/LPR controlled territories have been heavily dependent on Russia for supplies of raw materials and markets for their products. This is alleged to have included iron ore and other raw materials. According to the RBC Group, a Russian media group, its sources, including several close to large metallurgical holdings, confirmed that iron ore would be sent to Donbas via Rosreserv. The same was confirmed by the BBC.

Finally, the majority of goods sold in the D/LPR controlled territories are produced in Russia, with up to 80% of goods in the DPR having been imported from Russia in 2017. One way in which these goods are supplied to the D/LPR is through the conclusion of agreements with shell corporations in South Ossetia, which legalise the transfer of goods through Russia since Russia has officially recognised South Ossetia's statehood, but not the D/LPR's. Additionally, a number of factories – including factories that supply mining and processing equipment and products for the rocket, aerospace and locomotive industries – that were previously located in the Donetsk and Luhansk oblasts have moved to the Russian Federation.

4.1.2.3.2.8.4 Conclusion

In sum, there is evidence that Russia provided some financial assistance to the D/LPR armed groups from the earliest stages of the conflict in spring 2014. Additionally, there is clear and convincing evidence that towards the end of 2014, as the economies of the DPR and LPR began to collapse and Ukraine ceased paying salaries and social payments in the territories controlled by the D/LPR armed groups, Russia began to increasingly support the D/LPR armed groups financially, including through the provision of money for salaries and social payments and the provision of economic support, including the provision of raw materials for the D/LPR's industrial economy.

4.1.2.3.2.9 Supply and Provision of Logistical Support by the Russian Federation

The provision of logistical support and assistance in the form of supplying or dispatching military equipment or material (including arms, uniforms, vehicles and other supplies) is another indicator of overall control.


2198 Forbes, ‘Scheme with Rosrezerv? DNR and LNR will be able to receive ore for metallurgists from Russia’ (14 April 2017); RBC, ‘The head of the Rosrezerv spoke about Russia’s assistance to the DPR and LPR’ (14 April 2017); Ekonomicheska Pravda, ‘Russia admitted that it manages the captured enterprises of Donbas’ (18 April 2017).

2199 K. Skorkin, ‘Taken into balance. Why did Moscow change the owner of Donbas enterprises?’ (Carnegie Moscow Center, 24 June 2021); RBC, ‘One in the DPR and LPR will be supplied through the Federal Reserve’ (13 April 2017); RBC, ‘The head of Rosrezerv spoke about Russia’s assistance to the DPR and LPR’ (14 April 2017); BBC, ‘Crimea instead of DPR: how the government is discussing the refusal to help Donbas’ (15 September 2017); BBC, ‘A year after “nationalization” in the “DPR”: what is happening there?’ (19 March 2018); E. Solonunu, “Nationalization” from the “DPR” and “LPR”: a reaction to the blockade or a step towards integration with Russia’ (Radio Svoboda, 1 March 2017); K. Skorkin, ‘Unite and rule. How the regimes of the DPR and LPR are arranged and where they are moving’ (Carnegie, 10 March 2021); BBC, ‘A year after “nationalization” in the “DPR”: what is happening there?’ (19 March 2018); BBC, ‘“DPR” named 43 enterprises that it plans to “manage”’ (3 March 2017); V. Mykhnenko, ‘Causes and Consequences of the War in Eastern Ukraine: An Economic Geography Perspective’ (2020) 72 Europe-Asia Studies 528; BBC, ‘Crimea instead of DPR: how the government is discussing the refusal to help Donbas’ (15 September 2017).

2200 Forbes, ‘Scheme with Rosrezerv? DNR and LNR will be able to receive ore for metallurgists from Russia’ (14 April 2017).

There are multiple, credible reports that Russia has been the primary, if not sole, supplier of weapons and military equipment to the D/LPR armed groups since around May/June 2014, which has continued until the present.\footnote{M. Czuperski and others, *Hiding in plain sight. Putin’s war in Ukraine* (Atlantic Council, May 2015), p. 13; Amnesty International, *Ukraine: Mounting evidence of war crimes and Russian involvement* (7 September 2014); OHCHR, *Report on the human rights situation in Ukraine 16 February to 15 May 2015* (1 June 2015), para. 6; Y. Gorbunova, *Minimize Civilian Harm in Eastern Ukraine Conflict* (*Human Rights Watch*, 8 April 2021). 2210} The Atlantic Council, for example, concluded that the D/LPR “have been relying on a steady flow of Russian supplies, including heavy weapons such as tanks, armoured personnel carriers, artillery, and advanced anti-aircraft systems”.\footnote{An autocolumn with armed men is approaching the border of Ukraine from Russia, *Exclusive: Ukraine rebel commander (Chronicles)* (7 September 2014).} Amnesty International reported in 2014 that “Russia is fuelling the conflict, both through direct interference and by supporting the separatists”, including through “the steady flow of weapons and other support”.\footnote{OHCHR, *Report on the human rights situation in Ukraine 16 November 2016 to 15 February 2017* (15 March 2017), para. 3 citing OHCHR report on the human rights situation in Ukraine covering the period from 16 February to 15 May 2015, paras. 2, 6; OHCHR report on the human rights situation in Ukraine covering the period from 16 May to 15 August 2015, paras. 2, 58-59; OHCHR report on the human rights situation in Ukraine covering the period from 16 August to 15 November 2015, paras. 2, 22 (see also fn. 128); OHCHR report on the human rights situation in Ukraine covering the period from 16 February to 15 May 2016, para. 2 (see also fn. 3).} 2211 The provision of supplies continued to the present, this demonstrates the D/LPR’s continued reliance on Russia.

### 4.1.2.3.2.9.1 Military Supplies in 2014 – 2015

As early as May 2014, reports suggest that attempts (both successful and unsuccessful) were made to cross the border from Russian territory with military equipment.\footnote{See, e.g., Espreso, ‘An autocolumn with armed men is approaching the border of Ukraine from Russia’, *- Tymchuk* (26 May 2014); Espreso, ‘ATO in Donetsk (Chronicles)’ (26 May 2014); Interfax, ‘At night the part of fighters on trucks broke into Ukraine from the Russian Federation - State border service’ (27 May 2014); information provided by the Government of Ukraine. 2212} From June 2014, it appears that the provision of equipment increased. On 8 June 2014, Igor Girkin requested Russian military assistance from Sergey Aksyonov, the purported ‘Prime Minister’ of Crimea.\footnote{Ukraine: Mounting evidence of war crimes and Russian involvement (7 September 2014).} From June until the end of August 2014, Russia provided mechanised equipment, armour and advanced munitions to the D/LPR forces, as well as medium air defences (such as Buk-M1s capable of high-altitude interception) operated by units from the Russian Federation.\footnote{OHCHR, *Report of the Working Group on Arbitrary Detention*, UN Doc. E/CN.4/2000/4 (28 December 1999), paras.15, 17.}

Annex H (Specific Instances of the Provision of Military Supplies in 2014) contains a list of specific reports detailing the Russian government’s supply and transport of military equipment, including tanks and heavy weaponry to the D/LPR between May and August 2014. Reports of Russia’s provision of military supplies during this time have also been corroborated by statements from the D/LPR leadership.\footnote{Amnesty International, *Ukraine: Mounting evidence of war crimes and Russian involvement* (7 September 2014).} On 15 August 2014, Aleksandr Zakharchenko, then Head of the DPR’s government, announced that the DPR had received from Russia “150 units of military equipment, [...] about 30 tanks, everything else - infantry fighting vehicles and armoured personnel carriers, 1200 personnel who were trained for four months on the territory of the Russian Federation”.\footnote{See, e.g., Espreso, ‘An autocolumn with armed men is approaching the border of Ukraine from Russia’, *- Tymchuk* (26 May 2014); Espreso, ‘ATO in Donetsk (Chronicles)’ (26 May 2014); Interfax, ‘At night the part of fighters on trucks broke into Ukraine from the Russian Federation - State border service’ (27 May 2014); information provided by the Government of Ukraine. 2212} In autumn 2014, Igor Girkin stated that the...
Russian government forced his removal from Donbas by threatening to cease the supply of aid from Russia if he did not step down as Defence Minister of the DPR.2219 He added, “no fight is possible without the supplies”.2220

In early September 2014, upon the establishment of the 1st and 2nd Army Corps, “Russia began a more robust train-and-equip mission designed to turn the separatists into a more capable conventional force”.2221 There are multiple corroborating reports that use social media posts and satellite imagery to confirm the presence of Russian heavy weaponry and military vehicles inside the D/LPR towards the end of 2014 and in 2015.2222

One of the primary ways that military supplies entered the D/LPR territories from Russia is under the guise of ‘humanitarian convoys’. Between 2014 and 2015, Russia sent to the D/LPR at least 48 ‘humanitarian convoys’, each comprising over 100 vehicles.2223 There is information that at least some of these convoys transferred military equipment. According to interviews conducted by Ukrainian Helsinki Human Rights Union (‘UHHRU’) and information obtained by the GoU, detained Ukrainian servicemen were forced to offload the trucks from ‘humanitarian convoys’ and reported that they contained ammunition and other military equipment.2224 Annex H (Specific Instances of the Provision of Military Supplies in 2014) provides a list of military convoys that were recorded entering eastern Ukraine from the Russian Federation in the first half of 2015. These convoys contained, inter alia, tanks, trucks, ammunition, GRAD systems, fuel and vehicles and guns.

4.1.2.3.2.9.2 Military Supplies After 2015

The Russian Federation has continued to provide military supplies to the D/LPR from 2015 until the present day, demonstrating the D/LPR’s continued military reliance on the support of the Russian Federation.2225 As the Atlantic Council explains, “[w]hile it is impossible to give exact figures on how much equipment has been provided to separatists by the Russian government, it is clear that a wide variety of vehicles and arms—used almost exclusively by the Russian military—are in use in eastern Ukraine.”2226

According to a witness who lived close to the Russia-Ukraine border, the movement of military convoys from Russia to the D/LPR continued in 2015 and 2016, though on a lesser scale than in 2014.2227 Other evidence corroborates this information. According to Ukrainian intelligence and testimonies from Ukrainian military personnel, the D/LPR received large quantities of weaponry and military supplies from the Russian Federation between September and December 2016, including dozens of MLRS,2228 tanks, cars with fuel and lubricant, trucks with cars, infantry carriers, cars with ammunition, GRAD systems, 122-mm D-30 howitzers and an Osa anti-aircraft system.2229 According to

2219 M. Tishenko, “Strelkov admitted why at the very beginning he captured Slaviansk and Kramatorsk” (Komsomolskaya Pravda, 11 November 2014).
2221 M. Kofman et al., “Lessons from Russia’s Operations in Crimea and Eastern Ukraine” (Rand Corporation, 2017), p. 44.
2223 UHHRU, Human rights situation in Donbas (2017), p.3; Radio Svoboda, “48th Russian “rubber convoy” arrives in Ukraine” (24 December 2015); BBC, “Russia sends the eighth rubber convoy to Donbas” (25 November 2014); Ukrinform, “Russia sent to Donbass the 66th “rubber convoy” - SBGS” (15 June 2017); UNIAN, “SBGS about the 63rd “rubber convoy” from Russia: cars were loaded a little more than half” (23 March 2017).
2224 Information provided by the Government of Ukraine; UHHRU, Human rights situation in Donbas (2017), p. 4.
2226 M. Czuperski and others, “Hiding in plain sight. Putin’s war in Ukraine” (Atlantic Council, May 2015), pp. 8-12; H. Cognass, “Russia’s weapons of Ukraine’s destruction were not “found in Donbas mines”” (UKRPG, 24 March 2017); InformNapalm, “Database and Video Overview of the Russian Weaponry in the Donbas” (17 September 2016).
2227 Information provided by the Government of Ukraine; A Fleaurant and others, “Trends in International Arms Transfers, 2016” (Sipri, February 2017), p. 4.
2229 Information provided by the Government of Ukraine; InformNapalm, “Location of Russian Terrorist Artillery Battalion Disclosed (Aerial Photos)” (10 October 2016); UAwire, “Media: Separatists in eastern Ukraine received Osa anti-aircraft missile systems from Russia” (5 May 2017); InformNapalm, “Database and Video Overview of the Russian Weaponry in the Donbas” (17 September 2016).
Ukrainian intelligence, in 2017, Russian military personnel, weapons and military vehicles crossed the Ukrainian border 112 times. In the following paragraphs, this continued military supply is corroborated by numerous other independent and reliable sources.

According to a 2016 report by the Stockholm International Peace Research Institute (‘SIPRI’), the D/LPR “received tanks and other armoured vehicles as well as anti-tank and portable surface-to-air (SAM) missiles from Russia”. In the same year, InformNapalm published an infographic of 44 types of armament and equipment used by the Russian army which were used by the D/LPR militants in Donbas between 2014 and 2016. Thirty-four of these weapons were never in the possession of Ukraine, and thus could not have been seized by the D/LPR. In April 2017, civilians residing in a city in the Luhansk oblast, confirmed that from 2014 to at least 2017 (the date the statement was made), military vehicles were arriving from Russia to Ukraine via the Izvarino and Dovzhan crossing points.

In 2018, based on observations from the OSCE Special Monitoring Mission (‘SMM’), Bellingcat reported that recently developed Russian electronic warfare systems had been discovered in Donbas. In particular, on 28 July 2018, the OSCE SMM for the first time spotted “four distinct electronic warfare systems (a Leer-3 RB-341V, a 1L269 Krasukha-2 and RB-109A Bylina, and an anti-UAV system, Repellent-1)”. In October 2018, the OSCE SMM spotted another Russian humanitarian convoy crossing the Ukraine-Russia border in a non-government controlled area of Donetsk in the middle of the night with one truck carrying an anti-aircraft gun. In November 2020, the OSCE SMM spotted a RB-341B Leer-3 electronic warfare system not far from Luhansk. These are Russian-made systems that have been produced since 2015.

The Ukrainian Ministry of Defence found that, during the first half of 2018, Russia delivered around 40 armoured fighting vehicles (‘AFVs’) to the D/LPR. As of June 2018, Russia had delivered, in total, at least 208 MLRSs, 475 main battle tanks, 750 artillery and mortar systems, 400 surface-to-air missile systems and 870 armoured combat vehicles, usually equipped with medium automatic guns. Also, between 2016 and March 2018, Russia delivered roughly 26,000 tons of ammunition to the D/LPR.

According to a report from Conflict Armament Research, which inspected and documented weapons, ammunition and other conflict-related materiel in Donetsk and Luhansk between 2014 and 2019, factories based in the Russian Federation manufactured all but two of the 43 weapons documented (ten of which were manufactured after the "

2230 Information provided by the Government of Ukraine.
2233 Information provided by the Government of Ukraine; Donetckie Novosti, 'Russia separates itself from Donbass with barbed wire - journalist' (11 June 2018); InfoResist, 'Intelligence: Russia supplies weapons to militants through Izvarino' (28 February 2016); RBC, 'Kyiv announced the introduction of 10 tanks from Russia to the territory of Ukraine' (8 April 2015).
2235 OSCE, 'Latest from the OSCE Special Monitoring Mission to Ukraine (SMM), based on information received as of 19:30, 10 August 2018' (11 August 2018).
2236 OSCE SMM Ukraine (@OSCE_SMM), 'In a non-government controlled area of Donetsk region near the border with the Russian Federation, an SMM UAV again spotted convoys of trucks along a dirt road where there is no border crossing facility in the middle of the night. One of the trucks carried an anti-aircraft gun.' (Twitter, 12 October 2018).
2238 Ukrinform, 'Ukraine in the OSCE: Russia must explain how its Leer ended up in Donbas' (13 November 2020).
2239 Radio Svoboda Ukraive Youtube Channel, 'Russia is importing weapons to Donbas | Donbas Realities' (20 August 2018), strating at 0:40.
2240 Information provided by the Government of Ukraine.
2241 Conflict Armament Research, 'Weapons of the War in Ukraine' (November 2021), p. 12-13: With the cooperation of the Security Service of Ukraine, CAR field investigation teams gained access to weapons, ammunition, and related items recovered from armed formations operating in certain areas of the Donetsk and Luhansk regions of Ukraine. Between 2018 and 2020, CAR documented captured materiel held by eight different institutions with in the Ukrainian judicial and security system, including the National Guard of Ukraine, the National Police of Ukraine, the Security Service of Ukraine, the State Border Guard Service of Ukraine, the Ukrainian Armed Forces, the Ukrainian General Prosecutor, the Ukrainian Military Prosecutor, and the Ukrainian Ministry of Internal Affairs (hereafter referred to as ‘Ukrainian defence and security forces’). Together, these forces recovered weapons and ammunition in 29 different locations across the Donetsk and Luhansk regions between 2014 and 2019.
dissolution of the Soviet Union in 1991) and most of the ammunition examined. In addition, the D/LPR armed groups deployed a fleet of Russian-made drones in Ukraine.

Russia’s provision of military supplies to the D/LPR has continued until the present. For example, in December 2019, Russia delivered to the D/LPR about 3,000 tons of fuel and lubricants by rail and a column of military equipment (armoured vehicles, artillery and trucks) crossed the border between Russia and Ukraine. According to statements from Ukrainian officials, Russia continued supplying the D/LPR stocks of artillery shells, mortar mines, ammunition for rocket-propelled grenade launchers and grenade launchers in 2021. In March 2021, the Ukrainian Ministry of Defence reported that the 1st and 2nd Army Corps received new batches of anti-tank and anti-personnel mines, unmanned aerial vehicles, electronic warfare stations and several dozen military SUVs over the course of that month alone.

Denis Pushilin, the current Head of the DPR, also confirmed receipt of new equipment, including Russian-made equipment that was delivered to the DPR in March 2021. Pushilin presented the DPR army with Russian-made UAZ Patriot Pickup SUVs and stated that “[a]t the moment, the material and technical base of the units is constantly being updated, and the People’s Militia [DPR army] is receiving new equipment.”

On 14 April 2021, the OSCE SMM spotted 15 new Russian-made armoured UAZ Esail armoured utility vehicles in territory under DPR’s control. These vehicles have been used by the Russian army since 2018. On 5 May 2021, Eastern Human Rights Group posted a video of a column of military equipment crossing the Russian-Ukrainian border and moving in the direction of Donetsk. On 13 July 2021, experts of Eastern Human Rights Group located in the D/LPR recorded another column of tanks and military cargo crossing the Russian-Ukrainian border. On 1 October 2021, Ukrainian intelligence notified that, in September 2021, Russia supplied “more than 5,000 tons of fuel, new consignments of weapons and ammunition, including anti-tank guided missiles and shells for rocket systems of volley fire, shots to hand-held anti-tank grenade launchers, anti-tank and anti-personnel mines, ammunition for large-calibre machine guns and sniper rifles.”

4.1.2.3.2.9.3 Provision of Other Logistical Support

Support to the D/LPR has also been provided through food and humanitarian aid. According to the Russian Ministry of Emergency Situations, between August 2014 and September 2017, Russia sent 68 convoys to Donbas and delivered more than 70 thousand tons of humanitarian cargo. In total, Russia has officially sent to the D/LPR at least 101
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4.1.2.3.2.9.4 CONCLUSION

There is clear and convincing evidence that Russia has supplied significant logistical support, primarily in the form of military equipment and supplies, to the D/LPR armed groups since approximately May/June 2014 until the present. The scale of Russia’s provision of supplies to the D/LPR armed groups, and the absence of supply chains emanating from other sources, leads to a conclusion that it is highly likely that the D/LPR armed groups could not maintain their hostilities against the Ukrainian forces without Russia’s logistical support.

4.1.3 CONCLUSION ON CLASSIFICATION OF THE ARMED CONFLICT IN DONBAS

From 14 April 2014 in Donetsk and 30 April 2014 in Luhansk, a NIAC began between the Ukrainian armed forces and security forces (collectively, the Ukrainian forces) and the D/LPR armed groups. In Donetsk, the following operated during the hostilities as organised armed groups: Girkin’s group at least by 12 April 2014; Bezler’s group at least by 14 April 2014, the Patriotic Forces of Donbas (Vostok Battalion) at least by 9 May 2014, and the Oplot Battalion at least by 26 May 2014. In Luhansk, the following operated during the hostilities as organised armed groups: the Army of the South-East at least by 29 April 2014; the People’s Militia of Luhansk (Prizrak Battalion) at least by 27 April 2014; the Luhansk Cossack National Guard at least by 3 May 2014; and Dryomov’s group at least by 22 May 2014.

Having established the existence of a NIAC between the Ukrainian forces and the D/LPR armed groups, the section subsequently examined whether an IAC between Russia and Ukraine existed either: 1) in parallel to the NIAC as a result of any direct intervention by Russia in the conflict in support of the non-state armed groups; or 2) in place of the NIAC, in the case that the non-state armed groups acted under Russia’s overall control, thereby internationalising the conflict.

In relation to Russia’s direct intervention, numerous reports and testimonials, predominately emanating from Ukrainian sources, allege that individual RFAF units and FSB and GRU agents intervened in the conflict from the beginning of April 2014, and that Ukrainian positions were shelled from Russian territory from end of April (particularly towards the end of June and the beginning of July). While such evidence may establish the existence of an IAC between Russia's Involvement in Crimea and Donbas

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2257 V. Horodeev, “Russia sends New Year’s humanitarian convoy to Donbas” (RBC, 18 December 2014).
2259 Interfax, “Another humanitarian convoy sent to Donbas” (22 December 2016).
2260 Interfax, “Another humanitarian convoy leaves Russia for Donbas” (21 December 2017).
2262 Interfax, “The Ministry of Emergency Situations sent the 96th humanitarian convoy with 110 tons of cargo to Donbas” (19 December 2019).
2263 Regnum, “The 101st humanitarian convoy from Russia arrived in Donetsk and Lugansk” (17 December 2020); TASS, “Cars of a humanitarian convoy from Russia arrived in Donetsk and Lugansk” (17 December 2020); Cxid.info, “A humanitarian convoy of the Russian Emergency Situations Ministry has arrived in Lugansk. What did they bring this time?” (17 December 2020).
2264 Don News, “More than 52,000 tonnes of humanitarian aid delivered to the DPR” (26 November 2020).
2265 Lugansk Information Center, “Rescuers of the Ministry of Emergency Situations of the Russian Federation have delivered almost 49 thousand tons of humanitarian aid to the Republic since 2014 – Ministry of Emergency Situations of the LPR” (26 November 2020).
2266 Interfax, “The source announced the delivery of ‘Sputnik V’ to the DPR” (30 January 2021); RBC, “The Ministry of Health of the DPR announced the receipt of a batch of Russian vaccine against COVID-19” (31 January 2021); I. Buhtiyarov, “Light vaccination. What happens to vaccinations in LNR and how Russia helped with half of ‘Sputnik’” (Hromadske, 5 August 2021); Interfax, “Vaccination against coronavirus with ‘Sputnik V’ begins in the LPR” (3 February 2021).
2267 Donetsk Agency of News, “People over 60 will be vaccinated in the DPR with Sputnik Light – Ministry of Health” (24 August 2021); Interfax, “Mass vaccination with Sputnik Light starts in LPR” (29 July 2021).
Russia and Ukraine, in the absence of independent and reliable corroborating evidence and/or any evidence to establish that these individuals were acting as agents of the Russian State (as opposed to acting in an individual capacity or ultra vires), it is not possible to determine that Russia directly intervened in the conflict and, therefore, that an IAC existed at that time. Nevertheless, a likelihood exists that further investigation may provide clear and convincing evidence of the existence of an IAC prior to 11 July 2014, particularly in view of Russia’s belligerent statements around the time.

The first instance of Russia’s direct intervention on the territory of Ukraine that is sufficiently corroborated to satisfy the clear and convincing standard occurred on 11 July 2014 when the RFAF shelled Ukrainian forces in Zelenopillya, Luhansk oblast, in support of the D/LPR armed groups. From August 2014 until 18 February 2015, there is clear and convincing evidence that Russia conducted several operations on Ukrainian territory to support the D/LPR armed groups, namely in Ilovaisk, Donetsk airport, Mariupol and Debaltseve. There is also clear and convincing evidence of the deployment of RFAF officers into the D/LPR armed forces in Ukraine from around September 2014 onwards through the 12th Reserve Command (‘RC’), later renamed the 8th Combined Arms Army, of the Southern Military District of the Russian Ministry of Defence.

Evidence that Russia directly intervened in Ukraine from 11 July 2014 until 18 February 2015 through cross-border artillery strikes, and onwards through the deployment of Russian officers and servicemen into the D/LPR armed groups in Ukraine, is sufficient to establish the existence of an IAC between Russia and Ukraine from 11 July 2014, running parallel to the NIAC between Ukraine and the D/LPR armed forces. Nonetheless, due to clear and convincing evidence that Russia exercised overall control over the D/LPR armed groups starting from July 2014, it is more accurate to conclude that the NIAC became internationalised from July 2014 onwards.

To establish overall control, the circumstances need to be considered as a whole, on a case-by-case basis. Underpinning Russia’s contributions to the D/LPR armed groups have been shared military and territorial goals – namely, the intention to ensure Ukrainian territory in Donetsk and Luhansk is under the effective control of the D/LPR, and outside the de facto control of Ukraine. Russia’s consistent actions from 2014 until the present to support, influence and control the D/LPR armed groups in furtherance of their continued control over territory in Donbas, as well as measures to further incorporate the territory controlled by the armed groups into the orbit of Russia, support this conclusion.

While there is some indication that Russia exercised influence over the D/LPR forces from as early as March/April 2014, further investigation is required to establish a relationship of overall control during this time period. Indeed, the totality of evidence indicating control between March and July 2014 is insufficient to clearly and convincingly show that, in addition to financing, training, and equipping the D/LPR armed forces, Russia also played a role in organising, coordinating, or planning their military actions. Instead, the evidence shows that Russia’s exercise of overall control was an evolving process that began with influence in April 2014 and developed into the requisite level of control to constitute overall control in July 2014.

By July 2014, evidence of Russia’s overall control over the D/LPR armed groups is clear and convincing. Taking the evidence as a whole, the nature and scale of Russia’s involvement, when combined with the correspondence of aims and objectives, militates against a finding that individuals from organs of the Russian State (including the FSB, GRU, RFAF and political leadership) were acting in a personal capacity or otherwise ultra vires from July 2014. Instead, the only reasonable conclusion is that the Russian State utilised its apparatus to ensure overall control over the D/LPR armed groups in furtherance of their shared territorial and military aims.

To begin, from July 2014, there is clear and convincing evidence that Russia increased its direction and supervision over the D/LPR military forces through key military supervisors, such as Vladimir Ivanovich, Nikolai Fedorovich Tkachev, Igor Egorov and Oleg Vladimirovich Ivannikov, who had commanding roles within the D/LPR armed groups in the summer of 2014. Russia was also able to exert influence over, and control the activities of, key military personnel
in the D/LPR, including Alexander Borodai, Igor Girkin, Sergey Dubinsky, Igor Bezler, Valerii Bolotov and Ihor Plotnytskyi. Crucially, Russia’s direct intervention in the conflict in Ukraine began in July 2014, and the RFAF coordinated, planned and commanded joint operations with the D/LPR (e.g., in Ilovaisk, Donetsk airport, Mariupol and Debaltseve) between August 2014 and February 2015. Russia’s influence over the D/LPR’s political leadership was also aided by Russia’s appointment of Vladislav Surkov as curator in Donbas in July 2014 who, on Russia’s behalf, oversaw and controlled political developments in the D/LPR. Control over the political leadership was maintained by forcibly removing those who opposed Russia’s policies and ensuring they were replaced with those willing to follow Russia’s instructions and work toward the same objectives.

After the promulgation of the Minsk-II Agreements in February 2015, and the subsequent stabilisation of areas under the control of the D/LPR armed groups, the need for Russia’s large-scale direct intervention and the immediacy of its military support decreased. However, Russia’s overall control over the D/LPR forces continued and actually increased. After the establishment of the 1st and 2nd Army Corps in the D/LPR, Russia’s control over the armed groups’ military formalised with a system of sending its own military officers and personnel to serve in Donbas through the 12th Reserve Command/8th Army of the Southern Military District of the RFAF. The incorporation of Russian commanding officers into the leadership of the 1st and 2nd Army Corps, and the similarities between the military ranks and structures of the State and the armed group, furthered Russia’s control over the organisation, planning and coordination of the D/LPR’s military activities.

Russia’s ability to plan, organise and coordinate the military and political activities of the D/LPR was maintained and supported through the D/LPR’s severe dependence on the Russian Federation. In particular, Russia’s financial assistance that began in spring 2014, increased throughout 2014, resulting in the D/LPR’s gradual economic dependence on Russia, particularly after the Ukrainian Government ceased social payments and economic support in winter 2014 to 2015. The provision of weapon supplies and training, which began in spring 2014 and increased throughout summer 2014, also became more systematic after the establishment of the 1st and 2nd Army Corps. By August 2015, Russia had established a vast network of at least 54 training camps in Russia, 30 in Crimea and 58 in Donetsk, to train and deploy troops into the D/LPR forces. These contributions upheld the D/LPR’s dependency on the Russian Federation for their continued survival and, consequently, enabled Russia’s continued exercise of overall control over the groups.

Russia’s overall control over the D/LPR, effected through the same means, continues through to the present. For example, in addition to the continued provision of economic assistance, training, military supplies and logistical support, Russia’s 12th RC/8th Army of the Southern Military District has continued to play a pivotal role in organising, coordinating, and planning the activities of the D/LPR’s 1st and 2nd Army Corps. Russia has also persisted with its system of curators, with Vladislav Surkov continuing to act as the main curator overseeing the D/LPR political sphere until 2020, before being succeeded by Dmitry Kozak from winter 2020. To the present day, Kozak is said to define politics, strategy and ‘foreign relations’ in the D/LPR, while also representing Russia in diplomatic negotiations. He is assisted in his work by the subordinate Department for Cross-Border Cooperation of the Administration of the President of the Russian Federation, headed by Alexei Filatov.

Considering the full scope and cumulative effect of Russia’s contributions to the D/LPR armed groups – including organising, planning and directing their military and political activities, as well as the D/LPR’s continued dependency on Russia as a result of its assistance in the form of military supplies, training and economic assistance – and within the context of Russia’s continued territorial aims in Donbas, the evidence clearly and convincingly establishes a relationship of overall control. These circumstances militate against any other reasonable conclusions that could be drawn from the evidence.

Thus, in sum, there is clear and convincing evidence to establish that from 14 April 2014 in Donetsk and 30 April 2014 in Luhansk, a NIAC existed between Ukraine and the D/LPR organised armed groups. From July 2014, the NIAC was
transformed by the relationship of overall control into an IAC between Russia (through the D/LPR armed forces) and Ukraine.

The following section will consider whether Russia, through its overall control over the D/LPR armed groups, is occupying the territory under the control of the D/LPR.
4.2 Occupation by Proxy: Is Donbas Occupied?

4.2.1 Introduction

The question of whether the Russian Federation occupies parts of Donbas rests upon a detailed factual assessment of several legal issues. Whereas in Crimea there is evidence that the Russian Federation directly occupies the territory,\(^{2268}\) this is not the case in Donbas. In fact, there is little or no available evidence that would suggest that the Russian Federation directly exercises effective control over the relevant areas of Donbas, namely the Donetsk and Luhansk oblasts.

This does not, however, mean that Russia is not occupying Donbas – as it might still occupy the territory indirectly, i.e. ‘occupation by proxy’. Occupation by proxy describes a situation where a foreign State controls territory through an organisation/group that exercises effective control over that territory.\(^{2269}\) In order to establish whether the Russian Federation occupies Donbas by proxy, the following must be assessed: 1) whether an organisation/group (namely, the self-proclaimed DPR or LPR) is in effective control of territory, respectively; and 2) whether the Russian Federation exercises overall control over that organisation/group.

This assessment is critical for Ukraine. Although a finding that Russia is occupying Donbas will not remove Ukraine’s IHL or IHRL obligations towards the civilian population, it will help to define these obligations. Further, it will also clarify the obligations that Russia owes to civilians in Donbas and enable Ukraine to take legal action to enforce those rights and seek remedies for any violations that take place therein.

4.2.2 Overview of the Law

The law that defines occupation comes from various sources. The most relevant among them is IHL, although it fails to provide clear standards for determining when an occupation comes into existence.\(^{2270}\) Article 42 of the Hague Regulations provides that: “[t]erritory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised”.\(^{2271}\) The ICJ,\(^{2272}\) the ICTY\(^{2273}\) and the ICC\(^{2274}\) have confirmed this provision as the customary IHL standard for determining the existence of an occupation, including for the applicability of the Geneva Conventions.\(^{2275}\)

\(^{2268}\) See Section 3.2 Belligerent Occupation: Is Crimea Indeed Occupied?


\(^{2271}\) Hague Regulations, Article 42 (emphasis added).


\(^{2274}\) See e.g., Lubanga Trial Judgement, para. 541; Prosecutor v. Thomas Lubanga Dyilo, Decision on the Confirmation of the Charges, Case No ICC-01/04-01/06, 29 January 2007 (“Lubanga Decision on the Confirmation of the Charges”), para. 212; Prosecutor v. Germain Katanga, Judgement pursuant to article 74 of the Statute, Case No ICC-01/04-01/07, 7 March 2014 (“Katanga Trial Judgment”), para. 1179.

\(^{2275}\) The Geneva Conventions apply in “all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance.” (Common Article 2, Geneva Conventions I-IV; ICRC 2020 Commentary to the Geneva Convention III - Common Article 2, para. 319. See also, 2016 ICRC Commentary to the Geneva Convention I, para. 286). See also, Geneva Convention IV, Article 154; ICRC 2016 Commentary to the Geneva Convention I, para. 296; Naletilić and Martinović Trial Judgment, paras. 215–216; ICJ, Wall Advisory Opinion, para. 78; ICJ, Armed Activities Case, paras. 172–177; Sassoli, 2015, 1393. Nonetheless, the application of the law of occupation as it affects ‘individuals’ as civilians protected under the Fourth Geneva Convention does not require that the Occupying Power have actual authority, as per Article 42 Hague Regulations, but only that they fell into “the hands of the occupying power” : 1958 Commentary to the Geneva Convention IV, p. 60; Naletilić Trial Judgement, paras. 220-222.
Pursuant to Article 42 of the Hague Regulations, ‘belligerent occupation’ is defined as “the temporary placement of the territory of a State or a part of it under the de facto authority of a hostile army to the extent that it exercises a high degree of control over such territory.” 2276 The concept of ‘effective control’ has been used in the jurisprudence to specify and substantiate the degree of authority and control that must be present to establish a situation of occupation. 2277 Accordingly, territory belonging to a State becomes occupied when it comes under the effective control of hostile foreign armed forces, even if the occupation is not met with armed resistance and there is no fighting. 2278

Article 42 of the Hague Regulations does not limit the geographical scope of the occupation and there is broad consensus that occupation can be limited to small areas (such as villages). 2279 Nonetheless, it is recognised that delineating the exact ‘boundaries’ of the occupied territory can be extremely complicated. 2280 Similarly, occupation law does not set specific time limits for occupation. 2281 However, some experts suggest that occupation implies a degree of stability requiring a certain period of time to have expired. 2282 In this respect, the Eritrea-Ethiopia Claims Commission recognised that not all of the obligations relevant to the occupied territories contained in the Fourth Geneva Convention (namely, Section III of Part III) could reasonably be applied to an armed force anticipating combat and present in an area for only a few days. 2283 In the Issa case before the ECtHR, although the Court did not conclude that Turkey maintained effective control, the Court acknowledged that a military operation, conducted by Turkish forces in northern Iraq in 1995 for a few weeks only, entailed the exercise of ‘effective control’ in the area. 2284

The current section deals with the legal determination of when an occupation begins according to Article 42 of the Hague Regulations. A comprehensive review of the Hague Regulations and their preparatory work, commentaries on the matter by the ICRC, academic literature, military manuals, and jurisprudence reveal that the following three cumulative conditions must be met to establish occupation:

i. The armed forces of a State are physically present in a foreign territory without the consent of the effective local government in place at the time of the invasion;

ii. The effective local government in place at the time of the invasion has been or can be rendered substantially or completely incapable of exerting its powers by virtue of the unconsented-to presence of the foreign forces; and


2277 2020 Commentary on the Geneva Convention III, para. 336: “Indeed, only effective control will allow the foreign troops to apply the law of occupation. In this regard, ‘effective control’ is an essential concept as it substantiates and specifies the notion of ‘authority’ lying at the heart of the definition of occupation contained in Article 42 of the Hague Regulations. Accordingly, effective control is the main characteristic of occupation as there cannot be occupation of a territory without effective control exercised over it by hostile foreign forces. However, effective control does not require the exercise of full authority over the territory; instead, the mere capacity to exercise such authority would suffice. Military occupation can be said to exist despite the presence of resistance to it and can be said to exist even when some part of the territory in question is temporarily controlled by resistance forces.” 2016 Commentary to the Geneva Convention I – Common Article 2, para. 302.


2281 ICRC 2015 Commentary to Common Article 2, para. 320; ICRC 2020 Commentary on the Geneva Convention III, para. 353


2283 Eritrea Ethiopia Claims Commission, Partial Award, Western Front, Aerial Bombardments, and Related Claims, Eritrea Claims, paras. 1, 3, 5, 9-13, 14, 21, 25,26, 26-27: “The Commission agrees that the Ethiopian military presence was more transitory in most towns and villages on the Western Front that it was on the Central Front, where the Commission found Ethiopia to be an occupying power. The Commission also recognises that not all of the obligations of Section III of Part III of Geneva Convention IV (the section that deals with occupied territories) can reasonably be applied to an armed force anticipating combat and present in an area for only a few days”.

2284 ECtHR, Issa v. Turkey, Judgement of 16 November 2004, Application No. 31821/96, para 74.
iii. The foreign forces are in a position to exercise authority over the territory concerned (or other parts thereof) in lieu of the local government.\textsuperscript{2285}

4.2.2.1 OCCUPATION BY PROXY

While the above describes ‘classic’ belligerent occupation, modern conflicts often do not fit within this traditional model. Indeed, situations in which a territory is controlled by non-state armed forces acting on behalf of, and controlled by, a foreign State are becoming increasingly common. Such situations may still qualify as belligerent occupation (i.e., occupation by proxy), although the foreign State has not deployed its armed forces into the occupied territory. This notion was developed to ensure that States cannot evade their IHL obligations (more specifically, the law of occupation) by using proxies.\textsuperscript{2286}

Like classic belligerent occupation, establishing occupation by proxy requires a demonstration of the fact that the Occupying Power exercises ‘effective control’ over the territory in question. However, such effective control is exercised indirectly through surrogate (or proxy) armed forces.\textsuperscript{2287} In such a situation, the foreign State would be considered an Occupying Power provided that it exercises a certain level of control over the de facto local authorities or other local organised groups that are themselves in effective control of all or part of the territory.\textsuperscript{2288} In the view of the ICRC, this would turn the individuals belonging to such groups into ‘agents’ or ‘auxiliaries’ of the foreign State.\textsuperscript{2289}

While the ability of a State to occupy a territory through the actions of local authorities or other local organised groups is widely recognised in international law,\textsuperscript{2290} what level of control over the proxies is required is an unsettled question.\textsuperscript{2291} As discussed above,\textsuperscript{2292} there are divergent views as to whether the ‘effective control’ test, established by the ICJ,\textsuperscript{2293} or the ‘overall control’ test, preferred by the ICTY\textsuperscript{2294} and the ICC,\textsuperscript{2295} is the correct test. However, the overall control test appears to have become the preferred test under IHL and international criminal law (‘ICL’) for the determination of the existence of an occupation by proxy.\textsuperscript{2296} Indeed, the ICRC recognises that “[u]nder humanitarian law, effective control over all or parts of a foreign territory may be exercised through surrogate armed forces as long as they are subject to the overall control of the foreign State.”\textsuperscript{2297}

\textsuperscript{2285} ICRC 2016 Commentary to the Geneva Convention I – Common Article 2, 2016, para. 304 (emphasis added); ICRC 2020 Commentary to the Geneva Convention III – Common Article 2, 2020, para. 337.
\textsuperscript{2286} Prica et al Appeal Judgement, para. 322.
\textsuperscript{2291} Sassoli, International Humanitarian Law, para. 8.205.
\textsuperscript{2292} See Section 4.1.1.2.1.2 Indirect Intervention: Participants in the Internal Armed Conflict Act on Behalf of the State (‘Overall Control’).
\textsuperscript{2294} Tadić Appeal Judgement, IT-94-1-A, 15 July 1999, paras. 86, 122, 131, 137; Blaskic Trial Judgement; Aleksovski Appeal Judgement; Prica et al Appeal Judgement, para. 238.
\textsuperscript{2295} Lubanga Judgement, para. 541. See also Lubanga Decision on Confirmation of Charges, para 211; Katanga Trial Judgement, para. 1178; Bemba Trial Judgement, para. 130; Ongwen Trial Judgement, para. 2687.
\textsuperscript{2297} ICRC 2016 Commentary to the Geneva Convention I – Common Article 2, para. 329. At fn. 184: “The question of overall control over the group or entity is distinct from the question of whether that group or entity exercises effective control over the territory”; ICRC 2020 Commentary to the Geneva Convention III – Common Article 2, para. 363 (See also, fn. 164).
Accordingly, the present analysis will evaluate the position of the Russian Federation as an Occupying Power in Donbas in line with the overall control test. The Russian Federation will be considered an occupying power in Donbas under IHL for the duration of time that it has exercised overall control over *de facto* local authorities or other local organised groups (*i.e.*, the D/LPR) that in turn exercised ‘effective control’ in Donbas.2298

### 4.2.3 ASSESSMENT

Whether a particular territory is occupied is a question of fact that needs to be examined on a case-by-case basis.2299 In order to assess whether Russia is occupying parts of Donbas through the D/LPR by proxy, it must be determined whether:

1. The Russian Federation exercises *overall control over the D/LPR*,2300 and
2. The D/LPR exercises *effective control over the territory* of Donbas.2301

Where both conditions are satisfied, Russia may be said to be the Occupying Power in Donbas.

As has been discussed above,2302 by July 2014 there is clear and convincing evidence that Russia had overall control over the D/LPR armed groups. As such, the first requirement – that Russia exercises overall control over the D/LPR – necessary to establish occupation by proxy is fulfilled. Therefore, this assessment will move directly to examine whether the D/LPR exercises effective control over the territory of Donbas.

The effective control test applied when determining whether a situation amounts to an occupation by proxy is the same as the one applied in cases of classic belligerent occupation, provided that the local forces or agents are acting under the overall control of a foreign State.2303 In such a situation, the effective control of the foreign State is assessed through the extent of control exercised by its proxy forces.2304 Accordingly, the fulfilment by the D/LPR of the three cumulative conditions of occupation by proxy will be required to establish the effective control of the D/LPR and, consequently, Russia, over Donbas. These conditions are: the physical presence of the armed groups; the substantial or complete inability of Ukraine to exert its powers; and that the armed groups are in a position to exercise authority over the territory.2305

From around April 2014, the D/LPR armed groups have been physically present in the Donetsk and Luhansk oblasts without the consent of Ukraine. From mid April 2014 in Donetsk and late April 2014 in Luhansk, the situation between the D/LPR armed groups and Ukraine amounted to a NIAC. By 5 September 2014, the Ukrainian forces had withdrawn from the territories defined by the Minsk-I Agreement and hostilities had ceased except for skirmishes across the contact line.2306 From 5 September 2014, there is clear and convincing evidence that the D/LPR armed groups were able to exercise authority (including governmental functions), in lieu of the Ukrainian Government, over this territory.

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2298 Ferraro 2012, p. 158.
2300 *Tadić* Appeal Judgement, paras. 86, 122, 131, 137; Blaskic Trial Judgement; Aleksoski Appeals Judgement; Prlic et al Appeal Judgement, para. 238; Lubanga Judgement, para. 541. See also, Lubanga Decision on Confirmation of Charges, para 211; Katanga Trial Judgement, para. 1178; Bemba Trial Judgement, para. 130; Ongwen Trial Judgement, para. 2687; ICRC 2016 Commentary to Common Article 2, para. 329, fn 184; ICRC 2020 Commentary to Common Article 2, para. 363, fn 164.
2301 ICRC 2016 Commentary to Common Article 3, para. 329, fn 184; ICRC 2020 Commentary to Common Article 2, para. 363, fn 164; 2020 Commentary on the Geneva Convention III, para. 336: “Indeed, only effective control will allow the foreign troops to apply the law of occupation. In this regard, ‘effective control’ is an essential concept as it substantiates and specifies the notion of ‘authority’ lying at the heart of the definition of occupation contained in Article 42 of the Hague Regulations. Accordingly, effective control is the main characteristic of occupation as there cannot be occupation of a territory without effective control exercised over it by hostile foreign forces. However, effective control does not require the exercise of full authority over the territory; instead, the mere capacity to exercise such authority would suffice. Military occupation can be said to exist despite the presence of resistance to it and can be said to exist even when some part of the territory in question is temporarily controlled by resistance forces.” Commentaries on the Geneva Convention I – Common Article 2, para. 302.
2302 See Section 4.1.2.3.2 Overall Control: Participants in the Internal Armed Conflict Act on Behalf of the State.
2305 See Section 3.2.1 Overview of the Law.
2306 See Section 4.2.3.1.1 Presence of the D/LPR Armed Groups in Donetsk and Luhansk.
The territory under the control of the D/LPR armed forces expanded to include the city of Debaltseve after the signing of the Minsk-II Agreement on 12 February 2015 and Ukraine’s withdrawal from the area on 18 February 2015. From 18 February 2015 until the present, the areas under the control of the D/LPR armed groups have remained consistent and the hostilities have been reduced to sporadic and localised skirmishes across the contact line separating the Ukrainian forces and the D/LPR armed groups.

Consequently, and as the following section will explain, there is clear and convincing evidence that, from no later than 5 September 2014 (and 18 February 2015 in the Debaltseve area), the D/LPR armed groups have exercised effective control over territory in the Donetsk and Luhansk oblasts. The territory under their effective control is defined as follows:

- **Donetsk oblast:** Donetsk, Debaltseve, Dokuchaievsk, Horlivka, Yenakieve, Zhdanivka, Krestivka, Makivka, Snizhne, Chystykove, Khartysz, Shaktarsk, Yasinuvata, as well as separate settlements in Amvrosiivskyi, Shakhтарskyi, Starobeshivskyi, Bakmutskyi, Volnovaskyi, Marinskyi, Novoazovskyi, Telmanivskyi and Yasinuvatskyi districts.

- **Luhansk oblast:** Luhansk, Alchevskyi, Antratsyt, Brianka, Holubivka, Khrustalne, Sorokyne, Travnivka, Rovenky, Dovzhanskyi, and Kadiivka, as well as settlements of Antratsytivskyi, Sorokin, Dovzhanskyi, Novoazovskyi, Lutuhynskyi, Popasnyanskyi, Perevalskyi, Stanychno-Luhanskyi and Slovianoserbskyi districts.

It is recognised that prior to 5 September 2014, from as early as April 2014, the D/LPR armed groups exercised some form of control in many cities and towns at various points in time. Some towns or cities were taken over without any resistance, while others changed hands multiple times as a result of fighting between Ukraine and the D/LPR. However, as will be examined below, the period between April and 5 September 2014 was characterised

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2307 The following line of contact was defined by an Annex to a Memorandum of 19 September 2014 signed by the OSCE, Ukrainian and Russian representatives as well as Oleksandr Zaharchenko and Ihor Plotnytskyi – from the border with Russia at the junction of the rivers Siverskiy Donets and Derkul in Luhansk Oblast up along the riverbed of Siverskiy Donets through Stanitsia Luhanska, Schyastya, Tryokhizbenka, then from the village of Sokilnyky on land to highway R-66 (Lisichansk – Luhansk), along the route to the village of Novotoshivske, then between Orekhovo village and Golubivsky town, between the town of “Rodina” mine (Zolote-4) and Maryivka railroad station, between Katerynivka and Molodozhne, between Novooljesandrivka and Kalynove-Borschivata, between Troitske and Kalynove (Debaltsiivse bridgehead), between the villages of Vesellogorivka and Hanivka, Polyove and Lomavtsi, between Borshykivka and Komisaryivka, Chomukhino and Centralne, Mius and Faschivka, between Nikishyne and Kumshatske, between Vilkhuvata and Malorivka, Bulivsinske and Yuskomunarivski, between Avgirdivka and Yasynuvata, between the villages of Opytne and Spartak, between the village of Pesky and Kujkyivske, between Debaltseve People's Army and Olesya, between Mykolaivka and Krymovatka, between Mykolaivka and Petrovskyi, between Starognativka and Bila Kamyanka, emerging to the highway D-07 in Yasinuvata and further south along the riverbed by Granitne and Cherrmalyk to Pavilopiv reservoir, then on land between the village of Pishchiv and Verkhnyeshirokivskyi, between the villages of Pikuzy and Zayichenko, between Vodyane and Sakhanka, leading to the shore of the Sea of Azov in the village of Shirokino. KHRG, Violent Crimes Committed During the Armed Conflict in Eastern Ukraine between 2014–2015, p. 20. However, due to offensive which started in September 2014 and ended in February 2015, the contact line changed. As of March 2015, the contact line ran ‘along the border with RF on the junction of the rivers Siverskiy Donets and Derkul in Luhansk region up along the channel of Siverskiy Donets through Stanitsia Luhanska, Schyastya, Tryokhizbenka, then from the village of Sokilnyky on land to route R-66 (Lisichansk-Luhansk), along the route to the town of Novotoshivske, then between the village of Orekhovo and the town of Golubivsky, between the town of “Rodina” mine (Zolote-4) and Maryivka railroad station, between Katerynivka and Molodozhne, between Novooljesandrivka and Kalynove-Borschivata, between Troitske and Kalynove, between Myrnyivske and Pivdenna Lomavtsi, between the village of Luhanskska and Debaltseve, between Svitlodarsk and Vuglegirsk, between Novoluhanskyi and Holmivske, between Bakhmut and Zaitseve, between Novogorsk and Shiroka Balka, between Verkhnyotoretsk and Panteleymonivka, between Avdiivka and Yasynuvata, between the villages of Opytne and Spartak, between the village of Pesky and Kujkyivske, between Debaltseve People’s Army and Olesya, between Mykolaivka and Krymovatka, between Mykolaivka and Petrovskyi, between Starognativka and Bila Kamyanka, emerging near the village of Granite to Kalmius river and further south along the riverbed by Granitne and Cherrmalyk to Pavilopiv reservoir, then on land between the village of Pishchiv and Verkhnyeshirokivskyi, between the villages of Pikuzy and Zayichenko, between Vodyane and Sakhanka, reaching the shore of the Sea of Azov in the village of Shirokino. KHRG, Violent Crimes Committed During the Armed Conflict in Eastern Ukraine between 2014–2015, p. 21.

2308 See Section 4.2.3.1.4 Sporadic Fighting Along the Contact Line (February 2015 – Present).

2309 Decree of the President of Ukraine No 32/2019 “On the boundaries and lists of districts, cities, settlements, and villages temporarily occupied in the Donetsk and Luhansk regions” (7 February 2019).

2310 For example, in Donetsk Region: Sloviansk, Druzhivka and Batkhmut (12 April), Makivka, Yanakiev and Khartsyzk (14 April), Horlivka, Snizhne, Kramatorsk (14 April), Toretsk (15 April), Krastyanivka (28 April), Avdija, Debaltseve, Mariupol, Novoazovov, Siversk, Pokrovsk, Pokrovsky, and Rodynsky (between 16 April and 1 May). In Luhans region: Stanitsya Luhanska, Khristalnyi, Kadiivka, Travnivka, Alchevsk, Antratsit, Dovzhanskyi, Severodonetsky, Sorokyne, Lysychanskyi, and Rubizhne (between 28 April and May 2018). For more information, see Section 4.1.2.2.1 Mid-April 2014: The First Armed Clashes and Takeover of Towns.

2311 In the Donetsk region: Donetsk, Horlivka, Yanakiev, Makivka, Khartsyzk, Snizhne. In the Luhans region: Luhansk, Kadiivka, Dovzhanskyi, Khristalnyi, Sorokyne. For more information, see Section 4.1.2.2.1 Mid-April 2014: The First Armed Clashes and Takeover of Towns.

2312 E.g., Lysychanskyi, Severodonetsky.

2313 See Section 4.2.3.1.1 Armed Hostilities: April – September 2014.
by continued hostilities, which impacted upon the D/LPR’s ability to exercise effective control. Recognising the difficulty in delineating the exact boundaries of the occupied territory, as well as the ongoing hostilities and the changing nature of control in these areas, it has not been possible to draw conclusions – to a clear and convincing standard – about the extent of the D/LPR’s control in individual towns and cities prior 5 September 2014. Nevertheless, further investigation may reveal effective control over individual cities and towns prior to 5 September 2014. Thus, the findings made herein do not preclude the possibility that the D/LPR established effective control in individual towns and cities earlier than 5 September 2014.

4.2.3.1 Physical Presence of the Armed Forces in a Foreign Territory

To establish effective control, the occupying forces (i.e., the D/LPR under the overall control of Russia) must be physically present in a foreign territory without the consent of the effective local government in place at the time of the invasion. The physical presence requirement does not necessitate the occupying forces to be present in the totality of the territory. Indeed, effective control could be established by positioning foreign forces in strategic locations within the occupied territory to the extent that the Occupying Power can make its authority felt. In this regard, the ICJ in the DRC v. Uganda Judgement, confirmed that having armed forces “stationed in particular locations” would be sufficient to satisfy the requirement of physical presence. The ICTY takes a similarly expansive approach asserting that “[t]he occupying power must have sufficient force present, or capacity to send troops within a reasonable time to make the authority of the occupying power felt”. Conversely, a mere invasion (i.e., the passage of military troops without leaving adequate forces in order to exercise ‘effective control’) will not be considered an occupation.

Additionally, it must be established that the occupied State did not consent to the presence of the occupying forces on its territory. Indeed, the ICC has confirmed that “military occupation exists where a State’s military forces intervene in and exercise control over a territory beyond that State’s internationally recognised frontiers, whether that territory belongs to a hostile State, a neutral State or a co-belligerent, provided that the deployment of forces has not been authorised by an agreement with the Occupied Power.”

4.2.3.1.1 Presence of the D/LPR Armed Groups in Donetsk and Luhansk

The presence of armed groups in parts of the Donetsk and Luhansk oblasts began around March to April 2014. Following the protests that commenced at the beginning of March 2014, there was a build-up of the armed groups’ military presence. According to the NGO Information Resistance, as of 9 April 2014, members of the armed and unarmed pro-Russian separatist groups in Donbas exceeded 2,500. During this period, there were several disparate
armed groups operating in the Donbas oblast. In Donetsk, local groups included: the ‘People’s Militia of Donbas’ led by Pavlo Hubaryov, Denis Pushylin and others;2327 and the ‘Patriotic Forces of Donbas’ (the future ‘Vostok battalion’) headed by Oleksandr Khodakovskyi.2328 In Luhansk, local groups included: the ‘Army of the South East’ commanded by Valerii Bolotov;2329 the ‘Luhansk People’s Militia’ (later transformed into the ‘Prizrak battalion’) led by Oleksii Mozhovit;2330 and the ‘Luhansk District of Don Cossacks’.2331 In addition, there were numerous groups which came from Russia or Crimea, including: Igor Girkin’s group;2332 Igor Bezler’s group;2333 various Russian Cossack groups;2334 and Chechen battalions.2335 The organisation and activities of these groups, collectively known as the D/LPR armed groups, is discussed in greater detail above.2336

Between April and May 2014, the HRMMU2337 received credible reports regarding the “increasing number and presence of well-organised armed persons in eastern Ukraine”.2338 By the end of April 2014, the D/LPR armed groups had expanded their physical presence, and had carried out attacks, in numerous cities and towns across the Donetsk and Luhansk oblasts.2339 By 11 May 2014, when the D/LPR armed groups held referendums on the independence of the territories,2340 the D/LPR armed forces were observed over a large portion of territory in Donetsk and Luhansk.2341 By the end of May 2014, the Ukrainian State Security and Defence Council reported that the armed groups were present on no less than 13,500 km² in Donetsk (out of 26,500km²) and no less than 11,000km² in Luhansk (out of 26,700km²).2342

From May until July 2014, the number of individuals operating in the non-state armed groups present in the Donetsk and Luhansk oblasts grew rapidly to around 15-20 thousand.2343 According to the HRMMU, between June and July

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2327 I. Azar, “My popularity is their foolishness”. Interview with Donetsk Oblast “People’s Governor” Pavlo Hubaryov” (Lenta, 5 March 2014); K. Putiati and others, “Springtime for the Invader, Part One” (mil.in.ua, 11 April 2020); RIA News, “Who is who in leadership positions in the DPR, LPR and Novorossiya” (8 September 2014).
2328 Information provided by the Government of Ukraine; K. Serhackova, “In the camp of Vostok battalion” (Ukrainka Pravda, 2 June 2014); A. Vahner, “I knew that ‘Buk’ came from Luhansk” (Radio Svoboda, 24 July 2014); Novosti Donbassa, “Vostok” battalion founder Khodakovskyi came back to Donetsk” (20 June 2019); I. Yakunin, “Donetsk battalion ‘Vostok’ founder Khodakovskyi. Donbas in not yet ready for the association with Russia” (Komsomolskaya Pravda, 29 January 2021).
2329 Information provided by the Government of Ukraine; Ukrainska Pravda, “Luhansk acquired a ‘people’s governor’. He is the commander of the army” (21 April 2014); A. Vahner, “It’s just mechanical stage” (16 July 2014); ZN, “‘People’s governor’ elected at congress of pro-Russian activists in Luhansk” (21 April 2014); Warriors and Military Machinery Wiki, “The Army of South-East”.
2333 Streikov’s “Novorossia movement” (7 March 2016); DonPress, “Out of control”. Girkin announced the details of the capture of Gorlovka by Bezler” (29 February 2020); OHCHR Report on the human rights situation in Ukraine 15 June 2014, para. 66.
2336 Information provided by the Government of Ukraine; the Nemtsov Report, pp. 26-29; Kommersant, “Chechen hijackers brought home from Donbass” (31 July 2015).
2337 See Section 4.1.2.2 Existence of a Non-International Armed Conflict in Eastern Ukraine.
2338 The UN Human Rights Monitoring Mission in Ukraine (HRMMU) monitors, reports and advocates on the human rights situation in Ukraine. HRMMU was deployed as part of the Human Rights Up Front policy of the UN Secretary-General. See, UN Human Rights, “Un Human Rights in Ukraine”.
2341 See Section 4.2.3.3.1 Establishment of Governmental Structures.
2014, there was a “professionalisation of the armed groups fighting in the East” and they were becoming consolidated under the centralised common command of the D/LPR leaders. A joint general staff for the D/LPR, under the leadership of Colonel Nikolai Fedorovich Tkachev, was created in Krasnodon. Nonetheless, Igor Girkin (the Minister of Defence of the DPR) considered that there remained rag-tag groups outside of the established command. A Bellingcat source confirmed that, during this period, there continued to be armed groups in the LPR which were not subordinate to anyone.

In September 2014, the D/LPR armed groups announced the creation of the United Armed Forces of Novorossiya (‘NAF’). Later that year, instead of a united NAF, two separate army corps were created: the 1st Army Corps (Donetsk) and 2nd Army Corps (Luhansk).

Since the signing of the Minsk-I Agreement on 5 September 2014, and later the Minsk-II Agreement on 12 February 2015, the D/LPR have largely maintained a stable presence at strategic locations across the territories under their control as delineated by these agreements. The main bases of the 1st Army Corps and the 2nd Army Corps are located along the D/LPR side of the contact line which divides the territory controlled by the government of Ukraine and the D/LPR in the Donetsk and Luhansk oblasts.

According to InformNapalm, the divisions of the 1st Army Corps are present/located (from north to south) in: Novoazovsk, Donetsk oblast (9th Separate Assault Motorized Rifle Marine Regiment); Komsomolske, Donetsk oblast (1st Motorized Rifle Brigade); the area around Dokuchaievsk, Donetsk oblast (5th Motorized Rifle Brigade); Donetsk (the 100th Motorized Rifle Brigade); the area from Donetsk Airport to Panteleimonivka village (11th Separate Motorized Rifle Regiment); and from the village of Panteleimonivka to the village of Bayrak, Donetsk (3rd Motorized Rifle Brigade).

The 2nd Army Corps (from west to east) is located in: the area of Debaltseve, Luhansk oblast (7th Motorized Rifle Brigade); settlements including Kadiivka (formerly Stakhanov), Pervomais’k, and Irmino (6th Separate Motorized Rifle Regiment); and in Luhansk city (2nd Motorised Rifle Brigade).

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2344 OHCHR Report on the human rights situation in Ukraine (15 June 2014); Graty, “Killing “Malaysia Airlines” MH17 passengers in Donbas. Investigative materials proving the involvement of the accused”.

2345 “MH17 Court Hearings. Livestream 9 June 2021 Part 3” (9 June 2021), starting at 46:20; Bellingcat, “Russian Colonel General Identified as Key MH17 Figure” (8 December 2017); Insider, “Dolphin hunting. The key defendant in the case of the downed Boeing MH17 turned out to be a Russian colonel general” (8 December 2017).

2346 Insider, “Igor Girkin (Strelkov): “Surkov placed gangsters into power in Donetsk and Luhansk republics”” (8 December 2017).

2347 Bellingcat, “Russian Colonel General Identified as Key MH17 Figure” (8 December 2017).

2348 ACLED, “Donbas: Where the Guns Do Not Stay Silent” (2020); Kyiv Post, “Kremlin-backed rebels form Novorossiya army” (16 September 2014); D. Tymchuk, “The law on special status is three points, but not a point” (Espreso, 16 September 2014).

2349 See Section 4.1.2.1.1.2 The Formalisation of Groups into a Single Command: July 2014 – February 2015. See also, ACLED, “Donbas: Where the Guns Do Not Stay Silent” (2020); V. Shiryayev, “This is War” (Novaya Gazeta, 8 August 2016); Ukrinform, “Naev: army corps “OPR” and “UPR” are classic units of the RF Armed Forces” (2 May 2018).

2350 For a listing of the specific territories, see Section 4.2.3.2.1.3 Donetsk Airport and Debaltseve (September 2014 – February 2015). There have been some changes to the territory under their control, for example fighting continued around Debaltseve and on 18 February 2015, President Poroshenko announced that 80% of Ukrainian forces had retreated. See e.g., BBC News, “Ukraine crisis in maps” (18 February 2015); N. Melnyk (comp), “Armed conflict in the East of Ukraine: the damage caused to the housing of the civilian population” (Human Rights Publisher 2019), p. 11.

2351 InformNapalm, “Intelligence data on 1st and 2nd Army Corps of Russian Federation in occupied Donbas” (8 September 2020); OSCE, “Presentation by Lieutenant-General Leonid Holopatiuk, Chief of Main Department of Military Cooperation and Verification of the Armed Forces of Ukraine” (1 July 2020), p. 2.

2352 InformNapalm, “Intelligence data on 1st and 2nd Army Corps of Russian Federation in occupied Donbas” (8 September 2020); OSCE, “Presentation by Lieutenant-General Leonid Holopatiuk, Chief of Main Department of Military Cooperation and Verification of the Armed Forces of Ukraine” (1 July 2020), p. 2.

2353 InformNapalm, “Intelligence data on 1st and 2nd Army Corps of Russian Federation in occupied Donbas” (8 September 2020); OSCE, “Presentation by Lieutenant-General Leonid Holopatiuk, Chief of Main Department of Military Cooperation and Verification of the Armed Forces of Ukraine” (1 July 2020), p. 2.
The GoU have regularly reported on the size of the 1\textsuperscript{st} and 2\textsuperscript{nd} Army Corps, suggesting that jointly they had: from 35,000 to up 38,500 servicemen in 2016,\textsuperscript{2354} more than 30,000 servicemen in 2017,\textsuperscript{2355} about 32,000 servicemen in 2018;\textsuperscript{2356} about 35,000 servicemen in 2019 and 2020;\textsuperscript{2357} and 37,000 servicemen in 2021.\textsuperscript{2358}

Consequently, since April 2014, the D/LPR armed groups have maintained a physical presence across the territory of Donetsk and Luhansk. Further, as explained above,\textsuperscript{2359} the D/LPR’s continued authority over the territory is safeguarded by the RFAP’s presence close to the Ukraine-Russia border, and the implied threat of a full-scale Russian offensive should the Ukrainian forces advance.

4.2.3.1.2 UKRAINE’S LACK OF CONSENT

Ukraine, as the lawful sovereign over the territory of the Donetsk and Luhansk oblasts, has never consented to the presence of the D/LPR armed forces on this territory. As early as 13 April 2014, acting-President of Ukraine, Oleksandr Turchynov, announced that the National Security and Defence Council was to launch a large-scale ‘anti-terrorist’ operation against all illegal armed groups.\textsuperscript{2360} Further, on 17 April, Russian and Ukrainian representatives signed and adopted the Geneva Statement, which provided that all illegal armed groups must be disarmed, and all illegally seized buildings returned.\textsuperscript{2361} The Minsk-I Agreement, signed by representatives of Ukraine on 5 September 2014, called for, \textit{inter alia}, the withdrawal of “armed formations, military equipment and fighters and mercenaries” from Ukraine.\textsuperscript{2362} Similarly, the Minsk-II Agreement, signed on 12 February 2015 by representatives of Ukraine, stated that all foreign armed formations, military equipment and mercenaries must withdraw from Ukraine and militants must disarm.\textsuperscript{2363} These facts unequivocally demonstrate that the physical presence of the D/LPR armed groups in Donbas was unconsented-to by Ukraine.

Further, Ukraine’s declaration under Article 12(3) to the ICC on 8 September 2015 contains a statement that “[s]tarting from 20 February 2014 there is an ongoing Russian Federation’s and Russia supported militant-terrorists’ armed aggression against Ukraine, during which [...] parts of Donets and Luhans regions of Ukraine were occupied”.\textsuperscript{2364} On 20 April 2016, the GoU established a ‘Ministry of Temporarily Occupied Territories and IDPs’ which was later renamed as the ‘Ministry for Reintegration of the Temporarily Occupied Territories’.\textsuperscript{2365} The Ministry is aimed at “ensuring the formation and implementation of state policy [...] the ultimate goal of which is” the reintegration of parts of Donbas.\textsuperscript{2366} On 14 September 2020, Ukraine’s President signed the Decision of the National Security and Defence Council of Ukraine ‘On the National Security Strategy of Ukraine’ which provided for the “restoration of peace, territorial integrity and state sovereignty in the temporarily occupied territories of Donetsk and Luhansk regions of Ukraine”.

\begin{itemize}
\item \textsuperscript{2354} P. Kanyhin, ’SBU Chief Negotiator Yuriy Tandit on Nadezhda Savchenko’s Exchange Options’ (Novaya Gazeta, 21 March 2016); LB, ‘Ukraine estimated the strength of the militants in the Donbas as 38.5 thousand people’ (6 September 2016). International Crisis Group reported there were around 40,000 servicemen, see International Crisis Group, ‘Russia and the Separatists in Eastern Ukraine’ (Briefing N°79, 2016), p. 10.
\item \textsuperscript{2355} Ministry of Defence of Ukraine, ‘Fact of Russian aggression is proven by the presence of Russian troops on the territory of Ukraine - Ukrainian Army General Victor Muzhenko’ (7 July 2017).
\item \textsuperscript{2356} Novyarnaya, ‘Ukrainian Armed Forces resist 32 thousand of Russian mercenaries’ (17 August 2018).
\item \textsuperscript{2357} OSCE, ‘Presentation by Lieutenant-General Leonid Holopatiuk, Chief of Main Department of Military Cooperation and Verification of the Armed Forces of Ukraine’ (1 July 2020), p. 2.
\item \textsuperscript{2358} Ministry of Defence of Ukraine, ‘Aggressive Russian act against Ukraine and other states are aimed at the destruction of international and European security systems’ - Lieutenant General Valerii Zaluzhnyy’ (10 September 2021); Slovo i Dilo, ‘Poroshenko told the UN which Russian army had invaded Ukraine’ (20 February 2019). Russian newspaper Novaya Gazeta suggested there were around 34,000 servicemen in 2021, see Novaya Gazeta, ‘“Tochka-U” and other beasts’ (27 March 2021).
\item \textsuperscript{2359} See Section 4.1.2.3.1.2.3 Russian Intervention after the Minsk-II Agreements (post-February 2015).
\item \textsuperscript{2360} On the NSDC Decision of 13 April 2014 “On urgent measured aimed at tackling the terrorist threat and preserving the territorial integrity of Ukraine”, Decree of the President of Ukraine No 405/2014, 14 April 2014 (Ukraine); OHCHR Report on the human rights situation in Ukraine 15 May 2014, para. 95; Information Analysis Center - national security of Ukraine, ‘Donbas War timeline: from rallies to tanks’ (18 October 2014); UHHRU, ‘Sloveniya - The city from which the war began: the main role has been assigned.’ (Kyiv 2019), p. 11; Ukraïnska Pravda, ‘The NSDC starts the massive anti-terrorism operation with the Armed Forces of Ukraine participation - Turchynov’ (13 April 2014). \item \textsuperscript{2361} N. Melnyk (comp), ‘Armed conflict in the East of Ukraine: the damage caused to the housing of the civilian population’ (Human Rights Publisher 2019), p. 7; Mission of Ukraine to the NATO, ‘Geneva Statement’ (17 April 2014).
\item \textsuperscript{2362} D. Allan, ‘The Minsk Conundrum: Western Policy and Russia’s War in Eastern Ukraine’ (Chatham House 2020); OSCE, ‘Protocol on the results of consultations of the Trilateral Contact Group’ (5 September 2014).
\item \textsuperscript{2363} OSCE, ‘Range of measures for the Minsk Agreements implementation’ (2015), Article 10.
\item \textsuperscript{2364} International Criminal Court, ‘2015 Ukrainian declaration of acceptance of the ICC jurisdiction’ (2015), p. 3.
\item \textsuperscript{2365} Ministry for Reintegration of the Temporary Occupied Territories, ‘About the Ministry’.
\item \textsuperscript{2366} On amending some Orders of the Cabinet of Ministers, Order No 371 (6 May 2020), para. 3(1).
\end{itemize}
Ukraine on the basis of international law.” 2367 Additionally, Ukraine has continuously refused, since 2014 and until the present, to accept the D/LPR’s (or Russia’s) purported reign over parts of the Donetsk and Luhansk oblasts in its public statements before the United Nations General Assembly (‘UNGA’),2368 the UNSC,2369 the OSCE2370 and meetings with foreign delegations.2371

4.2.3.1.3 Conclusion

Considering the above, it can be concluded that the D/LPR armed forces have been present in the Donetsk and Luhansk oblasts from April 2014 without the consent of Ukraine. From June/July 2014, the forces formalised, cumulating in the establishment of the 1st and 2nd Army Corps between September 2014 and February 2015. Since the signing of the Minsk-I Agreement on 5 September 2014, and later the Minsk-II Agreement on 12 February 2015, the physical presence of the D/LPR forces (in particular, the newly established 1st and 2nd Army Corps) has stabilised and these forces have been stationed across the D/LPR-controlled Ukrainian territory, particularly along the contact line. The first criterion of effective control is consequently established.

4.2.3.2 Substantial or Complete Incapacity of the Effective Local Government

According to the second criterion of occupation by proxy, it must be established that “the effective local government in place at the time of the invasion has been or can be rendered substantially or completely incapable of exerting its powers by virtue of the foreign forces’ unconsented-to presence”.2372 The requirement that the local government must be incapable of exerting its powers, does not require that the entire territory of the occupied State (i.e., Ukraine) be occupied, provided that the areas in which the authority of the occupied State is still functioning “are effectively cut from the rest of the occupied territory”.2373

This criterion implies that the forces of the occupied State must have surrendered, been defeated, or have withdrawn.2374 Therefore, battle zones may not be considered as occupied territory.2375 Despite this, the status of occupied territory remains unchallenged by sporadic local resistance, however successful.2376 Indeed, the fact that a territory is occupied does not exclude the possibility that hostilities may resume.2377 If the Occupying Power continues to maintain control over the territory despite resistance and sporadic fighting, the territory is still considered occupied.2378 However, “resistance to occupation and outbreak of hostilities may become so widespread and persistent” as to contradict altogether the existence of a situation of occupation.2379

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2368 Kharkov Regional State Administration, “Speech by the President of Ukraine during the general debate of the 72nd session of the UN General Assembly” (21 September 2017); Embassy of Ukraine in the Kingdom of Thailand, “Speech by President of Ukraine Petro Poroshenko at the general debate of the 71st session of the UN General Assembly” (23 September 2016); Permanent Mission of Ukraine to the United Nations, “Statement by the delegation of Ukraine at the UN General Assembly debate on agenda item “Situation in the temporarily occupied territories of Ukraine” (23 February 2021)” (23 February 2021).
2369 UN SC Meeting S/PV.7165 (29 April 2014), pp. 16–17.
2370 OSCE, ‘Presentation by Lieutenant-General Leonid Holopatiuk, Chief of Main Department of Military Cooperation and Verification of the Armed Forces of Ukraine’ (1 July 2020), p. 6; UNSC Meeting S/PV.8516 (29 April 2014), pp. 18–19; Ministry of Foreign Affairs of Ukraine, ‘Ukraine informs the OSCE on Russia's hybrid warfare methods, recent killing of Ukrainian medic in the Donetsk’ (15 July 2020); Government Portal, “PM declares in Berlin holding elections in Donbas requires implementation of Minsk agreements” (2 April 2015); OSCE, “Statement by the Delegation of Ukraine at the 79th OCSPiary Meeting” (27 May 2015), p. 3.
2371 Ministry of Foreign Affairs of Ukraine, ‘Ostrovy Kuleba and Antony Blinken Discuss Strengthening of Ukraine-U.S. Strategic Partnership’ (2 February 2021).
2374 Naletilic and Martinovic Trial Judgement, para. 217.
2378 See e.g., Prlic et al. Appeals Judgement, para. 319 citing Hostage Trial Case, p. 56.
2379 Y. Arai-Takahashi, 2009, p. 7. Sassoli submits that in conformity with the second sentence of Article 42 (“the occupation extends only to the territory where such authority has been established and can be exercised”), any act of resistance that leads to a loss of territorial control over a part of a territory must end – possibly temporarily – the occupation in that part of the territory. Ferraro agrees, noting that “if foreign armed forces are required to engage in significant combat operations
Indeed, the ICRC Commentary to AP I states that “as soon as control of the occupied territory is once more put in doubt as a result of fighting, whether or not this is in conjunction with forces from outside the occupied territory, the status of the occupation ceased to exist in the region concerned”\textsuperscript{2380} In the UK, the House of Lords held in\textit{Al-Skeini} that, due to rising resistance and difficulties due to terrorist activities, the United Kingdom was not in effective control of the Basra region in Iraq at the time.\textsuperscript{2381} A similar position was taken by the post WWII tribunals, in the\textit{Trial of Carl Bauer et al.}, where it was stated that “[a]ny part of the territory in which the occupant has been deprived of actual means for carrying out normal administration by the presence of opposing military forces would not have the status of 'occupied' territory within the terms of Articles 2 and 42 of the Hague Regulations”.\textsuperscript{2382}

The following sections will discuss: 1) the withdrawal of Ukrainian forces from territory in the Donetsk and Luhansk oblasts and the cessation of hostilities; and 2) the incapacity of Ukraine to exercise its authority as demonstrated by its inability to operate its executive and judicial functions.

4.2.3.2.1 \textbf{WITHDRAWAL OF THE UKRAINIAN FORCES}

4.2.3.2.1.1 \textbf{ARMED HOSTILITIES: APRIL – SEPTEMBER 2014}

Between April and September 2014, the D/LPR armed forces took over cities and towns in the Donetsk and Luhansk oblasts.\textsuperscript{2383} Most significantly, on 6 to 7 April 2014, armed groups seized the regional state administration buildings in Donetsk, and the premises of the SSU in Luhansk.\textsuperscript{2384} By the end of April 2014, the D/LPR armed groups had carried out attacks in numerous settlements across Donetsk and Luhansk.\textsuperscript{2385} In Donetsk, the DPR armed groups launched attacks and seized administrative buildings in,\textit{inter alia}: Sloviansk, Druzhkivka and Artemivsk (currently – Bakhmut)\textsuperscript{2386} on 12 April 2014;\textsuperscript{2387} Makiivka, Yenakieve and Khartsyzk on 13 April 2014;\textsuperscript{2388} Horlivka, Snizhne, Kramatorsk on 14


\textsuperscript{2381} Al-Skeini and others v. Secretary of State for Defence [2007] UKHL 26, 83.


\textsuperscript{2383} See Section 4.1.2.2.2.1 Mid-April 2014: The First Armed Clashes and Takeover of Towns.


\textsuperscript{2386} O. Lager, “People in camouflage run everywhere: We heard shots and blasts. Bakhmut release in 2014: how it was [photos, videos]” (Free Radio, 6 July 2019); RBC-Ukraine, “Prussian activists in Druzhkovka has taken over the local administration” (12 April 2014).

\textsuperscript{2387} UHHRU, “Sloviansk - the city from which the war began: the main role has been assigned” (2019), pp. 11-14; UHHRU, Armed Conflict in Ukraine: Military Support of Illegal Armed Formations: ‘DPR’ and ‘LPR’ by Russian Federation (2018), p. 8; information provided by Vostok SOS; Ukrainian Institute of National Memory “On the Fifth Anniversary from the beginning of Russian military aggression against Ukraine” (27 February 2019); Information Analysis Center – national security of Ukraine “Donbas War timeline: from rallies to tanks” (18 October 2014); C. Miller, “Sloviansk Torturers. The Investigation” (Radio Svoboda, 23 July 2020); BBC News, “Ukrainian gummern seize buildings in Sloviansk” (12 April 2014); BBC News, “Ukraine crisis: Casualties in Sloviansk gun battles” (13 April 2014); DW, “Antimaidan activists take Donetsk local militiya by assault” (12 April 2014); LB, “Geography and chronicle of separatists seizing Donbas [photos]” (12 April 2014).

\textsuperscript{2388} OSCE, Latest from the Special Monitoring Mission to Ukraine – based on information received up until 20 April 2014, 20:00 (Kyiv time) (21 April 2014); Information Analysis Center - national security of Ukraine, “Donbas War timeline: from rallies to tanks” (18 October 2014); Ukraina Pravda, “City council in Makeyevka is taken over, ‘people’s mayor’ has been elected” (13 April 2014); Hromadske, “Towns beyond the line. Yenakiyev” (31 October 2015); LB, “Separatists in Yenakiyev seized the prosecutor’s office, militias office and local council” (13 April 2014); Ukraina Pravda, “‘Green men’ has seized the city council in Khartsyzk. They have ‘regional’ with them” (13 April 2014).
By 23 April 2014, many Ukrainian units had started to retreat,\(^{2395}\) notwithstanding that certain GoU controlled military units remained in the Donetsk and Luhansk oblasts.\(^{2396}\) Indeed, it is recognised that in many cities and towns, the attacks and initial takeovers occurred without armed resistance and the D/LPR armed groups retained control of many cities and towns throughout the hostilities that occurred between April to September 2014. For example, after the D/LPR overtook the cities of Donetsk and Luhansk, there was little resistance from the Ukrainian forces. Instead, the Ukrainian forces withdrew, apart from maintaining a presence at their military bases in Donetsk\(^{2397}\) and Luhansk,\(^{2398}\) until these bases were attacked and seized by the D/LPR forces in May to June 2014. These cities (Donetsk and Luhansk) have remained in the hands of the D/LPR armed forces ever since.\(^{2399}\) A similar pattern occurred in numerous cities and towns, many of which were close to the border with Russia, including towns in the Donetsk oblast.

2389. Ukraine’s ministry stated the objective of this attack was the firearms. This would become emblematic of the separatist attacks on security buildings and police stations in order to seize arms and equip a paramilitary force. A. Higgins, ‘Armed Men Seize Police Station in Eastern Ukraine City,’ (New York Times, 12 April 2014); Information Analysis Center - national security of Ukraine, ‘Donbas War timeline: from rallies to tanks’ (18 October 2014); N. Melnyk (comp), Armed conflict in the East of Ukraine: the damage caused to the housing of the civilian population (Human Rights Publisher 2019), p. 7; BBC News Ukraine, ‘Luhansk separatists demand to cancel the presidential election’ (7 April 2014); V. Hrytsyun and others, Information and reference materials on the chronology of events in 2014-2019 that took place in the Autonomous Republic of Crimea and during the anti-terrorist operation / Joint Forces operation in Eastern Ukraine (Research Center for Military History of the Ivan Chernyakhovsky National University of Defence of Ukraine 2019), p. 5; UHHRU, Slaviansk - The city from which the war began: the main role has been assigned (2019) p. 30; OHCHR, Report on the human rights situation in Ukraine (15 May 2014), p. 9; OSCE, Latest from the Special Monitoring Mission to Ukraine – based on information received up until 20 April 2014, 20:00 (Kyiv time) (21 April 2014); Texty, ‘Heavy fighting in Ilovaisk, Russians have significant loss in Snizhne’ (22 August 2014); BBC News Ukraine, ‘Donbas fighting: casualties on both sides’ (22 August 2014); BBC News, ‘Ukraine conflict: jet bombs rebel-held town of Snizhne’ (15 July 2014); Fakty, ‘Sergey Chernyshov: ‘Smash him till he starts spitting blood’, – ‘Des’ ordered, shooting my two ankles’ (8 August 2017).


2391. N. Melnyk (comp), Armed conflict in the East of Ukraine: the damage caused to the housing of the civilian population (Human Rights Publisher 2019), p. 34; Armiiniform, ‘Debaltseve was a real bur in the occupant’s throat’ (23 January 2020).


2393. Center for Civil Liberties, The Chemical Triangle of occupied Luhansk region: hostages, torturies and arbitrary executions (2015), pp. 24-25, 49-50; Ukrainian Institute of National Memory, ‘An informational campaign regarding the 6th anniversary of liberation of Eastern Ukrainian cities has started’ (6 July 2020); Hromadske, ‘The first attempt has failed, the convoy was gunned down - policeman on the Rubizhne liberation’ (21 July 2021); I. Pavlik, Kadiyava: naming is changed, occupation ongoing (UHHRU 2020), pp. 9-11, 33-34; Sudozyvy Reporter, ‘DPR police’ accountant from Krasnodon was sentenced to 10 years of prison’ (3 February 2018); Hromadske, ‘Towns beyond the line. Krasnodon’ (26 September 2015); V. Sniegiriov, O. Martynenko and S. Mocvan, The story of one town. Occupation and liberation of Severodonetsk (UHHRU 2017), p. 15; Gal-info, ‘Eastern Ukrainian towns liberation: how it was six years ago’ (7 July 2017); Army fm, ‘Severodonetsk celebrates the anniversary of liberation from fighters’ (21 July 2021); Suspilne, ‘Severodonetsk local shared his memories about the occupation’ (23 July 2021).


2396. Information provided by the Government of Ukraine; Interfax, ‘Gunmen has taken over the MoD Unit N3004 in Donetsk, battalion commander captured - National Guard’ (27 June 2014); LB, ‘Terrorists has taken over the National Guard Unit in Donetsk’ (27 June 2014); DW, ‘Russian flag raised: How the military unit in Donetsk was given up’ (28 June 2014).

2397. Information provided by the Governor of Donetsk; N. Melnyk (comp), Armed conflict in the East of Ukraine: the damage caused to the housing of the civilian population (Human Rights Publisher 2019), p. 34; Army Inform, ‘Debaltseve was a real bur in the occupant’s throat’ (23 January 2020).


2399. Center for Civil Liberties, The Chemical Triangle of occupied Luhansk region: hostages, torturies and arbitrary executions (2015), pp. 24-25, 49-50; Ukrainian Institute of National Memory, ‘An informational campaign regarding the 6th anniversary of liberation of Eastern Ukrainian cities has started’ (6 July 2020); Hromadske, ‘The first attempt has failed, the convoy was gunned down - policeman on the Rubizhne liberation’ (21 July 2021); I. Pavlik, Kadiyava: naming is changed, occupation ongoing (UHHRU 2020), pp. 9-11, 33-34; Sudozyvy Reporter, ‘DPR police’ accountant from Krasnodon was sentenced to 10 years of prison’ (3 February 2018); Hromadske, ‘Towns beyond the line. Krasnodon’ (26 September 2015); V. Sniegiriov, O. Martynenko and S. Mocvan, The story of one town. Occupation and liberation of Severodonetsk (UHHRU 2017), p. 15; Gal-info, ‘Eastern Ukrainian towns liberation: how it was six years ago’ (7 July 2017); Army fm, ‘Severodonetsk celebrates the anniversary of liberation from fighters’ (21 July 2021); Suspilne, ‘Severodonetsk local shared his memories about the occupation’ (23 July 2021).


2402. Information provided by the Government of Ukraine; Interfax, ‘Gunmen has taken over the MoD Unit N3004 in Donetsk, battalion commander captured - National Guard’ (27 June 2014); LB, ‘Terrorists has taken over the National Guard Unit in Donetsk’ (27 June 2014); DW, ‘Russian flag raised: How the military unit in Donetsk was given up’ (28 June 2014).

2403. Information provided by the Governor of Donetsk; N. Melnyk (comp), Armed conflict in the East of Ukraine: the damage caused to the housing of the civilian population (Human Rights Publisher 2019), p. 34; Army Inform, ‘Debaltseve was a real bur in the occupant’s throat’ (23 January 2020).

(Horlivka, Yenakieve, Makiivka, Khartsyzk, Snizhne and in the Luhansk oblast (Kadiivka, Dozhans, khrustalne, Sorokine)).

However, between April and 5 September 2014, the available evidence does not allow for conclusive determinations regarding when hostilities ceased in, and when the Ukrainian forces were defeated and withdrew from, each individual city and town. This is due to a lack of information as well as the fluctuating and changing nature of the hostilities between, and control by, the Ukrainian forces and the D/LPR armed groups. Consequently, it is concluded that there is insufficient clear and convincing evidence to distinguish between locations where Ukrainian forces had been defeated or withdrew, and locations where the battle for control remained ongoing between April and September 2014. This does not preclude the likelihood that further examination would be able to delineate when the occupation started with greater precision in individual cities and towns, such as Sloviansk. Instead, as the following paragraphs will describe, and as examined in greater detail above, to a large extent, hostilities continued across the Donetsk and Luhansk oblasts between April and September 2014. Thus, between April and 5 September 2014, the Ukrainian forces had not fully surrendered, been defeated or withdrawn and, therefore, Ukraine had not been rendered substantially or completely incapable of exerting its powers.

Between May and July 2014, there was fierce fighting between the UAF and the D/LPR armed forces, as the UAF commenced a campaign to regain territory. As a result of the hostilities, Ukrainian forces gained control over a large portion of the territory held by the armed groups in the Donetsk and Luhansk oblasts. Most notably, Ukrainian forces regained control of Mariupol in June, and cities in the Donetsk (Sloviansk, Druzhkivka, Kramatorsk, Kadiivka, Yenakieve, Korosten, and towns beyond the line). The city from which the war began – the first period of the armed conflict in eastern Ukraine...

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2400 Information provided by the Government of Ukraine; Assir Don Youtube Channel, 'Bezler in Horlivka' (14 April 2014); starting at 00:43; DW, "Militsija station taken over in Horlivka" (14 April 2014); Fakty, "Sergey Chernyshov: ‘Smash him till he starts spitting blood’, — ‘Bes’ ordered, shooting my two ankles’" (8 August 2017); TSN, "Separatists forcibly took over the militsija station" (14 April 2014); Ukrainska Pravda, "Russian lieutenant-colonel was a commander of Horlivka militsija taken over" (14 April 2014).

2401 Information Analysis Center - national security of Ukraine, "Donbas War timeline: from rallies to tanks" (18 October 2014); Hromadske, "Towns beyond the line Yenakieve" (30 October 2014); LB, "Separatists in Yenakiyeve seized the prosecutor’s office, militsija office and local council" (13 April 2014); Ukrainska Pravda, "Green men’ has seized the city council in Khartsyzsk. They have ‘regional’ with them" (13 April 2014).

2402 OSCE, Latest from the Special Monitoring Mission to Ukraine – based on information received up until 20 April 2014, 20:00 (Kyiv time) (21 April 2014); Ukrainska Pravda, 'Gunmen fired upon Makeyevka, there are casualties' (20 August 2014); BBC News Russia, ‘Donetsk: intensive night fire from both sides’ (9 November 2014); Interfax, ‘Ukrainian artillery fired shells at Makevka’ (4 August 2015); Ukrainska Pravda, ‘ATO officials say fires upon Makeyevka are gunmen’s provocation’ (28 October 2016); BBC News Russia, ‘Local of Avdiivka: They just drive out the whole town’ (31 January 2017); Ukrainska Pravda, ‘City council in Makeyevka is taken over, ‘people’s mayor’ has been elected’ (13 April 2014).

2403 Espreso, ‘Terrorists shot down Ukrainian plane over Khartsyzsk, - media say’ (30 July 2014); Korrespondent, ‘The mayor’s office was seized in Khartsyzsk, Donetsk region’ (13 April 2014); Interfax, ‘Unknown seized buildings of prosecutor’s office of Khartsyzk and investigative department on investigation of road accident in Donetsk - Militsija’ (29 September 2014).

2404 OSCE, Latest from the Special Monitoring Mission to Ukraine – based on information received up until 20 April 2014, 20:00 (Kyiv time) (21 April 2014); Texty, ‘Heavy fightings in Ilovaisk, Russians have significant loss in Snizhne’ (22 August 2014); BBC News Ukraine, ‘Donbas fighting: casualties on both sides’ (22 August 2014); BBC News, ‘Ukraine conflict: Jet bombs rebel-held town of Snizhne’ (15 July 2014).


2408 Sudovy Reporter, ‘‘DPR police’ accountant from Krasnodon was sentenced to 10 years of prison’ (3 February 2018); Hromadske, ‘Towns beyond the line: Krasnodon’ (26 September 2015).

2409 See also Section 4.1.2.2.2.2 When was the Intensity Requirement in Eastern Ukraine Satisfied?

2410 N. Melnyk (comp), Armed conflict in the East of Ukraine: the damage caused to the housing of the civilian population (Human Rights Publisher 2019), p. 7. See also, Section 4.1.2.2.2.2 When was the Intensity Requirement in Eastern Ukraine Satisfied?


Kostiantynivka, Bakhmut, Avdiivka, Debaltseve and Toretsk and Luhansk (Severodonetsk, Lysychansk and Rubizhne) oblasts in July.

Between June and July 2014, the territory held by the D/LPR armed forces shrank considerably. In Donetsk, by the end of July, the DPR armed groups held territory of no less than 4,100 km² as compared to 9,400 km² in late June (out of 26,500 km² of the total area of the Donetsk oblast). In Luhansk, by the end of July, the LPR armed groups held territory of no less than 6,100 km², as compared to 8,400 km² in late June (out of 26,700 km²).

In July and August 2014, the D/LPR armed groups in Donbas escalated counterattacks against the Ukrainian forces. During this period, Russia’s direct intervention into the territory began. As a result of Russia’s assistance, the D/LPR armed forces gained control of over 140 km of Ukraine’s border with Russia from the Luhansk oblast to the Azov Sea (from 6 to 7 August 2014) and in Ilovaisk (between 24 August and 5 September 2014). By the end of August 2014, the DPR held territory of no less than 7,800 km², while the LPR held territory of no less than 11,400 km².

Considering the significance of the hostilities between the UAF and the D/LPR armed groups between April and September 2014, the second criterion is not satisfied. First, the continued hostilities that occurred throughout the spring and summer of 2014 were of such an intensity that the area remained a battle zone. It cannot therefore be concluded that Ukraine had surrendered, been defeated or withdrawn from the territory and, accordingly, that it had been rendered substantially or completely incapable of exerting its powers. Second, due to insufficient clear and convincing evidence, it is currently not possible to distinguish with precision the dates and locations where hostilities ceased and the Ukrainian forces were forced to withdraw. This does not preclude the possibility that further investigation could establish the withdrawal of the UAF, and Ukraine’s incapacity to exercise authority, in individual cities and towns prior to this date.

4.2.3.2.1.2 **SIGNING OF THE MINSK-I AGREEMENT AND THE WITHDRAWAL OF THE UKRAINIAN FORCES (SEPTEMBER 2014)**

On 5 September 2014, following Russia’s intervention in July to August in support of the D/LPR armed groups, a ceasefire was agreed between Ukraine and the D/LPR leadership (i.e., the Minsk-I Agreement). The Minsk-I Agreement was signed by representatives of Russia, Ukraine, the OSCE, as well as Aleksandr Zakharchenko (then head of the so-called ‘Donbas’ battalion commander’).
of the DPR) and Ihor Plotnytskyi (then head of the LPR). Minsk-I called for an OSCE-monitored ceasefire; an exchange of prisoners; the withdrawal of “armed formations, military equipment and fighters and mercenaries” from Ukraine; the establishment of an OSCE-monitored “security zone” along the border; and an economic reconstruction programme for Donbas. A further three clauses were inserted on Russia’s insistence: 1) the adoption of a “law on special status” that would temporarily decentralise power to certain areas of the Donetsk and Luhansk oblasts; 2) on this basis, the holding of local elections; and 3) “an inclusive nationwide dialogue”. After the Minsk-I Agreement, there is clear and convincing evidence that Ukrainian forces withdrew to the contact line and hostilities largely ceased in the areas held by the D/LPR armed forces. The contact line was defined by an Annex to a Memorandum of 19 September 2014 (i.e., the ‘Minsk-I Memorandum’) signed by the OSCE, Ukrainian and Russian representatives, as well as Zakharchenko and Plotnytskyi. The contact line recorded by the Minsk-I Memorandum was based on the actual positions of the UAF and the D/LPR and established a 30 km buffer zone between the two sides, by requiring that heavy weaponry be pulled 15 km back from each side of the contact line. This area defines the locations under the control of the D/LPR armed groups from 5 September 2014. The major cities and towns included in this list are as follows:

- Donetsk oblast: Donetsk, Dokuchaievsk, Horlivka, Yenakiieve (except Vuhlehirsk), Zhdonivka, Khrestivka, Makivka, Snizhne, Chystyakove, Khartsyzk, Shakhbarsk, Yasynuvata, as well as separate settlements of Novoazovskyi district, Amvrosiivskyi, Starobeshivskyi and Shakhbarskyi districts.

Consequently, it has been established that by 5 September 2014, in the areas defined by the Minsk-I Agreement and the Minsk-I Memorandum, Ukraine had withdrawn and hostilities had ceased, with the exception of sporadic fighting near the contact line. 

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2434 D. Allan, ‘The Minsk Conundrum: Western Policy and Russia’s War in Eastern Ukraine’ (Chatham House 2020); OSCE, ‘Protocol following the consultations of the Trilateral Contact Group on joint steps aimed at the implementation of the Peace Plan of the President of Ukraine Petro Poroshenko and the initiatives of the President of Russia Vladimir Putin’ (5 September 2014).
2437 The following line of contact was established — from the border with Russia on the junction of the rivers of Siverskiy Donets and Derkul in Luhansk region up along the channel of Siversky Donets through Stanitsa Luhanska, Schastya, Tryokhizbenka, then from the village of Soklinyky on land to route R-66 (Luhansk-Luhansk), along the route to the town of Novotolshivske, then between the village of Orekhovo and the town of Holubovskoy, between the town of “Rodina” mine (Zolote-4) and Maryivka railway station, between Katerynivka and Molodizhne, between Novooleksandrivka and Kalynove-Borschuvatse, between Troitske and Kalynove, between Myronivske and Pivdenna Lomivatka, between the villages of Luhansk and Dbaltsiev, between Svitlodarsk and Vuglegirsik, between Novoluhanhansk and Holivmske, between Bakhmutka and Yaitseve, Mayorsk and Mykulyivka, between Pivdennie and Horlivka, between Novorodyske and Shyroka Balka, between Verkhnuyortsevsk and Panteleymonivka, between Avuiivka and Yasnyuvata, between the villages of Opytny and Spartak, between the village of Pisky and Kuybyshew district of Donetsk, between Krasnhorivka and Staromkylayivka, between Maryivka and Oleksandrivka, between the villages of Taramchuk and Olenivka, between Novotrotskie and Dokuchayskev, between Mykolayivka and Styla, Bohdanivka and Petrovskyi, Starohnatovka and Bila Kamyanok, emerging near the village of Hranitne to Kalmius river and further south along the riverbed by Hranitne and Chermalyk to Pavlopil reservoir, then on land between the village of Pischiverk and Verkhnyorohivske, between the villages of Pikuy and Zaychenko, between Vodyane and Sakhanak, reaching the shore of the Sea of Azov in the village of Shyrokins. See, KHRG, Violent Crimes Committed During the Armed Conflict in Eastern Ukraine between 2014–2018 (Human Rights Publishers 2018), p. 20.
2438 The buffer zone is also known as the “grey zone”.
2439 Euromaidan Press, ‘Everything you wanted to know about the Minsk peace deal but were afraid to ask’; Law of Ukraine No. 252-VIII ‘On determining certain areas, towns, settlements and villages of Donetsk and Luhansk regions, in which the special order of self-government is introduced’ (17 March 2015); Ukrainska Pravda, ‘MFA to insurgents: Annex to Minsk agreements did not require to be signed’ (2 February 2015).
2440 Decision of the Government of Ukraine No. 1085-p ‘On the approval of the list of the settlements in the territory of which public authorities temporarily don’t exercise control’ (17 March 2015).
2441 See Section 4.2.3.2.1.4 Sporadic Fighting Along the Contact Line (February 2015 – Present), below.
4.2.3.2.1.3 **DONETSK AIRPORT AND DEBALTSEVE (SEPTEMBER 2014 – FEBRUARY 2015)**

Nonetheless, in areas outside of the territory defined by the Minsk-I Agreement, hostilities continued between the UAF and the D/LPR armed groups, and Russia sustained its intervention in support of the D/LPR armed forces.\(^{2442}\)

Heavy fighting occurred between the Ukrainian forces and the D/LPR armed groups (with Russian support) in the following locations, amongst others: Donetsk airport and surrounding areas from 28 September 2014 to 21 January 2015;\(^{2443}\) Schastia city in Luhansk oblast between September 2014 and February 2015;\(^{2444}\) and Debaltseve between 14 January and 18 February 2015.\(^{2445}\) In these areas, the second criterion of effective control was not satisfied while the hostilities continued.\(^{2446}\)

On 21 January 2015, Ukrainian forces withdrew from Donetsk airport and the area came under the control of the D/LPR armed groups.\(^{2447}\) Subsequently, the Russian and D/LPR offensive in the area of Debaltseve\(^{2448}\) led to the Minsk-II Agreement and the withdrawal of Ukrainian troops from the area.\(^{2449}\) On 12 February 2015, the Minsk-II Agreement was signed by Ukraine, Russia, Germany and France, as well as the D/LPR leadership (Zakharchenko for the DPR and Plotnitskyi for the LPR).\(^{2450}\) It provided for an immediate ceasefire and outlined the plan for a political settlement of the conflict.\(^{2451}\)

It created a 50-140 km security zone along the contact line (as established by the Minsk-I Memorandum) and required the withdrawal of weaponry and troops.\(^{2452}\) However, Minsk-II did not stop the Russian offensive. Major fighting ended only on 18 February 2015, after Ukrainian government forces withdrew from Debaltseve.\(^{2453}\)

After the Minsk-II Agreement and the end of fighting on 18 February 2015, the territory from which the Ukrainian forces had withdrawn was expanded to include Debaltseve.\(^{2454}\) In an updated version of the Cabinet of Ministers’ Decision of 7 November 2014,\(^{2455}\) on 5 May 2015, the GoU set out the list of settlements over which Ukrainian authorities did not exercise control after the Minsk-II Agreement.\(^{2456}\) This area defines the locations under the control of the D/LPR armed groups from 18 February 2015. The major cities and towns included in this list are as follows:

\(^{2442}\) See Section 4.1.2.3.1.2 Military Interventions: August 2014 – February 2015.

\(^{2443}\) A. Fox, *Cyborgs at Little Stalingrad*: A Brief History of the Battles of the Donetsk Airport *(Institute of Land Warfare 2019)*, p. 5; Radio Svoboda, *28 September 2014 in Donetsk airport defensive: at least 9 killed and 20 wounded in action* (28 September 2020); Glavcom, *The firstfight for Donetsk airport happened 7 years ago: how it was* (26 May 2021).


\(^{2445}\) In relation to the D/LPR forces operating in Debaltseve: M. Czuperski and others, *Hiding in plain sight* *(Atlantic Council 2015)*, pp. 11, 14–16; Armyinform, *Six years ago ATO forces left Debaltsev* (18 February 2021); The Nemtsov Report, p. 19.

\(^{2446}\) Again, this finding does not preclude further investigation into individual cities and towns where Ukraine may have withdrawn prior to February 2015.


\(^{2448}\) See Section 4.1.2.3.1.2.2 Debaltseve Operation (14 January – 18 February 2015).


\(^{2450}\) OSCE, *The package of measures for the implementation of the Minsk agreements, agreed upon by the Trilateral Contact Group* (12 February 2015).

\(^{2451}\) N. Melnyk (comp), *Armed conflict in the East of Ukraine: the damage caused to the housing of the civilian population* (Human Rights Publisher 2019), p. 10.

\(^{2452}\) A. Maiorova (ed.), *Donbas In Flames* *(Prometheus 2017)*, p. 44.

\(^{2453}\) As of March 2015, the line of contact was drawn along the border with RF on the junction of the rivers of Siverskiy Donets and Derkul (Lysychansk-Luhansk), along the route to the town of Novotoshkivske, then the villages of Sokilnyky in land to route R-66 (Lysychansk-Luhansk), along the route to the town of Novotoshkivske, then the villages of Orekhovo and the town of Holubovskiy, between the town of “Rodina” mine (Zolote-4) and Maryivka railway station, between Katerynivka and Molodizhne, between Novooleksandrivka and Kalykove-Borschuvate, between Troitske and Kalykove, between Myronivske and Pidvenna Lomuvata, between the villages of Luhanske and Debaltseve, between Svityldarsk and Vuglevske, between Novoluhansch and Holmivske, between Bakhmutka and Zaytseve, Mayorsk and Mykylivka, between Pidvonne and Horlivka, between Novohorodske and Shyrokaya Balka, between Verkhnyotoretsk and Panteleymonivka, between Avsivka and Yasymuvata, between the villages of Opytne and Spartak, between the village of Pisky and Kubyshiev district of Donetsk, between Krasnohoriivka and Staromykhaylivka, between Maryivka and Oleksandrivka, between the villages of Taramchuk and Olenivka, between Novotrotske and Dokuchayevsk, between Mykolaivka and Styla, Bohdanivka and Petrosivka, Starohnativka and Bila Kamyanka, emerging near the village of Horlivka to Kalmius river and further south along the riverbed by Horlivka and Chervonaya to Pavlopil reservoir, then on land between the village of Pischevik and Verkhnehirskivske, between the villages of Pikuziv and Zayichenko, between Vodyane and Sahanka, reaching the shore of the Sea of Azov in the village of Shyrokine. See e.g., Y. Zakharov (comp), *Violent Crimes Committed During the Armed Conflict in Eastern Ukraine between 2014–2018* *(Human Rights Publisher 2018)*, p. 21.

\(^{2454}\) See Section 4.2.3.2.1.2 Signing of the Minsk-I Agreement and the Withdrawal of the Ukrainian Forces (September 2014), above.

\(^{2455}\) Decision of the Government of Ukraine No. 1085-p*’On the approval of the list of the settlements in the territory of which public authorities temporarily don’t exercise the powers, and the list of the settlements which are located on a contact line”* (7 November 2014).
Donetsk oblast: Donetsk, Dokuchaievsk, Debaltseve (except Svitlodarsk and Myronivsky), Horlivka, Yanukieve, Zhdanivka, Khrestivka, Makiiivka, Snizhne, Chistyakove, Khartsyzk, Shakhtarsk, Yasynuvata, as well as separate settlements of Amvrosiivsky, Shakhtarskyi, Starobeshivsky, Bakhmutskyi), Volnovasky, Marinskyi, Novoazovskv, Telmanivskyi and Yasynuvatkskyi districts.


As of the end of 2015, the territories controlled by armed groups in the Donetsk oblast encompassed no less than 8,200 km² (out of 26,500 km² of the total area of the region), with a population of no less than 2.7 million people. In the Luhansk oblast, it encompassed no less than 11,600 km² (out of 26,700 km² of the total area of the region), with a population of no less than 1.4 million people.\footnote{See e.g., Y. Zakharov (comp), \textit{Violent Crimes Committed During the Armed Conflict in Eastern Ukraine between 2014–2018} (Human Rights Publisher 2018), pp. 21-22.}

In sum, Ukrainian forces had withdrawn from the above-mentioned areas by 18 February 2015. After the signing of the Minsk II Agreement on 12 February 2015, and the end of hostilities in Debaltseve on 18 February 2015, hostilities decreased. Ukrainian forces withdrew to the government-controlled side of the contact line, and skirmishes were largely confined to these areas.\footnote{N. Melnyk (comp), \textit{Armed conflict in the East of Ukraine: the damage caused to the housing of the civilian population} (Human Rights Publisher 2019), p. 11; A. Maiorova (ed.), \textit{Donbas In Flames} (Prometheus 2017), p. 44; UHHRU, \textit{Armed Conflict in Ukraine: Military Support of Illegal Armed Formations ‘DPR’ and ‘LPR’ by Russian Federation} (2018), p. 10.}

### 4.2.3.2.1.4 SPORADIC FIGHTING ALONG THE CONTACT LINE (FEBRUARY 2015 – PRESENT)

Between February 2015 and the present, there has been sporadic escalation of hostilities along the contact line. Between 19 February and 10 April 2015, the ceasefire was generally respected, although settlements near the contact line on both the Ukrainian and D/LPR side continued to be shelled.\footnote{OHCHR provided the list of settlements which were frequently shelled: Avdiivka, Dokuchaivsk, Donetsk, Horlivka, Hranitne, Krasnoshchekiv, Krymske, Luhanske, Olenivka, Opytne, Pisky, Popasna, Shchastia, Shukrynye, Stanichno Luhanske, Slovianskerbki, Spartak, Svitlodarsk, Vesele, Vodiane, Volnovakha, Yasynuvata, Zolote and the area of the Donetsk airport. See, OHCHR, \textit{Report on the human rights situation in Ukraine 16 February to 15 May 2015}, para. 21; fn. 9; N. Melnyk (comp), \textit{Armed conflict in the East of Ukraine: the damage caused to the housing of the civilian population} (Human Rights Publisher 2019), p. 11.} Hostilities escalated again between April and 26 August 2015 when a new “ceasefire within the framework of the truce” was agreed at a meeting of the TCG in Minsk.\footnote{Trilateral Contact Group (TCG) for the peaceful settlement of the situation in eastern Ukraine was formed in June 2014 and co-chaired by representatives from the

Throughout 2017, the fighting continued along the contact line with variable intensity. A significant escalation took place in June 2017 near the villages of Zholobok and Krymske of Luhansk oblast (the so-called 'battles for the Bakhmut highway').\footnote{In 2016, violations of the ceasefire continued, with regular escalation of hostilities along the contact line. In 21 September 2016, the ‘Framework Decision of the Trilateral Contact Group relating to disengagement of forces and hardware’ was signed, establishing three areas of disengagement along the contact line (Stanytsia Luhanska, Zolote and Petrovsk).\footnote{However, between October and December 2016, hostilities escalated, primarily near Avdiivka and Yasynovataya, in the north and east of Mariupol, as well as in other places along the contact line, for example, in Novozvanivka village in Luhansk oblast.} In 2018 and 2019, as with the previous years, skirmishes and shooting across the contact line and in the...} In 2018 and 2019, as with the previous years, skirmishes and shooting across the contact line and in the...
surrounding areas continued.2467 In the summer of 2018, the TGC in Minsk agreed to two truces: from 1 July and from 1 September 2018.2468 In May 2020, Ukraine convened an emergency meeting of the TGC in response to continued threats from the armed groups in Donbas, which had announced that they were bringing their troops “into full combat readiness”.2469 The TGC agreed to measures to strengthen the ceasefire which took effect on 27 July 2020.2470 From February to April 2021, and again from August 2021 until the present, the situation in Donbas has escalated. While there has been no direct fighting during the indicated periods, shelling across the contact line has increased and, with it, the number of wounded and killed servicemen and civilians.2471 Nevertheless, the aforementioned escalations between February 2015 and the present have not altered the ability of the D/LPR armed groups to control the territories where these hostilities have occurred.

Despite skirmishes, the areas outside of the control of the Ukrainian government (and under the control of the D/LPR armed groups)2472 has remained largely stable. On 7 February 20192473 and 16 September 2020,2474 the GoU again issued Decisions defining the territory outside of their control. The major cities and towns included in this list are as follows:

- Donetsk oblast: Donetsk, Debaltseve, Dokuchaevsk, Horlivka, Yenakievo, Zhdanivka, Krestivka, Makiivka, Snizhne, Chistyakove, Khartsyzk, Shakhtarsk, Yasinuvata, as well as separate settlements in Amvrosiivskyi, Shakhtarskyi, Starobeshivskyi, Bakhmutskyi, Volnovaskyi, Marinskyi, Novoazovskyi, Telmanivskyi and Yasinuvatskyi districts.

In sum, the only change in the description of territory outside the control of Ukraine contained in the 2019 and 2020 Decisions as compared to the 5 May 2015 Decision2475 is the addition of Novoaidarivskyi district. However, this change is not due to a change in the territory outside the control of Ukraine, but rather reflective of administrative changes in the boundaries of the districts.2476

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2468 N. Melnyk (comp), Armed conflict in the East of Ukraine: the damage caused to the housing of the civilian population (Human Rights Publisher 2019), p. 15.
2469 Radio Svoboda, “Russian hybrid forces threaten with “military preparedness” in Donbas: what is going on?” (20 May 2020); President of Ukraine, “The first meeting of the TGC was held with the participation of the renewed Ukrainian delegation” (14 May 2021).
2471 BBC News Russia, “Donbas: new war or local operation? Why is there the escalation in the Eastern Ukraine?” (11 March 2021); DW, “Escalation in Donbas. Kyiv notifies about casualties” (9 April 2021); 18, “Germany and France made joint statement on Donbas escalation” (4 April 2021); Ukraina Pravda, “Escalation in Donbas: 18 shooting per day, 10 soldiers wounded” (29 August 2021); New York Times, “Fighting Escalates in Eastern Ukraine, Signaling the End to Another Cease-Fire” (30 March 2021); Europolitics, “Eastern Ukraine: how serious is the situation?” (6 April 2021); OSCE, “SMM Report as of 5 April 2021” (2021); L. Schlein, “UN Monitors: Eastern Ukraine Casualties Rose After Cease-Fire Ended” (Voa News, 9 October 2021); Relief Web, “OSCE Special Monitoring Mission to Ukraine (SMM) Daily Report 266/2021 issued on 12 November 2021” (12 November 2021).
2472 See Section 4.2.3.2.1.3 Donetsk Airport and Debaltseve (September 2014 – February 2015).
2473 Decree of the President of Ukraine No. 32/2019 “On the boundaries and lists of districts, cities, settlements, and villages temporarily occupied in the Donetsk and Luhans regions” (7 February 2019).
2474 Order of the Governor of Ukraine No. 1085-p “On the approval of the list of the settlements in the territory of which public authorities temporarily don’t exercise the powers, and the list of the settlements which are located on a contact line” (7 November 2014). The only difference between the two is that addition of Zayichenko village to the territory not controlled by Ukraine on 16 September 2020.
2475 Order of the Governor of Ukraine No. 1085-p “On the approval of the list of the settlements in the territory of which public authorities temporarily don’t exercise the powers, and the list of the settlements which are located on a contact line” (7 November 2014): Donetsk region: Donetsk, Dokuchaevsk, Debaltseve (except Svitlodarsk and Myronivskyi), Horlivka, Yenakievo, Zhdanivka, Krestivka, Makiivka, Snizhne, Chistyakove, Khartsyzk, Shakhtarsk, Yasinuvata, as well as separate settlements of Amvrosiivskyi, Shakhtarskyi, Starobeshivskyi, Bakhmutskyi, Volnovaskyi, Marinskyi, Novoazovskyi, Telmanivskyi, and Yasinuvatskyi districts.
2476 As such, Novoaidarivskyi district was included in the 2019 and 2020 Decisions because of one village, Sokilnyky, which had been outside of the control of Ukraine since 2014 but had previously belonged to Slovyanskerbskyi district. Therefore, although the village has been outside of the GoU’s control since 2014, it is only in the 2019 and 2020 Decisions that Novoaidarivskyi appears on the list of uncontrolled territories. See, Decree of Verkhovna Rada of Ukraine No. 1692-VII “On changing the administrative and territorial structure of Luhans region, changing and establishing the boundaries of Novoaidarivskyi and Slovyanskerbskyi districts” (7 October 2014); National Security and Defense Council of Ukraine, “Immediate information of the NSDC Center for Information and Analytics for 28 October + Map” (28 October 2014).
While the territory under the control of the D/LPR armed groups does not encompass the whole of Ukraine, or even the whole of the Donetsk and Luhansk oblasts, this area may still be considered occupied since it is "effectively cut from" government-controlled Ukrainian territory by the contact line and the buffer zone.2477 In the areas outside of the control of Ukraine, the border into Ukraine is controlled by the D/LPR armed groups and territory controlled by the D/LPR officially began functioning in January 2015, enabling residents to leave or enter along specially created corridors with a previously issued pass.2479

4.2.3.2.1.5 CONCLUSION
As the above analysis shows, while the front line stabilised by February 2015, clashes across the contact line continued through 13 February 2022, the end of the period under consideration in the context of the present Legal Opinion.2480 Nonetheless, the areas outside of the control of the Ukrainian Government (and under the control of the D/LPR armed groups) remained largely stable and the skirmishes did not significantly alter the territory from which Ukraine had withdrawn and over which Ukraine was therefore unable to exercise its powers.2481 Thus, any hostilities that occurred did not rise above intermittent resistance or sporadic fighting. Consequently, it can be concluded that from 18 February 2015 in the territory controlled by the D/LPR, the UAF had withdrawn or had been defeated, and the hostilities (except for sporadic fighting) had ceased.

4.2.3.2.2 INCAPACITY OF LOCAL GOVERNMENT
As the UAF withdrew from territory in Donbas,2482 the Ukrainian government lost control and was rendered unable to exercise governmental power in those areas. While this process began as early as April 2014, there is clear and convincing evidence that, by at least 5 September 2014, the Ukrainian government had been rendered substantially incapable of operating its executive and judicial functions in parts of Donetsk and Luhansk because of the presence of foreign forces (i.e., the D/LPR armed groups under the overall control of Russia).2483

The Ukrainian government has made clear in statements that Kyiv considered it had lost control of areas of Donbas from as early as April 2014. On 30 April 2014, Ukraine’s then acting President announced that the Kyiv government had effectively lost control over the situation in the Luhansk and Donetsk oblasts.2484 On 5 June 2015, a derogation contained in a note verbale from the Permanent Representative of Ukraine to the Council of Europe described that “[t]he Russian Federation, which actually occupies and exercises control over certain areas of the Donetsk and Luhansk

2477 As of March 2015, the line of contact was drawn along the border with RF on the junction of the rivers of Siverskyi Donets and Derkul in Luhansk region up along the channel of Siverskyi Donets through Stanytsya Luhanska, Schastya, Tryokhizhenka, then from the village of Sokilnyky on land to route R-66 (Lysychansk-Luhansk), along the route to the town of Novotoshchikivske, then between the village of Orekhovo and the town of Holubovskiy, between the town of “Rodina” mine (Zolote-4) and Manyivka railway station, between Katerynivka and Molodizhne, between Novooleksandrivka and Kalyinove-Borschuvate, between Troitske and Kalyanove, between Myronivske and Pidvenna Lomovatska, between the villages of Luhanske and Debaltsiye, between Svitlodarsk and Vuglegirs’k, between Novoluhansk and Holmivske, between Bakhmutka and Zaytsyeve, Mayorsk and Mykytzivka, between Pidvenne and Horlivka, between Novhorodske and Shyroka Balka, between Verkhnyotoretsk and Panteleymonivka, between Avdiivka and Yasynuvata, between the villages of Opytne and Spartak, between the village of Pisky and Kuybyshev district of Donetsk, between Krasnohorivka and Staromkyhaylivka, between Manyivka and Oleksandrivka, between the villages of Taramchuk and Olenivka, between Novotroitske and Dokuchayevsk, between Mykolayivka and Stylya, Bohdanivka and Petровські, Starohatlivka and Bila Kam’yanka, emerging near the village of Hranitne to Kalmius river and further south along the riverbed by Hranitne and Chervalky to Pavlopoli reservoir, then on land between the village of Pischiv and Verkhnseshirokivske, between the villages of Pizykiv and Zayichenko, between Vodyane and Sahanka, reaching the shore of the Sea of Azov in the village of Shyrokyne. See e.g., Y. Zakharov (comp), Violent Crimes Committed During the Armed Conflict in Eastern Ukraine between 2014–2018 (Human Rights Publisher 2018), p. 21. See also, Euromaidan Press, “Everything you wanted to know about the Minsk peace deal but were afraid to ask”–Law of Ukraine No. 252-VIII “On determining certain areas, towns, settlements and villages of Donetsk and Luhansk regions, in which the special order of self-government is introduced” (17 March 2015); Ukrainska Pravda, “MFA to insurgents: Annex to Minsk agreements did not require to be signed” (2 February 2015).

2478 See Section 4.2.3.1.1 Control Over Borders.


2481 Ministry of Defence of Ukraine, “The attitude of the civilian population of Donbas to the Ukrainian military has changed – Nozdrachov” (16 May 2018); Day Kyiv, “The experience gained in the war is invaluable. But it is better not to use it anymore’. Taras Lutkovets ‘about the lessons of service in the anti-terrorist operation, comrades-in-arms and political forecasts’ (14 May 2019); Radio Svoboda, “What should the map of Donbas look like under the Minsk agreements? Infographics” (11 December 2018).

2482 See Section 4.2.3.2.1 Withdrawal of the Ukrainian Forces.

2483 As defined in Section 4.2.3.2.1.2 Signing of the Minsk-I Agreement and the Withdrawal of the Ukrainian Forces (September 2014). After it withdrew from Debaltsiye on 18 February 2015, Ukraine was also rendered incapable of operating it executive and judicial functions in that area.

oblasts, is fully responsible for respect and protection of human rights in these territories [...]". This indicates that Ukraine considered itself incapable of exercising its authority in certain areas, as defined by the 5 May 2015 updated version of the Decision of 7 November 2014 ‘On the approval of the list of the settlements in the territory of which public authorities temporarily don’t exercise the powers’.

Between April and September 2014, the local Ukrainian administrations became de facto incapable of exercising their functions in the areas taken over by the D/LPR armed forces. For example, when the cities of Donetsk and Luhansk were first taken over by the D/LPR armed groups and armed hostilities broke out in April 2014, the Ukrainian government relocated its administrative centres. The Donetsk regional administrative centre was relocated to Mariupol, and later to Kramatorsk from 11 October 2014, while the Luhansk regional administrative centre was relocated to Severodonetsk. Thereafter, the members of the Ukrainian local self-government bodies that were in areas outside of the control of the Ukrainian government resigned from their duties as a result of the territories coming under the control of the D/LPR armed groups, which led to a collapse of these institutions.

When the local Ukrainian administrations relocated, the local self-government ceased to function. In July 2014, the UN Office of the High Commissioner for Human Rights (‘OHCHR’) reported that, in the territories where the D/LPR were present, the armed groups did not recognise the authority of Ukraine. They took over Ukrainian public buildings, such as those hosting the local or regional branches of the Ukrainian Ministry of the Interior, the OPG, the SSU and local government institutions. In addition, in these territories, the police came under the control of the D/LPR armed groups and criminal proceedings or other legal measures initiated by Ukraine’s Ministry of the Interior and the OPG were largely unable to proceed. While some courts continued to function on behalf of Ukraine, these were often interrupted by armed groups.

As for the judiciary, on 12 August 2014, the Verkhovna Rada adopted the Law ‘On the Administrative Justice and Criminal Proceedings in Connection with the Anti-Terrorist Operation’, which changed the territorial jurisdiction of cases in the anti-terrorism operation zone to the courts in areas controlled by Ukraine. Pursuant to this law, the chairmen of the Supreme Commercial Court of Ukraine, the High Administrative Court and the High Specialized Court for Civil and Criminal Cases changed the territorial jurisdiction of S8 courts and authorised them to transfer cases to the relevant judicial bodies in Ukraine-controlled territory. Moreover, it was decided to only pay the salaries of those judges that had moved to territories controlled by Ukraine, and remuneration for judges that remained in the D/LPR controlled territories was suspended.

In addition, pursuant to a Presidential Decree of 12 November 2014,
the locations of the seven largest judicial institutions were transferred to territory controlled by Ukraine. In the absence of the Ukrainian judiciary, military courts were established by the D/LPR armed groups in August 2014 in the areas under their control, and later they established local civilian courts which operated until November 2014. From January 2015, a three-level court system under the control of the DPR began to function in the Donetsk oblast. In Luhansk, the formation of a tiered court system under the control of the LPR occurred between April 2015 and 2018, culminating in the establishment of the ‘Supreme Court’ of the LPR on 16 August 2018. The D/LPR’s assumption of control over the judiciary is examined in more detail below.

In addition, the GoU began to cease the provision of services and funding to the territories under the control of the D/LPR. On 6 August 2014, the National Bank of Ukraine issued a decree ordering all banks and other financial institutions “to suspend all types of financial transactions in settlements that are not controlled by the Ukrainian authorities”.

In relation to education, Ukraine’s Ministry of Education and Science (‘Ministry of Education’) on 29 July 2014 issued Letter No. 1/9-382 ‘On the special responsibility of pedagogical and scientific-pedagogical workers’, pursuant to which the activities of educators who remained working in the D/LPR were declared illegal. On 1 September 2014, the Ministry of Education published a statement providing that the school year in institutions located outside of the control of the Ukrainian government would not begin as scheduled, and would only resume after the liberation of those territories.

The Ukrainian authorities attempted to organise the relocation of universities in the Donetsk and Luhansk oblasts to territory controlled by the Ukrainian government and took measures to transfer students to Ukrainian universities. These measures were contained in the 27 August 2014 Order of the Cabinet of Ministers of Ukraine No. 785 ‘On some issues of organization of the 2014/15 academic year in educational institutions located in Donetsk and Luhansk oblasts’, with explanations of the Ministry of Education and Science, and No. 1210-r of 5 December 2014, ‘On some issues of organisation educational process in higher educational institutions’. Accordingly, by the time hostilities in the areas defined by the Minsk-I Agreement had ceased and Ukraine had been defeated and withdrawn, it is clear that Ukraine was substantially or completely incapable of exercising its authority over certain of its territory due to the presence of foreign forces (i.e., the D/LPR armed groups under the overall control of Russia). This is demonstrated by its inability to perform its executive and judicial functions. This fact is

2498 A. Korynevych, M. Gnatovsky and O. Lysenko, War and Human Rights (UHHRU 2015), p. 33; Order of the President of Ukraine No. 867/2014 ‘On making changes to the Network of Courts of Appeal’ (12 November 2014). For more on the implications of this law, see Section 4.2.3.3.1.4 Ensuring of the Law.


2500 OHCHR, Human Rights in the Administration of Justice in Conflict - Related Criminal Cases in Ukraine April 2014 – April 2020 (2020), para. 104; Decree of the Cabinet of Ministers No. 1085-p (7 November 2014) suspended operations of governmental bodies, including courts, in specific locations of Donetsk and Luhansk regions. All 31 local courts of Donetsk region and all 17 local courts of Luhansk region were only officially closed down on 25 January 2018 by the Decision of the High Council of Justice of Ukraine No. 182/10-15-18.


2502 OHCHR, Human Rights in the Administration of Justice in Conflict - Related Criminal Cases in Ukraine April 2014 – April 2020 (2020), para. 78. See Section 4.2.3.3.1.8 Courts.


2506 Some universities in Donetsk and Luhansk regions were allocated premises in other regions of Ukraine and relocated in agreement with their colleagues, while retaining their licenses, legal entity rights and accreditation. Thus, Donetsk National University in accordance with the order of the Ministry of Education and Science of Ukraine № 1084 (30 September 2014) carries out its educational activities from 3 November 2014 in Vinnytsya, Donetsk National Technical - in Pokrovsk, Donetsk National University of Economics and Trade - in Kryvyi Rih, Donetsk National Medical University - in Lyman, Donetsk State University and Donetsk Law Institute - in Mariupol, Donbas National Academy of Civil Engineering and Architecture - in Kramatorsk, Luhansk National University - in Starobilsk etc: A. Korynevych, M. Gnatovsky and O. Lysenko, War and Human Rights (UHHRU 2015), p. 35.

2507 Decree of the Government of Ukraine No. 785-p ‘Some issues of the organization of the 2014/15 academic year in educational institutions located in Donetsk and Luhansk regions’ (27 August 2014).

2508 Decree of the Government of Ukraine No. 1210-p ‘Some issues of organization of the educational process in higher educational institutions’ (5 December 2014).

2509 As defined above, see Section 4.2.3.2.1.3 Donetsk Airport and Debaltseve (September 2014 – February 2015).
confirmed by the text of the Minsk-I Agreement of 5 September 2014 and the Minsk-I Memorandum of 19 September 2014 which provided for the “reinstatement of full control of the state border by the government of Ukraine throughout the conflict area” after local elections and political settlement.2511 Accordingly, the Ukrainian government was precluded from exercising control over territories behind the contact line as a result of the presence of the D/LPR armed groups.

As mentioned above, in a Decision of 7 November 2014, the Cabinet of Ministers published a list of settlements in the territory where it is recognised that the Ukrainian public authorities “do not exercise their powers.”2512 Subsequently, in these territories, the evidence suggests that Ukraine continued to further withdraw public services, agents and funding, in acknowledgment of its incapacity to exercise its authority in the aftermath of the Minsk-I Agreement.

In November 2014, the GoU issued a number of resolutions suspending allocations and disbursements from the State budget to the D/LPR controlled territories, reflective of the Government’s incapacity to exercise its power in these areas.2513 First, Resolution 595 of the Cabinet of Ministers on 7 November 20142514 required the withdrawal of all government services and funding from the “settlements on the territory of which public authorities temporarily do not exercise their powers” by 1 December 2014, and the cessation of social payments, including pensions, to residents of those territories.2515 On the same day, the Decree of the Cabinet of Ministers No. 1085-p of 7 November 2014,2516 inter alia, suspended operation of governmental bodies, including the courts, in “settlements on the territory of which public authorities temporarily do not exercise their powers”.2517 Finally, on 14 November 2014, Decree 875/2014, which enacted the Decision of the National Security and Defence Council of Ukraine, set additional requirements for “separate territories in the area of the anti-terrorist operation in Donetsk and Luhansk regions”, including “the relocation of civil servants; the immediate relocation of penitentiary facilities, including convicts and pre-trial detainees; a recommendation to establish procedures and funding to ensure the provision of humanitarian assistance; and the submission by the Government of Ukraine to the Secretary General of the Parliamentary Assembly of the Council of Europe of a declaration of derogation from certain obligations under the European Convention on Human Rights”.2518

As a result of Resolution 595 of the Cabinet of Ministers on 7 November 2014, numerous ministries and other executive bodies relocated the departments and divisions under their control from “settlements on the territory of which public authorities temporarily do not exercise their powers” to government-controlled areas.2519 This process occurred with, inter alia, the State Statistics Service of Ukraine, the State Forestry Agency, the State Property Fund, the State Pension Fund, the Ministry of Education and the Ministry of Infrastructure.2520 Beginning on 27 November 2014, the Ukrainian Postal Service ceased all services in the territories of Donetsk and Luhansk not under Ukrainian government control.2521

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2511 Financial Times, ‘Full text of the Minsk agreement’ (12 February 2015).
2512 Decision of the Government of Ukraine No. 1085-p ‘On the approval of the list of the settlements in the territory of which public authorities temporarily don’t exercise the powers, and the list of the settlements which are located on a contact line’ (7 November 2014).
2514 Decision of the Cabinet of Ministers No 595 “Some issues of financing of budgetary institutions, implementation of social benefits to the population and the provision of financial support to individual enterprises and organisations of Donetsk and Luhansk regions” (11 November 2014).
2516 Decision of the Government of Ukraine No. 1085-p ‘On the approval of the list of the settlements in the territory of which public authorities temporarily don’t exercise the powers, and the list of the settlements which are located on a contact line’ (7 November 2014).
2517 OHCHR, Human Rights in the Administration of Justice in Conflict-Related Criminal Cases in Ukraine April 2014 – April 2020 (2020), fn. 133; Decision of the Cabinet of Ministers No. 1085-p (7 November 2014) suspended operations of governmental bodies, including courts, in specific locations of Donetsk and Luhansk regions. All 31 local courts of Donetsk region and all 17 local courts of Luhansk region were only officially closed down on 25 January 2018 by the the Decision of the High Council of Justice of Ukraine No. 182/0-15-18.
2520 Information provided by the Government of Ukraine, Cabinet of Ministers of Ukraine, Resolution 595 (7 November 2014).
2521 Cabinet of Ministers of Ukraine, ‘Ukrposhta stops mailing to the ATO territory’ (27 November 2014).

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In relation to penitentiary services, in order to implement Resolution 595 of the Cabinet of Ministers on 7 November 2014, the location of the Department of State Penitentiary Service of Donetsk and Luhansk oblasts was changed from the temporarily uncontrolled territory to the territory controlled by Ukraine (i.e., Mariupol in the Donetsk oblast and Severodonetsk in the Luhansk oblast). By 1 December 2014, funding for penitentiary bodies and pre-trial detention facilities located in the territory not under the control of the Ukrainian government had been suspended. Moreover, after the seizure of the institutions by the D/LPR forces, the connection with the State Penitentiary Service was gradually terminated.

The incapacity of the Ukrainian government to exercise authority in the territories under the control of the D/LPR continues to the present. As mentioned above, Presidential Decree No. 32/2019 contains the precise boundaries and lists of districts, cities, settlements and villages in the Donetsk and Luhansk oblasts that were temporarily occupied in February 2015. The list was confirmed by the Decision of the Cabinet of Ministers of Ukraine of 7 November 2014 No. 1085-p (version of 16 September 2020), which remains largely unchanged. As of April 2020, it was reported that about 16,800 km² of the territories of Donetsk and Luhansk oblasts, and more than 400 km of the State border of Ukraine, remain temporarily out of the control of the GoU.

There is no information to suggest that Ukraine has regained any capacity to exercise its powers over parts of Donbas to date. To the contrary, on 21 September 2021, Ukraine’s President indicated during a UN speech that Donbas has been occupied for 8 years.

The Ukrainian Ministry of Foreign Affairs commented on 16 September 2021 that the “Russians [continue to] control this territory”. In his address to the Parliament on 1 December 2021, Ukraine’s President spoke of Donbas as temporarily occupied territory reassuring the public that “This is our land. Our goal is to liberate it.”

In addition, international organisations continue to refer to the territory as “non-government-controlled” or “territory controlled by self-proclaimed [DPR or LPR]”. For example, on 12 July 2018, the Chairman of NATO-Ukraine referred to the “areas of eastern Ukraine controlled by the Russian-backed militants”.

The TCG referred to the “unconditional access of international organisations to the occupied territories” on 19 July 2021. On 2 March 2021, the EU issued a statement that it expected Russia to ensure the OSCE SMM “has full access to the areas of Ukraine not controlled by the government” and, on 12 May 2021, that the actions of Russia in Donbas were aimed “at de facto integration of Ukraine’s non-governmental-controlled areas into Russia”.

4.2.3.2.2.1 Conclusion

In conclusion, the period between April and September 2014 was largely characterised by battleground hostilities and as a time when the Ukrainian forces had not yet fully withdrawn from the territory. On 5 September 2014, the...
Minsk-I Agreement was signed after which Ukrainian forces withdrew to the contact line, and hostilities largely ceased. Small pockets of hostilities remained during September 2014 and February 2015, including at Donetsk airport and Debaltseve. After the signing of the Minsk-II Agreement on 18 February 2015, Ukraine withdrew from Debaltseve. Since February 2015, despite regular skirmishes along the contact line, any hostilities that have occurred have not risen above resistance and sporadic fighting. In a Decision on 7 May 2015, the Ukrainian government defined the territories outside of their control and these have largely remained static until the present, as defined by further Decisions in 2019 and 2020. Further, in the territories where the Ukrainian forces had withdrawn in response to the presence of the D/LPR armed groups, the local government gradually became incapable of exercising its authority. By at least 5 September 2014, the Ukrainian government had been rendered substantially incapable of operating its executive and judicial functions in the territory under the control of the D/LPR. Thereafter, Ukraine continued to withdraw its public services, authorities and funding. The incapacity of the Ukrainian government to exercise authority in the territories from which it has withdrawn as a result of the presence of the D/LPR armed groups continues to the present. Consequently, between 5 September 2014 (and 18 February 2015 in Debaltseve) and the present, the second criteria for establishing effective control for the purposes of occupation by proxy is satisfied in the territories defined by the Minsk Agreements.

4.2.3.3 Exercise of Authority in Lieu of Local Government

Pursuant to Article 42 of the Hague Regulations, “territory is considered occupied when it is actually placed under the authority of the hostile army”. As such, the final criterion of effective control requires that “the foreign forces are in a position to exercise authority over the territory concerned (or parts thereof) in lieu of the local government”. Therefore, the D/LPR armed groups, under the overall control of Russia, must be in a position to substitute their own authority for that of Ukraine, which has been rendered incapable of exercising its authority as a result of the D/LPR’s unconsented-to presence.

Occupation requires the exercise of governmental functions. Consequently, ‘authority’ refers to “the notion of governmental functions since occupation relates to the political direction of the territory concerned and cannot be enforced by anything short of governmental control.”

This assists in distinguishing an invasion from an occupation. As noted by the International Military Tribunal in Nuremberg in the Hostages case, “invasion implies a military operation while an occupation indicates the exercise of governmental authority to the exclusion of an established government.” This may be shown by the fact that a

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2539 Decision of the Cabinet of Ministers of Ukraine No 1085-p “On the approval of the list of the settlements in the territory of which public authorities temporarily don’t exercise the powers, and the list of the settlements which are located on a contact line” (7 November 2014).
2540 Decree of the President of Ukraine No 32/2019 “On the boundaries and lists of districts, cities, settlements, and villages temporarily occupied in the Donetsk and Luhansk regions” (7 February 2019).
2541 Decision of the Cabinet of Ministers of Ukraine No 1085-p “On the approval of the list of the settlements in the territory of which public authorities temporarily don’t exercise the powers, and the list of the settlements which are located on a contact line” (7 November 2014). See also, Section 4.2.3.2.1.4 Sporadic Fighting Along the Contact Line (February 2015 – Present).
2542 See Section 4.2.3.2.1.4 Sporadic Fighting Along the Contact Line (February 2015 – Present).
temporary administration has been established over the territory,\textsuperscript{2548} or by the occupying forces having issued and enforced directions to the civilian population.\textsuperscript{2549}

For example, the Independent International Fact-Finding Mission on the Conflict in Georgia found that Russia was in effective control over the territories of Abkhazia and South Ossetia because the Russian troops were able to establish roadblocks and Russia itself later claimed that Russian troops protected homes from looting in furtherance of public safety, and that “these elements demonstrate that to a certain degree, Russian forces were in a position to ensure public order and safety in the territories they were stationed in, and claim to have undertaken measures in this regard”\textsuperscript{2550}

However, while the ICI requires the exercise of \textit{actual} authority by the foreign forces,\textsuperscript{2551} there is broad consensus that it is the \textit{ability} of the foreign forces to exert authority that is relevant to the determination of effective control.\textsuperscript{2552} As confirmed by the ICTY, the Occupying Power need only be in a position to exercise its authority.\textsuperscript{2553} The ICRC agrees, stating that “effective control does not require the exercise of full authority over the territory; instead, the mere capacity to exercise such authority would suffice.”\textsuperscript{2554} Indeed, there is broad agreement amongst experts that once enemy foreign forces have established a presence in a territory, what counts for the purposes of determining the applicability of occupation law is the ability of the foreign forces to exert authority in the foreign territory and not the actual and concrete exercise of such authority.\textsuperscript{2555}

As the following sections will demonstrate, the D/LPR armed forces began exercising some authority in the territories under their control from as early as April 2014. By the time hostilities in the areas defined by the Minsk-I and II Agreements had ceased (5 September 2014, and 18 February 2015 in Debaltseve) and Ukraine had fully withdrawn from these areas, the D/LPR unequivocally exercised authority in lieu of the local government. This is evidenced by the D/LPR’s: establishment of governmental structures; formation of government ministries; adoption and enforcement of laws; control over borders; control over services; control over the economy, taxes, salaries, pensions and social payments; and regulation of enterprises and property. The exercise of authority by the D/LPR armed forces existed in lieu of the authority of the Ukrainian government, which had been rendered substantially incapable of operating its executive and judicial functions and had withdrawn all government assistance.

\subsection{Establishment of Governmental Structures}

As discussed above,\textsuperscript{2556} from the beginning of the conflict in April, there is evidence that Russia exerted influence over the political leadership in Donbas, including through defining the D/LPR’s internal politics and its formation of governmental structures.\textsuperscript{2557} By July 2014, this influence had developed into overall control on account of clear and convincing evidence of Russia’s continued influence over the D/LPR’s political leadership, as well as the appointment

\begin{thebibliography}{10}
\bibitem{Katanga} Katanga Trial Judgement, para. 1180; Pribi\v{c} et al, Appeals Judgement, para. 320, citing Nae\l{e}ti\v{c}i\c{s} and Martinovi\c{c} Judgement, para. 217 & fn. 587, referring to 1958 UK Manual on the Law of War, para. 501; Lauterpacht, Oppenheim’s International Law, para. 167.
\bibitem{Katanga} Katanga Trial Judgement, para 1180; Pribi\v{c} et al, Appeals Judgement, para. 320, citing Nae\l{e}ti\v{c}i\c{s} and Martinovi\c{c} Judgement, para. 217 & fn. 588, referring to Hague Regulations, Art. 43; 1992 German Manual on the Law of War, para. 527; Fleck, The Handbook of Humanitarian Law in Armed Conflicts, para. 525.2.
\bibitem{Ferraro} T. Ferraro, Occupation and Other Forms of Administration of Foreign Territory (ICRC 2012), p. 19.
\bibitem{Prlić et al} See e.g., Pribi\v{c} et al, Appeals Judgement, para. 322, fn. 979 citing Hostage Trial Case, p. 55; Nae\l{e}ti\v{c}i\c{s} and Martinovi\c{c} Judgement, para 217; Armed Activities Judgement, Separate Opinion of Judge Kooijmans, paras 44-49. See also, E. Benvenisti, The International Law of Occupation (Oxford University Press 2012), p. 5; Y. Dinstein, The International Law of Belligerent Occupation (Cambridge University Press 2009), paras 96-100, 130; E. von Glahn, The Occupation of Enemy Territory: A Commentary on the Law and Practice of Belligerent Occupation (University of Minnesota Press 1957), p. 29.
\bibitem{ICRC Commentary to Geneva Convention III} ICRC Commentary to Geneva Convention III, para. 336.
\bibitem{Section 4.1.2.3.2.4.8} See Section 4.1.2.3.2.4.8 Influence over the Political Leadership in 2014 – 2015. Note that, while there is clear and convincing evidence of this influence, it has not been possible to determine whether this amounted to ‘decisive influence’ and control until July 2014.
\bibitem{Gordon} Gordon, ‘Former head of Luhansk SBU Petru\v{c}evych: It was Russian presidential aide Glazyev who stirred up an insurgency in eastern Ukraine after trying the ‘Putin, send troops’ scenario in Crimea’” (14 July 2017); P. Gubarev, ‘The Torch of Novorossiya’ [St. Petersburg, 2016]; A. Zverev, “Ex-rebel leaders detail role played by Putin aide in east Ukraine” (Reuters, 11 May 2017).
\end{thebibliography}
of Vladislav Surkov as a curator in Donbas and evidence he decisively influenced and controlled the D/LPR’s political processes.

The D/LPR’s establishment of governmental control over territory in Donbas, in lieu of the withdrawn GoU, began with the declarations of independence by the so-called ‘Republics’ and their establishment of governmental structures. Indeed, as discussed above (under criterion 2, i.e., substantial or complete incapacity of the effective local government), between April and September 2014 in the areas taken over by the D/LPR armed forces, the local Ukrainian administrations became de facto incapable of exercising their functions and relocated to territory controlled by the GoU. The process of the D/LPR’s establishment of governmental structures occurred between April and May 2014, although further investigation is required to understand the extent to which these governmental structures were able to function during this period.

On 7 April 2014, those occupying the Regional Administration Building in Donetsk announced their “sovereignty” and the establishment of the so-called DPR. The ‘People’s Council’ of the self-proclaimed DPR was established as the supreme body of power in the region and the ‘Declaration of Sovereignty of the DPR and the Act on State Independence of the DPR’ were proclaimed. The establishment of the so-called ‘LPR’ was announced on 27 April 2014 by armed groups who had occupied the Luhansk SSU building.

Referendums on self-rule were held in both ‘Republics’ on 11 May 2014. According to their leadership, the turnout in the Donetsk oblast was 75% and 81% in the Luhansk oblast, with around 90% of the voters supporting independence for the so-called DPR and LPR. These referendums were contrary to the Ukrainian Constitution, did not have effect under international law and were deemed illegal by the GoU.

In the aftermath of the ‘referendums’ in May 2014, both ‘Republics’ took steps towards adopting Constitutions, establishing governmental structures and forming their leadership. To begin with, the ‘constitutions’ of D/LPR were adopted and ‘governments’ were formed. The Constitution of the DPR was adopted on 14 May 2014 by the People’s Council, while the Constitution of the LPR was adopted on 18 May 2014. The Constitutions of both Republics contain provisions on the division of governmental power between the executive, legislative and judiciary.

In the DPR, the branches of government can be described as follows:

- The executive branch of government is called the Council of Ministers. According to the Constitution of the DPR, the executive branch of government, inter alia, ensures the implementation of a unified state policy in the fields of science, education, culture, health care, physical culture and sports, social security, road safety and ecology.

As of 2014, the D/LPR had adopted a new Constitution. The DPR’s Constitution was adopted on 14 May 2014 by the People’s Council, while the Constitution of the LPR was adopted on 18 May 2014. The Constitutions of both Republics contain provisions on the division of governmental power between the executive, legislative and judiciary.

In the DPR, the branches of government can be described as follows:

- The executive branch of government is called the Council of Ministers. According to the Constitution of the DPR, the executive branch of government, inter alia, ensures the implementation of a unified state policy in the fields of science, education, culture, health care, physical culture and sports, social security, road safety and ecology.
2021, the DPR’s Council of Ministers consists of the Head of Government and three deputies, 2570 21 Ministries, 2571 and dozens of other departments. 2572 For more information on the DPR’s government ministries, see below. 2573

- The highest legislative body is the ‘People’s Council’ (previously the ‘Supreme Council’). 2574 The first iteration of a parliamentary body – the Interim People’s Council – was created on 7 April 2014. 2575 On 14 May 2014, the first proper legislative body of the DPR, the Supreme Council was formed. 2576 This legislative body was considered temporary, operating until the first parliamentary elections (held in November 2014). 2577 The main competences of the People’s Council, as set out in the Constitution, are the adoption and amendment of laws and resolutions, the approval of the budget, and taking decisions on border-related issues. 2579 The People’s Council is comprised of 100 deputies. 2580 Currently, 73 deputies come from the ‘Donetsk Republic’ movement and 24 from the ‘Free Donbas’ movement. 2581 Furthermore, at present, the People’s Council has 16 specialised committees and five ad hoc commissions. 2583 Members of the People’s Council are elected for a four-year term in direct general parliamentary elections held under the proportional system in multi-member constituencies. 2584 The first elections to the DPR’s People’s Council took place on 2 November 2014. 2585 The first plenary meeting of the People’s Council took place on 14 November 2014. 2586 Between 14 November 2014 and 16 November 2018, the period of work of the People’s Council 2587 – convocation, 599 bills were submitted for consideration and 272 laws were adopted. 2587 In the LPR, the branches of government can be described as follows:

- The executive branch is called the Government of the Luhansk People’s Republic, formed in accordance with the Constitution on 18 May 2014. 2588 The Government of the LPR is the permanent and supreme executive body. It includes the Chairman of the Government of the LPR, his deputies and ministers. 2589 On 17 November, Ihor Plotnitsky, the newly elected Head of DPR, issued a Decree on the formation of the Council of Ministers. 2590 For more information on the LPR’s government ministries, see below. 2591

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2573 See Section 4.2.3.3.1.2 The Formation of Government Ministries.
2574 On 7 April 2014, after the proclamation of the Donetsk People’s Republic, the People’s Council of the DPR announced plans for the organisation of a referendum. In May 2014, DPR’s parliament was officially called ‘Supreme Council’. In November 2014, the parliament restored its name as ‘People’s Council’. See Interfax, ‘A referendum on the establishment of the republic to be held in Donetsk region’ (7 April 2014); Ria Novosti, ‘The Supreme Council of DPR approved the exemplary text of the Constitution’ (15 May 2014); People’s Council of the DPR, ‘The history of People’s Council’. 2575 Law of the DPR ‘The Constitution of DPR’ (14 May 2014), Article 63.
2576 Baltnews, ‘Boris Livinov: the creation of the DPR is our choice, not a “Russian project”’ (26 June 2021).
2579 For the full list of functions of the People’s Council, see Constitution of the DPR, Article 69.
2581 People’s Council of the DPR, ‘The history of People’s Council’.
2582 People’s Council of the DPR, ‘The history of People’s Council’; namely, budget, finance and economic policy; on security and defense; on social and housing policy; on foreign policy, international relations, information policy and information technology; on constitutional legislation and state building; on civil and arbitration law; on nature management, ecology, subsoil and natural resources; on transport and communications; on industry and trade; on agriculture and land resources; on education, science and culture; on the development of civil society, issues of public and religious associations; on criminal and administrative law; on ethics, regulations and organisation of work of the People’s Council; on health care, protection of mothers and children; on youth affairs.
2583 People’s Council of the DPR, ‘The history of People’s Council’: namely, to control and coordinate activities in the areas most affected by the armed aggression of Ukraine; on the activities of markets, as well as non-resident enterprises and institutions, where temporary state administrations have been introduced; to identify the facts of damage to legal entities and individuals as a result of illegal activities of representatives of the Ministry of Revenue and Duties; on the activities of small coal mining enterprises.
2585 People’s Council of the DPR, ‘The history of People’s Council’; People’s Council of the DPR, ‘Members of People’s Council’.
2586 People’s Council of the DPR, ‘The history of People’s Council’.
2587 People’s Council of the DPR, ‘The history of People’s Council’.
2590 Decree of the Head of the LPR ‘On the formation of the Council of Ministers of LPR’ (17 November 2014).
2591 See Section 4.2.3.3.1.2 The Formation of Government Ministries. The first resolutions of the DPR government were issued in January 2015. See also, Regulation of the Government of the LPR ‘On the Agency for State Reserves of LPR’ (January 2015).
• The legislative branch was established on 18 May 2014 and was initially named the ‘Republican Assembly’, but later renamed the ‘People’s Council’. It consists of 50 deputies who are elected for a term of five years. The first so-called ‘elections’ of deputies of the Republican Assembly of the LPR were held on 18 May 2014 at popular gatherings of some cities and districts of the Luhansk oblast. The first real election to the People’s Council took place on 2 November 2014 simultaneously with elections for the position of the Head of State of the LPR. The first ordinary plenary meeting of the People’s Council took place on 17 November 2014. According to statistics, from 17 November 2014 until 17 November 2015 the parliament considered 209 draft laws. According to information available on the website of the People’s Council, the first parliament adopted 3 laws in May 2014, 8 laws in June 2014, 1 law in July 2014, 0 laws in August 2014, 7 laws in September 2014 and 8 laws in October 2014. The latest ordinary plenary meeting took place on 9 August 2021.

It is noteworthy that, although the D/LPR’s Constitutions contain provisions on the division of state powers and the independence of all three branches, in practice the ‘Head’ of each Republic plays a decisive role and holds significant power over the executive, legislature and judiciary. The Head of each Republic is also vested with significant law-making power as they are able to issue decrees which are binding on the entire population.

At the same time, the D/LPR took steps towards formalising their leadership. In the DPR, Igor Girkin (aka ‘Strelkov’) declared himself the ‘Supreme Commander’ of the DPR on 12 May 2014. On 15 May 2014, the post of ‘Prime Minister’ of the Republic was introduced and on 16 May, Alexander Borodai was nominated Prime Minister. In the LPR, Vasily Nikitin was appointed ‘Prime Minister’ on 18 May, and Valery Bolotov was named the first Head of the Republic. As mentioned above, there is evidence that, from spring 2014, Russia exercised influence which developed into overall control by July 2014 over key political personnel including Girkin, Borodai and Bolotov. More specifically, there is evidence that: Moscow chose Bolotov as the leader of the LPR; Girkin received orders from multiple Russian officials between June and August 2014, and Bolotov was directed by Russia.


2594 TASS, ‘Valery Bolotov was elected the head of the proclaimed Luhansk People’s Republic’ (18 May 2014).

2595 Interfax, ‘The results of L/DPR elections published’ (3 November 2014).

2596 A. Toporov, ‘Members of Second People’s Council of DPR began working’ (IA Regnum, 17 November 2014).

2597 People’s Council of LPR, ‘Information on Council’s activities’.

2598 People’s Council of LPR, ‘Laws’.

2599 People’s Council of LPR, ‘The regular plenary meeting’.


2602 Novosti Donbas, ‘DPR declared war to Ukraine an called Russia for help’ (12 May 2014); V. Sborschchikova, ‘Who is who in “Donetsk people’s republic’ (Komsonomolskaya Pravda, 20 May 2014).


2606 Information provided by the Government of Ukraine; UHHRU, ‘Examination of L/DPR laws’ (2016) 2 Human Rights on the South-East of Ukraine (2016), p. 10. See Section 4.1.2.3.2.4.8 Influence over the Political Leadership.

2607 Politie Youtube Channel, ‘Witness appeal 11 ‘9 - Possible Russian influence on appointments in the DPR’ (13 November 2019) starting from 5:55. See also, Section 4.1.2.3.2.4.5. Valerii Bolotov.

2608 Nieuwsuur Youtube Channel, ‘Reconstruction- de onthulling telefoongesprekken van MH17- hoofdverdachte’ (11 April 2021), at 4:54-5:36; G.-J. Dennekamp, ‘Audio tapes of thousands of overheard conversations, a reconstruction of the MH17 disaster’ (NOS, 11 April 2021); I. Babaranov and others, ‘Burlaka on Don. Who is Vladimir Ivanovich which is looked for by the MH17 investigation’ (BBC News, 28 April 2020); Insider, ‘Igor Girkin (Strelkov): “Surkov has brought gangsters into the power in Donetsk and Luhansk republics”’ (8 December 2017). See also, Section 4.1.2.3.2.4.4.2. Igor Girkin.

4.2.3.3.1.1 **Elections**

As mentioned above, the D/LPR held their first elections on 2 November 2014 for the ‘Heads’ of government and the ‘People’s Council’ of both Republics.\(^1\) These elections were held in violation of the legislation of Ukraine and the Minsk Protocols.\(^2\) In Donetsk, Aleksandr Zakharchenko was declared the ‘Head’ of the DPR.\(^3\) In Luhansk, the ‘Central Election Commission’ announced on 3 November 2014 that Ihor Plotnytskyi was elected as ‘Head’ of the LPR.\(^4\) Only the Russian Federation recognised these ‘elections’.\(^5\) The most recent elections to be held in the D/LPR occurred on 11 November 2018.\(^6\) During these elections in Donetsk, the then acting Head of the DPR, Denis Pushilin, was elected to the position of Head of the DPR\(^7\) and Pushilin’s movement, ‘Donetsk Republic’, won a majority in the elections to the People’s Council of the DPR.\(^8\) In Luhansk, the then Head of the LPR, Leonid Pasechnik, was re-elected to the position of Head of the LPR\(^9\) and Pasechnik’s movement, ‘Peace for Luhansk Region’, won a majority in the elections to the LPR’s People’s Council.\(^10\) As discussed above,\(^11\) Russia exerted influence over the 2018 elections by forcing the exclusion of other popular leaders whose policies did not suit Russian interests.\(^12\)

4.2.3.3.1.2 **The Formation of Government Ministries**

Shortly after the D/LPR’s adoption of their ‘constitutions’ and the establishment of their foundational governmental institutions, the Heads and parliamentary bodies of the D/LPR began to establish Ministries and appoint Ministers to run them.\(^13\)

As discussed above, on 13 May 2014, Surkov received a list of recommendations for political posts in the DPR, including Denis Pushilin, Igor Girkin, Aleksandr Zakharchenko and Oleksandr Khodakovskii.\(^14\) On 16 May 2014, 21 Ministries and 13 Departments were established by a Resolution of the DPR People’s Council.\(^15\) On the same day, at a session of the DPR’s Parliament, Girkin was appointed the DPR’s Minister of Defence.\(^16\) Khodakovskii as the Head of State Security, Zakharchenko as the Commandant of Donetsk, and Pushilin as the Chairman of the Supreme Council (i.e., Parliament).\(^17\)

All other DPR ministerial positions were also eventually filled, although several initial appointees rejected their appointment.\(^18\) The positions of those who refused to work for the DPR, or those who subsequently left their
positions, were filled in May to August 2014. New Ministries continued to be established between July and September 2014. As of 2021, there are 21 Ministries in the DPR. A detailed overview of the Ministries currently functioning in the DPR is contained in Annex I (Structures of the DPR and LPR Governments).

Similarly, the Constitution of the LPR provides for the appointment of Ministers and heads of other executive bodies by the Head of the LPR. Ministers began to be appointed by the LPR organs in mid- to late May 2014, including, for example, Yuriy Ievkin's appointment as Minister for Internal Affairs by the Head of the LPR on 18 May 2014. On 21 May 2014, the Republican Assembly of the DPR officially appointed Ihor Plotnytskyi as Minister of Defence of the LPR. At the same time, Bolotov stated in an interview that he had appointed Plotnytskyi to the position of the Minister of Defence. As mentioned above, Bellingcat investigations have established that Plotnytskyi was subordinate to, and supervised by, Oleg Ivankov (who was, according to Bellingcat, “with very high certainty” a GRU officer and military supervisor to the LPR) in the LPR’s Ministry of Defence.

On 27 May, numerous other Ministers were appointed to head the newly established Ministries. Currently, there are 18 functioning Ministries, as outlined in Annex I (Structures of the DPR and LPR Governments).

4.2.3.3.1.3 ADOPTION OF LAWS
Starting in May 2014, the D/LPR under Russia’s overall control, began to enact and enforce their own laws on the territories under their control. On 14 May 2014, Pavel Hubaryov, the ‘People’s Governor’ of the DPR, instituted martial law. Martial law was similarly instated in the LPR by Valery Bolotov on 22 May 2014. As discussed above, the Constitutions of the DPR and LPR were adopted on 14 May and 18 May 2014, respectively.

The laws in the DPR and LPR can be divided into three types.
- Ukrainian legislation (including some legislation adopted during the Soviet Union), which applies only insofar as it is consistent with the Constitution of the DPR of 14 May 2014 and the Constitution of the LPR of 18 May 2014;2647

- Legislation of the DPR and LPR, which are either borrowed completely from the legislation of the Russian Federation (e.g., Criminal Code of the DPR,2648 Civil Procedure Code of the DPR,2649 etc.), or are borrowed from the legislation of the Russian Federation with some editorial amendments (e.g., Act of the DPR of 25 December 2015 No. 99-IHC ’On the tax system’,2650 Act of the LPR of 3 July 2015 No 28-II ’On the state civil service of the LPR’2651);

- Legislation of the DPR and LPR developed independently (e.g., Act of DPR of 23 October 2015 No. 71-II ’On special economic and other sanctions’,2652 Act of the DPR of 21 August 2015 No. 76-IHC ’On the state supervision in the area of business activity’,2653 etc.).

As discussed above,2654 through Surkov, Russia also played a role in approving the legislative acts of the D/LPR governments, including the D/LPR’s ‘Declaration of Confederation’ in May 2014,2655 and the proposed ‘Constitutional Act of Novorossiya’2656 in July 2014, which was adopted by the DPR parliament.2657

In the DPR, the first legislative acts pertaining to mostly military action. On 23 May 2014, the DPR adopted the Law ‘On the committee of the people’s control’.2658 On 20 June 2014, the DPR adopted the Law ‘On urgent social protection measures of citizens living in the territory of the Donetsk People’s Republic in the conditions of the aggression of the armed forces and armed forces of Ukraine’.2659 That same day, it adopted the Law ‘On the Armed Forces of the Donetsk People’s Republic’.2660 Later, the DPR focused on passing laws establishing public institutions. For example, on 15 July 2014, the DPR parliament voted for the Law ‘On the Prosecutor’s Office’;2661 on 18 July 2014, the Law ‘On the status of a deputy of the Supreme Council of the Donetsk People’s Republic’;2662 and on 12 December 2014, the Law ‘On the Ministry of State Security of the Donetsk People’s Republic’.2663 The Criminal Code of the DPR was passed on 19 August 2014.2664

In the DPR, the People’s Council continues to operate and adopt laws to the present day. In particular, in 2015, 259 draft laws were submitted and 100 laws were adopted;2665 in 2016, 122 draft laws were submitted and 56 laws were

2647 Law of the DPR ’On the legal acts in the LPR’ (30 April 2014), transitional provisions. According to Article 86.2 of the constitutions of the republics, legislation in force prior to the adoptions of the constitutions, is in force to the extent it does not contradict the ‘constitutions’. See also, OHCHR, “Human Rights in the Administration of Justice in Conflict-Related Criminal Cases in Ukraine April 2014 – April 2020” (27 August 2020), para. 102; Decree of the Council of Ministers of the DPR No. 9-1 ‘On the application of laws on the territory of the DPR during the transition period’ (2 June 2014); KHRPG, “Human Rights on the South-East of Ukraine” No 2 (2016), p. 10.


2651 Law of the DPR No 28-II ’On the civil service in LPR’ (3 July 2015).

2652 Law of the DPR No 71-II ’On special economic and other sanctions’ (23 October 2015).

2653 Law of the DPR No. 76-IHC ’On governmental oversight of business activities’ (21 August 2015).

2654 See Section 4.1.2.3.2.4.9.2 Vladislav Surkov.


2656 For an explanation of Novorossiya, see Section 4.1.2.3.2.2.1 The Novorossiya Project and Shared Objectives in 2014.

2657 Poltii YouTube Channel, ’Witness appeal November 2019 - Conversation Surkov and Borodai; reinforcements from Russia’ (13 November 2019), 08:31-09:40; TASS, “At the session of the Supreme Council of the DPR, an act was adopted on associations with the LPR in the Union of People’s Republic” (24 June 2014).

2658 Law of the DPR ’On people’s control committee’ (23 May 2014).

2659 Law of the DPR ’On immediate actions of social protection of people residing on DPR territory in armed aggression of Armed Forces and paramilitary forces of Ukraine’ (20 June 2014).

2660 IA Novorossiya, ’The law “On the Armed Forces of the Donetsk People’s Republic” was adopted” (21 June 2014); S. Sokolova and S. Samoylov, ”The Supreme Council of DPR adopted the law on armed forces and approved the loyalty oath text” (TAGIS, 20 June 2014); R. Melnikov, ”The loyalty of oath of the People’s Army warrior may be sworn in DPR” (Rossiyiskaya Gazeta, 21 June 2014).

2661 Law of the DPR ’On the prosecution’ (15 April 2016).

2662 Law of the DPR ’On the status of member of DPR Supreme Council’ (15 August 2015).


2665 People’s Council of the DPR, ”The results of the Autumn 2015 plenary sessions” (2015); People’s Council of the DPR ’The results of the Spring 2015 plenary sessions’ (13 July 2015).
adopted; in 2017, 99 draft laws were submitted and 63 laws were adopted; in 2018, 105 draft laws were submitted and 60 laws were adopted; in 2019, 178 draft laws were submitted and 80 laws were adopted; in 2020, 226 draft laws were submitted and 151 laws were adopted; and in 2021, there have been at least 83 laws adopted to date.


In the LPR, the People’s Council continues to operate and adopt laws to the present. In particular, in 2015, 209 draft laws were considered and 75 were adopted; in 2016, 226 draft laws were considered and 61 were adopted; in 2017, 172 draft laws were considered and 58 were adopted; in 2018, 237 draft laws were considered and 89 were adopted; in 2019, 231 draft laws were considered and 120 were adopted; in 2020, 229 draft laws were considered and 117 were adopted; and in 2021, there have been at least 76 laws adopted to date.

4.2.3.3.1.4 **ENFORCEMENT OF THE LAW**

As the following sections will discuss, throughout 2014 until the present, the D/LPR have established and maintained their own law enforcement and judicial structures in lieu of Ukraine. As mentioned above, after Ukraine withdrew from the territories under the control of the D/LPR, criminal proceedings or other legal measures initiated by the Ukrainian Ministry of the Interior and the OPG were largely unable to proceed. On 12 August 2014, the territorial jurisdiction of cases within the anti-terrorist zone changed to courts in areas controlled by Ukraine, and on 12 November 2014, the locations of the seven largest judicial institutions were transferred to territory controlled by Ukraine.

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2670 People’s Council of the DPR, ‘The results of Spring 2020 plenary sessions’ (2020); People’s Council of the DPR, ‘The results of Autumn 2020 plenary sessions’ (2020).
2671 People’s Council of the DPR, ‘Laws’.
2674 LPR People’s Council, ‘Information on People’s Council activities from 17.11.2014 to 17.11.2015’.
2675 LPR People’s Council, ‘Information on People’s Council activities from 18.11.2015 to 17.11.2016’.
2676 LPR People’s Council, ‘Information on People’s Council activities from 18.11.2016 to 17.11.2017’.
2679 LPR People’s Council, ‘Information on People’s Council activities from 01.01.2020 to 31.12.2020’.
2680 People’s Council of the DPR, ‘Laws’.
2681 See Section 4.2.3.2 ‘Substantial or Complete Incapacity of the Effective Local Government.
2683 See Section 4.2.3.2.2 Incapacity of Local Government.
4.2.3.3.1.5  **LEGAL FRAMEWORK**

In Donetsk, on 2 June 2014, the DPR Council of Ministers adopted Resolution No. 9-1 ‘On the application of the Laws on the territory of the DPR during the transition period’ through which the 1960 Criminal Procedure Code of Ukraine (as amended on 29 June 2001) was established as the framework regulating criminal proceedings, as opposed to the 2012 Ukrainian Criminal Procedure Code which was in force at the time of the takeover. In 2018, significant changes were made with the adoption of the ‘Criminal Procedure Code’ and laws on intelligence-gathering, the status of ‘judges’, and the judicial system. The Criminal Code of the DPR was adopted on 19 August 2014 and it is based on the Russian Criminal Code.

Between April and August 2015, the LPR adopted a framework for processing criminal cases based solely on Russian legislation, including its ‘Criminal Code’, adopted on 14 August 2015, and the ‘Criminal Procedure Code’, adopted on 21 August 2015.

4.2.3.3.1.6  **POLICE**

The DPR and the LPR both have their own police services. In the DPR, it appears that the police started functioning at least by September 2014, and in the LPR, it appears that the police were formalised in November 2014.

While it is not clear precisely when the DPR police were established, by at least September 2014 they had started functioning as the law enforcement agency in Donetsk. Nonetheless, it appears that some form of police was operating prior to September. Already in July 2014, civilians and Ukrainian soldiers recorded instances of cooperation between the DPR and Ukrainian police officers in the Donetsk oblast. At the end of July, the DPR’s police cars were noticed patrolling the towns under the DPR’s control. In August 2014, Ukraine’s Ministry of Internal Affairs (‘MIA’) published a list of 150 Ukrainian police officers who, starting from 19 July 2014, became DPR police officers.

The DPR Law ‘On Police’ was passed on 7 August 2015 and remains in force to this day. This law places the police force under the competence of the DPR MIA. The composition of the police, and the procedure for the creation, reorganisation and liquidation of police units is determined by the Head of the DPR. The law also sets out the legal parameters of police competence.

The management of police activities is carried out, within the limits of their competences, as follows:

1.预防和打击犯罪，保护公民和法人免受犯罪侵害；
2.收集并保护案件的证据。
3.保护公民的生命、自由和财产安全；
4.遵守法律和秩序。
5.执行行政法规。
6.确保道路交通安全。
7.处理失踪人员的事件，以及确定身份不明人员的身份。
competence, by the Head of the MIA, the eads of territorial bodies of the DPR MIA, and the heads of police units. According to the DPR MIA’s website, there are currently around 32 police offices in different districts.

On 12 September 2014, the official account of the DPR’s government published on VK (a popular Russian social media platform) an advertisement inviting “cadets and graduates of the Donetsk Law Institute and other higher educational institutions of the Ministry of Internal Affairs” to join the DPR’s police. On 29 September 2014, the Presidium of the Council of Ministers passed Decree No. 36-1 ‘On the Deputy Minister of Internal Affairs-Chief of the Criminal Police’, appointing Roman Groshev as head of the criminal investigations department.

In the LPR, it is similarly difficult to establish the precise date on which the police were established, although there is some indication that the police began to formalise in November 2014. The first Law ‘On Police’ was adopted on 20 May 2014. However, prior to November 2014, the LPR controlled territory was divided into many spheres of influence and each town applied their own ‘customs and traditions’ regarding policing. From at least November 2014, police vehicles marked with ‘military police’ and licence plates marked ‘Novorossiya’ were observed. According to one LPR district police officer interviewed on 2 November 2014, while the LPR was undertaking a reorganisation of the police service, the LPR military units initially took over law enforcement functions. He further stated that the restructuring of the LPR police force was ongoing at that time, and that police officers were not yet being paid salaries. At that point, the police were still registering all reported crimes and, in some instances, formulating cases in accordance with the criminal law of Ukraine. Since, at this point, there were no prosecutors or courts operating, the cases remained pending. Moreover, the LPR had not yet adopted criminal law legislation, so there were no legal provisions detailing the powers to arrest, hold, detain and charge people.

In the LPR, the Law ‘On Police’ was passed on 10 November 2014, which replaced the previous law of 20 May 2014. According to the 10 November 2014 law, the police are subordinated to the LPR MIA, and the service is divided into departments and territorial units. This law remains in force to this day, with recent amendments introduced in 2021. After the adoption of the 10 November 2014 law, it appears that the police force formalised in the LPR. On 11 November 2014, the LPR Deputy Minister of the Interior stated that the Ministry had recruited more than 1,500 police officers and was in the process of creating a new IT system to handle administrative and criminal cases. In December 2014, the acting chief of police confirmed that the reorganisation of the police and recruitment was still

field of arms and ammunition circulation in the manner prescribed by the current legislation; 9) control of compliance with the legislation of the Donetsk People’s Republic in the field of private detective and security activities; 10) protection of property and objects, including on a contractual basis; 11) state protection of victims, witnesses and other participants in criminal proceedings, judges, prosecutors, investigators, officials of law enforcement and regulatory bodies, as well as other protected persons; 12) the implementation of expert and forensic activities. 2. By decision of the Head of the Donetsk People’s Republic, police officers may participate in activities to maintain or restore international peace and security.

According to the DPR MIA’s website, there are currently around 32 police offices in different districts.
ongoing.2715 As mentioned above,2716 between April and August 2015, the LPR adopted a framework for processing criminal cases based solely on Russian legislation,2717 which the police now apply. Currently, the website of the LPR MIA displays the addresses of 17 city / district police offices in the Luhansk oblast.2718

4.2.3.3.1.7 PROSECUTION

The DPR and LPR established Prosecutor’s offices by law on 15 July 2014,2719 and on 30 June 2014,2720 respectively.2721 In the DPR there is evidence that the Prosecution started to preliminarily function as early as May 2014, while in the LPR the Prosecution did not start operating until the end of 2014.

In practice, the first mention of the DPR Prosecutor General occurred before the enactment of its legislation in July 2014. There is evidence that, on 23 May 2014, the DPR’s so-called Prosecutor General, Ravil Khalikov, launched a criminal case against a Ukrainian tycoon.2722 In the DPR, the first Law ‘On the Prosecution Office’ was adopted on 15 July 2014,2723 and was later replaced by the Law ‘On the Prosecution’s Office’ of 31 August 2018.2724 The Prosecutor’s Office is headed by the Prosecutor General of the DPR and a first deputy. The Prosecutor General’s Office is divided into directorates and divisions, and senior prosecutors and prosecutors work within these divisions.2725 To carry out special measures, operations and physical protection of employees of the Prosecutor’s Office, the structure of the DPR General Prosecutor’s Office has its own security department, the structure and staffing of which is established by the Prosecutor General.2726

The DPR General Prosecutor’s Office began its work in the summer of 2014, and 27 employees of Ukraine’s Donetsk Oblast Prosecutor’s Office started working for the DPR.2727 In July 2014, DPR prosecution personnel were allegedly working on the site of the MH17 crash.2728 Aleksey Borisovich Remizov, a Russian citizen, was appointed to the post of Prosecutor General on 23 September 2014.2729 As of 25 November 2014, the DPR’s Prosecutor’s Office consisted of a total of 215 employees, of which 149 are employees of the Office of the Prosecutor General’s Office.2730 However, in December 2014, there is evidence from a resident of Horlivka that the “prosecutor’s office and the court [were] absent”, suggesting that the prosecution had not been fully operationalised across the DPR’s territory at that point.2731 There is nonetheless evidence that, by the beginning of 2015, the prosecutor’s office had begun to operate. In fact, during the first five months of 2015, 101 criminal cases were processed by the investigators of the Investigation Unit of the Prosecutor’s Office.2732

According to the website of the DPR Prosecutor’s Office, at present, there are 29 city, inter-district and district prosecution offices in operation.2733 In 2016, the DPR Prosecutor General’s Office published information about 17,391
pending criminal cases. During the first six months of 2020, the DPR Prosecutor General’s Office launched 411 criminal cases against Ukrainian combatants. During the first seven months of 2021, the Prosecution launched 1,760 criminal cases against 1,944 persons in the first-instance courts, which resulted in a guilty verdict. During the same period, the Prosecution also launched 209 criminal cases against 250 persons in the ‘Court of Appeal’ and the ‘Supreme Court’ of the DPR.

As mentioned above, there is clear and convincing evidence that Russian FSB officials held senior positions within the DPR Prosecutor General’s Office. There is, however, insufficient evidence to establish they played a role directing and supervising.

In the LPR, the Law of 30 June 2014 ‘On the Prosecutor’s Office’ established the Prosecutor’s Office in law, and towards the end of 2014, a Prosecutor’s Office, headed by Zaur Ismailov, began operating in the LPR. Some towns established their own branches, mostly headed by former employees of the Ukrainian Prosecutor’s Office. The first Prosecutor-General was appointed on 24 February 2015. The Law of 30 June 2014 was amended by the Law of 6 August 2018 ‘On the Prosecution Office of the LPR’. Under the Law of 2018, the Prosecutor General of the LPR is appointed and dismissed by the Supreme Council at the proposal of the Head of the LPR.

According to statistical data published by the Prosecutor General’s Office of the LPR, since its establishment, the LPR Prosecutor General’s Office has prosecuted: in 2016, 5,353 criminal cases; in 2017, 4,332 criminal cases against 4,948 individuals; in 2018, 3,995 criminal cases against 4,390 individuals; in 2019, 4,231 criminal cases; and in 2020, 3,664 criminal cases against 4,017 individuals.

The LPR Prosecutor General’s Office is now governed by the new Law ‘On the Prosecution Office of the LPR’, adopted on 6 August 2018. Under this Law, the LPR Prosecutor General is appointed and dismissed by the D/LPR parliamentary body on the proposal of the Head of the LPR. Currently there are 17 City and District Prosecution Offices in the LPR.

### Courts

In regard the courts in each ‘Republic’, prior to the establishment of more formal structures, ad hoc ‘military tribunals’ or ‘people’s courts’ were held, either without any legal framework or following USSR martial law from the Second World War. In the DPR, Decree No. 27-111 of 17 August 2014 provided for the establishment of military courts as ‘courts of first instance’ and the ‘Military Tribunal’ as a ‘specialised court of appeal’ with jurisdiction over crimes...
committed by military personnel. The ‘military court’ of LPR was established in August 2015 as a specialised ‘court of first instance’ with jurisdiction over crimes committed by military personnel. Subsequently, both the DPR and LPR established local civilian courts based on the territorial structure of the Ukrainian judiciary, which had been operating in the territory until November 2014. Thereafter, both the DPR and LPR took steps to establish a three-tier ‘court’ system.

In the DPR, the creation of its judicial system began on 22 October 2014 with Resolution No. 40-1, which established a ‘Supreme Court’, an ‘Arbitration Court’, city and district courts of general jurisdiction and military courts. The Resolution also “banned” the operation of judicial bodies of Ukraine in the DPR. On the same day, Resolution No. 40-2 was adopted, approving provisional definitions of ‘judicial proceedings’ principles, requirements for the appointment of judges, general principles relating to the functioning of the judicial system and the creation of 55 courts of general jurisdiction. The head of the ‘Supreme Court’ established 14 ‘local courts’ on 1 December 2014, and an additional one in Debaltsevskyi on 6 May 2015, as well as two ‘specialised courts’ (the ‘Arbitration Court’ and the ‘Military Field Court’).

On 9 January 2015, the Supreme Court of the DPR, the Arbitration Court and nine ‘courts of general jurisdiction’ started functioning. On 17 March 2016, the Military Field Court and four ‘courts of general jurisdiction’ began operating. On 19 May 2017, two further ‘courts of general jurisdiction’ began functioning. According to the website of the DPR Supreme Court, in 2015 there were 7,785 criminal cases under consideration by the courts of general jurisdiction and six cases under the consideration of the Chamber of Criminal Cases of the Supreme Court as a court of first instance. There were 813 further cases under the consideration of the Chamber of Criminal Cases of the Supreme Court ( cassation) and 62 under the consideration of the Presidium of the Supreme Court (supervision).

In total, between 2014 and 2016, the courts heard 57,119 cases.

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2766 OHCHR, ‘Human Rights in the Administration of Justice in Conflict-Related Criminal Cases in Ukraine April 2014 – April 2020’ (27 August 2020), para. 104; Decree of the Cabinet of Ministers No. 1085-p of 7 November 2014 suspended operations of governmental bodies, including courts, in specific locations of Donetsk and Luhansk regions. All 31 local courts of Donetsk region and all 17 local courts of Luhansk region were only officially closed down on 25 January 2018 by the Decision of the High Council of Justice of Ukraine No. 182/0/15-18 ‘On the termination of the courts’ work in connection with natural disasters, hostilities, measures to combat terrorism or other emergencies’ (25 January 2018). See also, Section 4.2.3.2.2 Incapacity of Local Government, above.


2768 Resolution of the Council of Ministers of the DPR No. 40-1 ‘On the creation of the judicial system’ (22 October 2014).


Nonetheless, on 18 August 2016, the OHCHR held a meeting with the DPR Supreme Court where the OHCHR was informed that not all courts were operational and some of them were understaffed. At that point in time there were 73 judges working in 13 courts (24 in the DPR Supreme Court and 49 in courts of general jurisdiction).

On 31 August 2018, the Law ‘On the judicial system’ was adopted. According to the 2018 Law, the DPR ‘judicial system’ consists of the Supreme Court, which includes criminal, civil and arbitration chambers, as well as a specialised Military Tribunal (as a chamber of the Supreme Court); two specialised courts (the Arbitration Court and Military Field Court); and 15 courts of general jurisdiction. Between 1 January 2018 and 9 August 2018, the Supreme Court of the DPR reported that it had ‘heard’ 4,054 cases, of which 1,380 were ‘criminal’ cases, 1,801 were ‘civil’ cases, 77 related to ‘administrative offences’, and 796 were ‘commercial cases’. The ‘court’ reportedly delivered final ‘Judgements’ in 84 per cent of these ‘cases’. In 2020, the courts had 113,797 cases awaiting trial, 101,905 of those were heard by DPR courts, including 1,460 criminal cases that were heard by the Supreme Court. In the first half of 2021, 56,149 out of 69,489 cases have been heard by the DPR courts. In total in 2021, the DPR courts considered 116,311 cases including 1068 criminal cases that were heard by the Supreme Court.

Initially, the leadership of the LPR primarily focused on creating military courts. Therefore, in September 2014, the LPR passed a law ‘On military courts’, which operated until April 2015. Then, on 30 April 2015, the LPR adopted a second law on the matter entitled ‘On the military courts of the LPR’. Information on the practice of the military courts between 2014 and 2018, including the number of cases and types of offences heard, could not be found. However, in October 2014, Mozhovii, former head of the Prizrak Battalion of the LPR, organised a ‘people’s court’ which had considered two cases.

Between April and May 2015, the LPR intensified its pace in passing ‘laws’ on the creation of a ‘judicial system’. Thus, the LPR adopted the Laws ‘On the creation of courts of the LPR’ of 30 April 2015; ‘On the judicial system’ of 30 April 2015; ‘On the status of judges’ of 22 May 2015; and ‘On the Supreme Court of LPR’ of 29 May 2015. Through these laws, the LPR created a judicial system comprised of the Supreme Court, which is the highest ‘judicial’
body for all cases, as well as economic disputes, and also ensures the implementation of constitutional justice; the ‘Arbitration Court’ and ‘courts of general jurisdiction’, including the ‘Military Court’ and 17 local courts.

On 24 October 2015, the Head of the LPR issued an ‘order’ prescribing the commencement of the operation of 15 local courts. In addition, another two local courts in Rovenskyi and Stakhanovsky commenced activities on 2 and 28 December 2016, respectively.

On 16 August 2018, the ‘acting head’ of the LPR issued a ‘decree’ on proceeding with the establishment of the ‘Supreme Court’ of the LPR. On 28 August 2018, the ‘People’s Council’ appointed 14 ‘judges’ to the ‘Supreme Court’. The ‘Supreme Court’ of the LPR began to function as a ‘court of appeal and cassation’ on 25 October 2018.

In total, as of 31 December 2018, there were 78 judges in the LPR controlled territory, of which 44 had, prior to the withdrawal of Ukraine, held positions in public bodies of the Ukrainian Government, and 32 (over 40%) had previously held judicial positions in a Ukrainian court.

4.2.3.3.1.9 DEFENCE

The ‘legislation’ in the DPR and LPR provides for the right to legal assistance in criminal proceedings. In territory controlled by the DPR, the relevant ‘legislation’ on the legal status and activities of defence lawyers was adopted on 20 March 2015 and a lawyers’ association was established on 20 June 2015. In territory controlled by the LPR, the relevant ‘legislation’ was adopted on 28 August 2018 and a lawyers’ association was established on 9 January 2019.

Defence lawyers are required to be certified in the territory controlled by the D/LPR and achieve this by making submissions to the D/LPR’s respective ‘ministries of justice’. In the territory controlled by the LPR, defence lawyers are also screened and certified by the ‘ministry of state security’. On 30 June 2017, the Head of the DPR issued a decree stating that only lawyers who were ‘certified’ by the DPR may represent a ‘defendant’ in ‘criminal cases’. According to the LPR’s law ‘On advocacy and advocacy in the Luhansk People’s Republic’ of 28 August 2018, individuals who served as lawyers as of 12 May 2014 can obtain the status of lawyer if, among others, they “passed a special check in the state security authorities”.


2800 OHCHR, "Human Rights in the Administration of Justice in Conflict-Related Criminal Cases in Ukraine April 2014 – April 2020" (27 August 2020), fn. 132.

2801 OHCHR, "Human Rights in the Administration of Justice in Conflict-Related Criminal Cases in Ukraine April 2014 – April 2020" (27 August 2020), fn. 132.

2802 Order of the Head of the LPR No. UG-570/18 “On some issues of the formation of the Supreme Court of the Luhansk People’s Republic” (16 August 2018).


2805 OHCHR, "Human Rights in the Administration of Justice in Conflict-Related Criminal Cases in Ukraine April 2014 – April 2020" (27 August 2020), para. 120.
4.2.3.3.1.10 PRISONS

Finally, Ukrainian prisons were also gradually brought under the authority of the new parallel structures in the D/LPR and made subject to the new laws and regulations. As mentioned above, the Ukrainian authorities lost access to, and communication with, the prison authorities located in the D/LPR from 1 December 2014. Ukraine also stopped funding these prisons from the national budget.

To begin with, prisons in the DPR came under the jurisdiction of the DPR MIA. According to Decree No. 17-4 of 17 July 2014, the DPR MIA was established with a mandate to, *inter alia*, ensure the execution of punishments, detention of suspects, accused persons and convicts, as well as other functions formally performed by the Ukrainian prison authorities such as the maintenance of law and order in its prisons. On 2 September 2015, responsibility for prisons was transferred to the ‘Ministry of Justice’ of the DPR.

In the LPR, prisons were brought under the jurisdiction of the LPR MIA from December 2014. It was reported in December 2014 that the penitentiary system in the LPR consisted of 12 prisons and detention centres with over 5,000 inmates.

The D/LPR’s ‘Ministries of State Security’ (‘MGB’) also have powers of detention. Human Rights Watch and Amnesty International reported in July 2016 that there is a special resolution of the DPR’s Council of Ministers allowing the DPR’s MGB to arrest individuals for up to 30 days without charge. In addition, both the DPR’s and LPR’s legislation provide their MGBs with the power of administrative arrest. In 2017, the DPR MGB detained 246 individuals under “suspicion of espionage and state treason”.

In this context, it is relevant that, as discussed above, there is clear and convincing evidence that the FSB has integrated officers into the D/LPR’s MGBs, FSB curators have also allegedly issued recommendations to the DPR and LPR MGBs, and, according to Information Resistance, participated in meetings with the MGB’s high-ranking officials.
officials. However, while the evidence demonstrates that the FSB officers deployed to the D/LPR’s law enforcement agencies exercised some influence, further investigation is needed to establish that they played a role in directing and supervising the law enforcement agencies in order to amount to overall control.

4.2.3.3.1.11 Control Over Borders

Crucially, the D/LPR maintains control over the borders separating the territory under their control and Ukrainian government-controlled territory (i.e., the contact line). In total, there are seven entry-exit checkpoints (‘EECPs’) operated by the Ukrainian forces on the Ukrainian side of the contact line in the Donetsk and Luhansk oblasts, and seven corresponding checkpoints operated by the D/LPR armed formations on the D/LPR side. The system for crossing the contact line between government-controlled territory and territory controlled by D/LPR officially began functioning on 21 January 2015 when a permit regime to cross the contact line was introduced.

Three EECPs (two of which are new) and three corresponding LPR checkpoints are located in the Luhansk oblast. As of 14 January 2022, while the two new checkpoints were opened on the Ukrainian side, the LPR’s new corresponding checkpoints were closed. Four EECPs and four corresponding DPR checkpoints are located in the Donetsk Oblast. As of the end of December 2021, only one of the DPR’s checkpoints operated but with considerable limitations.

In Donetsk, according to the Law ‘On the Ministry of State Security’ of 3 August 2018, the DPR MGB is entrusted with operating the state border of the DPR. Borders and checkpoints are regulated by the Law ‘On the protection of the state border of the Donetsk People’s Republic’ of 29 November 2019, which provides that the MGB bears responsibility for implementing the border control regime on land and water, while the DPR armed forces control the air border. Within the MGB, the operation of state borders is exercised by the Border Guard Service of the MGB.

In Luhansk, in accordance with the Law ‘On the Ministry of State Security’ of 8 October 2018, the DPR MGB is responsible for operating the state border. Within the Ministry, the operation of state borders is exercised by the Border Guard Service of the MGB. In March 2020, the LPR implemented the Order of the Head of the LPR of 10 June 2020 No. 359/20 ‘On some issues of crossing the temporary checkpoint Stanystsia Luhanskaya’, which provided special conditions/procedures for entry in light of the Covid-19 pandemic.

Anyone wishing to enter the DPR controlled territory from elsewhere in Ukraine must gain permission from the DPR’s ‘Interdepartmental Operational Headquaters’. Thereafter, if the application is accepted, the Headquaters will issue a permit for a specific day it has chosen itself and not the applicant. Citizens with a residence permit for the territory controlled by Ukraine do not need to seek permission from the Headquaters when leaving DPR controlled territory. However, citizens with a Donetsk residence permit must first obtain permission from the Headquaters to leave the DPR, regardless of the destination.
Entry into the LPR controlled areas from elsewhere in Ukraine is allowed where the individual has a residence permit, or a certificate of registration of a place of residence or stay. If an individual does not have LPR-registration, they can fill in an application requesting entry on several grounds. Following the Order of the Head of DPR of 25 September 2020, when leaving the LPR, citizens who do not have LPR registration can leave without limitation, whereas citizens with an LPR registration are only allowed by the LPR authorities to go into Ukrainian controlled territory once a month. From May 2015, it was reported that all border crossing points between Ukraine in the Luhansk oblast and the Russian Federation had been handed over to the LPR border guards. In Donetsk oblast, the border crossing points between Ukraine and Russia are controlled by the DPR authorities. Three of them are international, namely: Uspenka, Marinovka and Novoazovsk. In addition, there are two local checkpoints operating for residents of border areas.

As a matter of law and practice in both the DPR and LPR, passage in and out of Russia is virtually unobstructed, with a visa free regime in place along the border between Russia and the DPR and LPR.

There are also four checkpoints between the DPR and LPR controlled by the D/LPR authorities. It is not exactly clear when the border between the DPR and LPR was established; however, the first piece of information about the delimitation of each Republic’s territory and the establishment of customs services between them appeared in November 2015. According to another source, the border posts between the DPR and LPR were established in 2014 to 2015 in order to control “the circulation of weapons and the distribution of humanitarian aid […] as well as to combat smuggling”. In March 2020, the ‘border’ between the D/LPR was closed due to the Covid-19 pandemic. Starting from 19 June 2021, the border was re-opened; however only one checkpoint (located in the Debaltseve area) is operational.

4.2.3.3.1.12 Passports

Both Republics now issue their own passports. As of 16 March 2016, the DPR has issued its own passports. It was reported that, by June 2016, 34,000 passports would be issued and would be required for people to be able to vote, but would not affect access to other public services. In the end of August 2021, it was reported that more than 700,000 residents had received DPR passports. In the LPR, passports have been issued since May 2015. As of December 2020, the LPR had issued around 583,143 passports.

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2836 Order of the Head of the DPR No. UG-607/20 “On Amendments to the Order of the Head of the Luhansk People’s Republic of 10.06.2020 No. UG-359/20 “On some issues of crossing the temporary checkpoint Stanytsia Luhanska” (25 September 2020); CXID.info, “Rules for crossing the contact line during the period of quarantine restrictions” (2 June 2021).

2837 OSCE, “Latest from OSCE Special Monitoring Mission (SMM) to Ukraine based on information received as of 19:30 (Kyiv time), 14 May 2015” (15 May 2015).

2838 VisaSam, “Crossing the DPR-Russia border in 2022” (29 December 2021).

2839 Ministry of Foreign Affairs of the DPR, “Crossings Points in the Donetsk People’s Republic on the Border with the Russian Federation” (16 May 2016).

2840 VisaSam, “Crossing the DPR-Russia border in 2022” (29 December 2021); VisaSam, “What documents do you need to have to enter the LPR” (15 August 2021).

2841 Informator, “What happens on the “border” between the “LPR” and “DPR”, which was opened by the militants: how to get through” (28 June 2021); Svoi.City, “How to get from Donetsk to Luhansk. 4 questions about the new conditions and situation at checkpoints” (29 June 2021); DAN, “DPR opens border with Luhansk People’s Republic” (19 June 2021).

2842 Gordon, “Kazansky: Debaltseve was divided into two parts between “LPR” and “DPR” customs” (15 November 2015).

2843 E. Makho, “The border between the LPR and the DPR has become more impenetrable over the years” (Voyennoe obozrenie, 5 October 2020).

2844 Svoi.City, “How to get from Donetsk to Luhansk. 4 questions about the new conditions and situation at checkpoints” (29 June 2021).

2845 Svoi.City, “How to get from Donetsk to Luhansk. 4 questions about the new conditions and situation at checkpoints” (29 June 2021); TASS, “DPR opens border with LPR closed earlier due to pandemic” (19 June 2021); Informator, “What happens on the “border” between the “LPR” and “DPR”, which was opened by the militants: how to get through” (28 June 2021).


2849 DAN, “More than 700 thousand residents received DPR passports” (23 August 2021).

2850 M. Sokolov, “Medida: DPR started issuing the first republican passports” (TASS, 16 March 2016); P. Khomshiashvili and F. Rustamova, “DPR started issuing their passports” (ABC, 15 March 2016).

2851 I. Sitnikova, “Almost 442 thousand passports of the Russian Federation and more than 1.2 million “LDPDR” were issued in the occupied territories of Ukraine, - human rights activists” (Hromadske, 14 January 2021).
It has been reported that in 2021, the D/LPR authorities are increasing efforts to ensure residents have either Russian Federation or D/LPR passports, including by requiring such passports for persons to receive pensions or assistance and for employees to hold civil service roles.2852

4.2.3.3.1.13 CONTROL OF IMPORTS AND EXPORTS
The D/LPR authorities have also maintained control over the transport of goods into the territories under their control since around January 2015.2853

In particular, between January and February 2015, the DPR Council of Ministers issued the Regulation ‘On the temporary provision on the customs system of the DPR’ of 10 January 2015,2854 and the DPR ‘Ministry of Revenues and Duties’ issued the Decree ‘On the temporary order of creation and operation of customs control zones’ on 5 February 2015,2855 establishing a customs system. On 25 March 2016, the Law ‘On customs regulation in the Donetsk People’s Republic’ was adopted and currently regulates the customs system.2856 The general management of customs in the DPR is carried out by the Government of the Donetsk People’s Republic.2857 The Customs Service is governed by the Ministry of Revenues and Duties (i.e., ‘Ministry of Taxation’).2858 There are thirteen customs posts according to the DPR’s website.2859

The DPR has a ‘State Customs Committee,’2860 It was created by the Order of the Head of the DPR ‘On the structure of the executive organs of the Luhansk People’s Republic’ of 25 November 2014.2861 The new Decree ‘On the State Customs Committee of the DPR’ was adopted on 17 December 2019.2862 The Chairman of the Committee is appointed and dismissed by the Head of the LPR on the submission of the Chairman of the Council of Ministers.2863 There are eight customs posts mentioned on the website of the LPR ‘Ministry of Economic Development’.2864

On 15 September 2021, the heads of the D/LPR signed an agreement on the creation of a single customs territory and the development of economic integration.2865 Following this Agreement, on 1 October 2021, the customs posts between the LPR and the DPR were abolished.2866

4.2.3.3.1.14 CONTROL OVER SERVICES
As described above, Ukraine stopped funding services in the D/LPR controlled territories from November 2014. Thereafter, it was reported by the OSCE that there was a “continuously deteriorating humanitarian situation” where institutions, such as hospitals and residential care facilities, remained operational despite an absence of government support. They reported having received humanitarian aid from numerous sources, including the GoU, the Russian

2853 See e.g., BBC News, “How and what can be transported to the ‘DPR’ and ‘LPR’” (23 January 2015); Donetskovya Vremya, ‘What goods can be imported through the DPR customs’ (21 October 2020); Gorlovka.ua, ‘LPR has new rules of importing goods through Semyonovka’ (19 February 2021).
2854 Decree of the Council of Ministers of the DPR No. 1-23 ‘On Temporary Provision on the customs system of the DPR’ (10 January 2015).
2855 Decree of the Ministry of Revenues and Duties of the DPR No. 14 ‘On Temporary order of creation and operation of customs control zones’ (5 February 2015).
2858 Ministry of Revenues and Duties of DPR, ‘Customs’.
2859 Ministry of Revenues and Duties of DPR, ‘Customs posts.’
2860 State Customs Committee of DPR, ‘Main page’.
2862 Decree of the Council of Ministers of the DPR No. 793/19 ‘On the State Customs Committee of the DPR’ (17 December 2019).
2863 Decree of the Council of Ministers of the DPR No. 793/19 ‘On the State Customs Committee of the DPR’ (17 December 2019), Article 5.1.
2865 Head of DPR, ‘The head of DPR Leonid Pasechnik and the head of the DPR Denis Pushilin signed an agreement on the creation of a single customs territory and the development of economic integration’ (15 September 2021).
2866 Vedomosti, ‘DPR and LPR eliminate customs on the joint section of the border’ (7 September 2021); DAN, ‘There are no more customs’ posts on the border of the DPR and LPR, the dismantling of the first post has begun’ (PHOTO)’ (1 October 2021); L. Mokhanova, Donetsk diary. The border was opened between the republics and the customs were removed. But...” (Ostrov, 13 October 2021).
Federation, the LPR 'Ministry of Health', the DPR ‘Ministry of Health’ and various international organisations and NGOs.\(^{2867}\)

Since January 2015, the D/LPR authorities have maintained control over hospitals and other social care institutions. In the DPR, all medical institutions are subordinated to the Ministry of Health according to regulations dated 10 January 2015.\(^{2868}\) On 24 April 2015, the Law ‘On healthcare’ was adopted by the People’s Council of the DPR, further expanding the state-owned healthcare and health institutions.\(^{2869}\) In the LPR, healthcare institutions are also subordinated to the LPR’s Ministry of Health as the competent executive body.\(^{2870}\) The Ministry of Health was established on 25 November 2014 by the Order of the Head of the LPR.\(^{2871}\) On 20 January 2015, the LPR’s Council of Ministers adopted the ‘Regulations of the Ministry of Health of the LPR’.\(^{2872}\) On 15 September 2016, the LPR’s parliament adopted a Law ‘On the basics of healthcare’.\(^{2873}\) In both the D/LPR, a significant shortage in medical staff has been reported, as well as a drop in medical care available.\(^{2874}\) Around February 2021, the D/LPR began vaccinating certain categories of the residents in the territory it controls against Covid-19 with the Sputnik V and Sputnik Light vaccines provided by Russia.\(^{2875}\)

Regarding education, at the same time as the GoU issued a statement providing that only educational institutions located in government-controlled territory would open on 1 September 2014, the DPR’s ‘Ministry of Education and Science’ issued an order stipulating that, from 1 September 2014, “all the educational and science facilities that are situated on the territory of the DPR shall be subordinate to the DPR’s Ministry of Education and Science.”\(^{2876}\) The D/LPR authorities opened educational institutions on 1 October 2014.\(^{2877}\) On 19 June 2015, a Law ‘On education’ was adopted in the DPR.\(^{2878}\) The Law regulates, in general terms, the educational process from preschool to higher education.\(^{2879}\)


\(^{2868}\) Decree of the Council of Ministers of the DPR No. 1-33 “On the approval of the regulations of the Ministry of Health of DPR” (10 January 2015).

\(^{2869}\) Law of the DPR No. 42-IHC ‘On healthcare’ (24 April 2015): According to Article 8, the state healthcare system includes: the republican executive body of the Donetsk People’s Republic in the field of healthcare, state-owned healthcare institutions and research institutions, educational institutions, pharmaceutical enterprises and institutions, sanitary and preventive institutions, territorial bodies established in the prescribed manner for implementation of sanitary and epidemiological supervision, institutions of forensic examination of a medical profile, enterprises for the production of medicines and medical equipment and other enterprises, institutions and organisations. According to Article 13, the procedure for the establishment, reorganisation and liquidation of health care institutions, the specifics of the activities and classification of health care institutions are determined by current legislation. According to Article 26, medical care is provided by professionally trained medical workers in accordance with medical indications in health care institutions. All DPR citizens have a right to medical care.

\(^{2870}\) Order of the Head of the LPR ‘On the structure of the executive organs of the Luhansk People’s Republic’ (25 November 2014); Law of the LPR ‘On the basics of healthcare’ (15 September 2016).

\(^{2871}\) Order of the Head of the LPR ‘On the structure of the executive organs of the Luhansk People’s Republic’ (25 November 2014).

\(^{2872}\) According to clause 2, the tasks of the Ministry were: organisation of the healthcare, organisation of emergency medical care, etc. The functions of the Ministry include the supply of medications for the healthcare facilities, provides maintenance of information systems, databases in the field of healthcare; licensing of the medications; coordination of the activities in the field of health care of state medical and preventive institutions and the private health care system, etc.

\(^{2873}\) According to Article 13: the executive body in the sphere of healthcare has powers to: establish requirements for the placement of medical organisations, healthcare institutions; establish general requirements for the structure and staffing of health care institutions; organization of the healthcare within the framework of diagnosis, treatment and rehabilitation in health care institutions; appointment (dismissal) of heads of healthcare institutions. See Law of the LPR ‘On the basics of healthcare’ (15 September 2016).

\(^{2874}\) Health Cluster|Protection Cluster|UN High Commissioner for Refugees|World Health Organisation, “Exploring access to health care services in Ukraine: A protection and health perspective - July 2019” (25 July 2019); Information Resistance, “The realities of medicine in uncontrolled Luhansk district: people die without help” (3 April 2019); I. Timofeyev, "A military expert told how the insurgents destroyed medicine in the "L/DPR" (Segodnya, 26 May 2019); S. Andreyev, “Letters from the occupied Donbass. Zakharchenko did not allow to get sick” (Krym.Realty, 17 January 2017); O. Konovalova, “DPR recognised the catastrophic shortage of doctors: in some towns the deficit of up to 50%” (Depo Donbas, 5 April 2021); O. Konovalova, “The realities of medicine in the "DPR": There are no doctors, medical institutions and ambulances are worn out” (Depo Donbas, 17 May 2021).

\(^{2875}\) Lenta, “Vaccination against coronavirus has begun in LPR” (1 February 2021); O. Kramar, “L/DPR announced the start of vaccination against coronavirus with the Russian “Sputnik V”” (Hromadske, 1 February 2021).

\(^{2876}\) Order of the Ministry of Education and Science of the DPR No. 2 “On reattachment of educational institutions of all levels, types and forms of property” (1 September 2014).

\(^{2877}\) Decree of the Council of Ministers of the DPR No. 30-3 ‘On the shift of 2014/2015 school year in DPR’ (25 August 2014); Ria Novosti, ‘LPR Head: opening of 42 schools on the territory of LNR is planned for October’ (30 September 2014); K. Ivanova, “Donbass: the academic year began with the rumble of shells” (DW, 1 October 2014).


Both the DPR and LPR proceeded to implement a ‘Russian’ curriculum, including by changing the main language of education to Russian.\textsuperscript{2880} In 2017, Zakharchenko (the then Head of the DPR) reported that all the schools have finished the transition to Russian as a language of education.\textsuperscript{2881} In 2020, the ‘Minister of Education and Science’ of the DPR stated that “our schoolchildren study according to Russian textbooks, and from September 1 we are almost completely switching to Russian educational standards”.\textsuperscript{2882} In the LPR, the transition to Russian as a language of education started in 2014.\textsuperscript{2883} In 2019, the LPR ‘Minister of Education’ reported that “[n]owadays the standards of the Russian Federation have already been adopted, we are fully working in accordance with the standards of the Russian Federation”.\textsuperscript{2884} In 2020, the ‘Ministry of Education’ of the LPR excluded the Ukrainian language from its school curricula.\textsuperscript{2885}

According to the DPR ‘Ministry of Revenue and Fees’, the average monthly wages in the education sphere were 11,118 rubles (6,716 UAH) for January to April 2020.\textsuperscript{2886} On 25 December 2020, Resolution No. 87-13 was adopted regulating the salaries of teachers in the DPR.\textsuperscript{2887} In Luhansk, the salaries of teachers are also paid by the LPR.\textsuperscript{2888}

Final exams are taken in the D/LPR but are not recognised by the GoU. Therefore, any student wishing to enter a Ukrainian university is required to pass exams in Ukrainian-controlled territory as an external student. These exams, the Independent External Evaluation, are undertaken by every student in Ukraine.\textsuperscript{2889} In 2020, Ukraine made changes so that the students from the D/LPR and Crimea would be able to choose – to only take an exam on Ukrainian language and literature and then an entry exam at the university they wish to enter, or to pass the Independent External Evaluation.\textsuperscript{2890} On the contrary, Russia recognised the D/LPR’s certificate of secondary education as official Ukrainian documents, and, thus, those students can enter Russian higher education institutions.\textsuperscript{2891}

4.2.3.3.1.15 Control over Social Welfare, Banks and Taxes

As discussed above,\textsuperscript{2892} in November 2014, the GoU adopted resolutions\textsuperscript{2893} suspending allocations and disbursements from the Ukrainian State budget to non-government-controlled territories.\textsuperscript{2894} At the same time, the D/LPR authorities took control over the provision of these services (as described in this section). As mentioned above,\textsuperscript{2895} there is clear and convincing evidence that, towards the end of the 2014, Russia’s financial contributions and economic assistance to the D/LPR (which had begun in spring 2014) became increasingly systematised.

In Donetsk, regulations establishing a ‘Central Republican Bank’ were adopted on 6 May 2015.\textsuperscript{2896} The Central Republican Bank of the DPR was established on 7 October 2014 by the ‘Ministry of Finance’.\textsuperscript{2897} In January 2015, it

\textsuperscript{2880} OSCE, ‘Latest from OSCE Special Monitoring Mission (SMM) to Ukraine based on information received as of 14 September 2015’ (15 September 2015); TSN, “Zakharchenko boasted about the complete transition of schools in the “DPR” into Russian” (7 June 2017); DAN, ‘DPR schools will switch to educational standards of the Russian Federation from September 1, 2020 - Kushakoy’ (5 June 2020).

\textsuperscript{2881} TSN, "Zakharchenko boasted about the complete transition of schools in the “DPR” into Russian" (7 June 2017).

\textsuperscript{2882} DAN, ‘DPR schools will switch to educational standards of the Russian Federation from September 1, 2020 - Kushakoy’ (5 June 2020).

\textsuperscript{2883} Vest, ‘LPR adopts Russian educational standards’ (13 November 2014).


\textsuperscript{2885} T. Semenova, ‘Vicious circle. How the Ukrainian language became unnecessary again in the occupied part of the Luhansk region’ (Focus, 21 June 2020).

\textsuperscript{2886} Vestnik Khartsyzka, ‘Average salary in DPR by industry - teachers in second place’ (2020).

\textsuperscript{2887} Decree of the Council of Ministers of the DPR No. 87-13 ‘On amendments to the Decree of the Council of Ministers of the Donetsk People's Republic of 18 April 2015 No. 6’ ‘On the remuneration of employees on the basis of the Unified tariff scale of categories and salaries (tariff rates) for remuneration of employees of institutions, enterprises, and organizations of certain branches of the public sector” (25 December 2020).

\textsuperscript{2888} Lug-info, ‘Increasing teachers' salaries up to 10.5 thousand rubles is possible. - Pasechnik’ (26 May 2018); City News, “‘LPR’ is looking for money to pay salaries to teachers” (3 March 2017); A. Vostochnaya, "How is he like - a teacher in "LPR"?" (Ukrainska Pravda, 28 August 2021).

\textsuperscript{2889} ATN, ‘Graduates with DPR and LPR certificates will not be able to enroll in universities of Ukraine’ (16 April 2015).

\textsuperscript{2890} President of Ukraine, ‘The President signed a law allowing the admission to Ukrainian universities of residents of the temporarily occupied territories of Donbas and Crimea without external evaluation’ (10 July 2020); H. Kovalchuk, ‘Students from there. What Ukraine received from preferential admission to universities for young people from TO and Crimea’ (Focus, 9 December 2020).

\textsuperscript{2891} Donetskiy vesti, ‘Russia recognizes diplomas of DPR and LPR as Ukrainian’ (17 July 2015); F. Rustamova amd A. Artemiev, ‘DPR and LPR school graduates will be admitted to Moscow State University with certificates’ (RBC, 22 June 2015).

\textsuperscript{2892} See Section 4.1.2.3.2.6 Financial Assistance and Economic Dependency on the Russia Federation.

\textsuperscript{2893} Decree of the President of Ukraine No. 875/2014 ‘On the Decision of the National Security and Defence Council of 4 November 2014 ‘On Immediate Measures Aimed at the Stabilization of Socio-Economic Situation in Donetsk and Luhanskiy regions’” (President of Ukraine, No 875/2014, 14 November 2014); Decision of the Cabinet of Ministers of Ukraine No. 595 ‘Certain matters of financing of budgetary institutions, implementation of social benefits to the population and the provision of financial support to individual enterprises and organisations of Donetsk and Luhanskiy regions’ (11 November 2014).


\textsuperscript{2895} See Section 4.1.2.3.2.6 Institutionalisation of Economic Assistance by End of 2014/Beginning of 2015.

\textsuperscript{2896} Order of the Council of Ministers of the DPR ‘On adopting regulations on Central Republican Bank and other matters of its activity’ (6 May 2014).

\textsuperscript{2897} Central Bank of the Donetsk People’s Republic, ‘History’. 
was reported that “the Bank of DPR’ and a post office opened offices in Ilovaisk, giving people working in ‘the DPR structures’ and elderly people an opportunity to collect allowances from the DPR.”

Bank branches have since been opened in numerous towns and cities across the DPR. According to the DPR’s website, there are 247 branches of the Central Republican Bank in the DPR, including in Donetsk, Horlivka, Amvrosiyevka, Debaltseve, Dokuchaevsk, Enakievo, Zhdanovka, Zugres, Ilovaisk, Kirovskoye, Makeevka, Novoazovsk, Snezhnoe, Torez, Khartsyzk, Shakhtersk and Yasinovataya.


Further, social welfare payments started to be paid by the D/LPR authorities. In October 2014, it was reported that pensions and other welfare payments were being paid in the LPR through private donations and local donors and investors. From April 2015, both the DPR and LPR began paying pensions in Russian rubles. HRMMU reported that already in April 2015, 200,000 people living in the areas controlled by the armed groups received pensions in Russian rubles. On 14 April 2015, the LPR State Bank reported that 45 million rubles had been paid out by the LPR to pensioners. As described above, since April 2015, Russia has paid pensions, benefits and wages in both the DPR and LPR. In May 2015, HRMMU also reported that ‘the armed groups had paid salaries on an irregular basis to medical staff, teachers, employees of social care institutions and penitentiary services’, which had not received salaries from the GoU since July 2014.

Both the LPR and DPR have also introduced a system of taxes on their respective territories. Nonetheless, as discussed above, the level of financial aid provided by Russia far exceeds the money collected in taxes by the D/LPR. In addition, there is evidence that the Russian Commission for the Provision of Humanitarian Aid for the Affected Areas in the Southeast of the Regions of Donetsk and Luhansk deals with “the effectiveness of the collection of taxes and duties by the tax authorities of the (Ukrainian) territories and the development of proposals for the improvement of their function and strengthening of the budget discipline”.

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2908 OSCE, ‘Latest from OSCE Special Monitoring Mission (SMM) to Ukraine based on information received as of 18:00 (Kyiv time), 14 January 2015’ (15 January 2015).
2909 Donetsk People’s Republic, ‘List of the CRB offices open on 22 May’ (21 May 2021).
2911 The State Bank of the Lugansk People’s Republic, ‘Main page’.
2912 The State Bank of the Lugansk People’s Republic, ‘General information’.
2915 OSCE, ‘Latest from OSCE Special Monitoring Mission (SMM) to Ukraine based on information received as of 18:00 (Kyiv time), 26 October 2014’ (28 October 2014).
2918 OSCE, ‘Latest from OSCE Special Monitoring Mission to Ukraine (SMM), based on information received as of: 19:30 (Kyiv time), 14 April 2015’ (15 April 2015).
2919 See Section 4.1.2.3.2.6.2 Institutionalisation of Economic Assistance by End of 2014/Beginning of 2015.
2922 Law of the LPR No. 4-III ‘On the taxation system’ (30 December 2014); Temporary Provision of the Council of Ministers of the DPR ‘On the tax system’ (3 October 2014).
2923 See Section 4.1.2.3.2.6.2 Institutionalisation of Economic Assistance by End of 2014/Beginning of 2015.
2925 J. Röpcke, “How Russia finances the Ukrainian rebel territories” (Bild, 16 January 2016).
In the DPR, the regulation ‘Temporary provision on the tax system’ adopted by the Council of Ministers entered into force on 3 October 2014. On the same day, the DPR’s ‘Minister of Revenues and Duties’ announced that “from 3 October, a temporary regulation on taxation will be in effect in the republic”. The Minister also pointed out that “there are severe sanctions for tax evasion, from fines to the administrative arrest of a defaulter.” He also stated that a tax inspectorate, a ministry for revenues and fees, as well as other bodies to control taxation were created. Taxation is now regulated by the Law ‘On the tax system’ adopted by the DPR People’s Council on 25 December 2015. This law establishes the basic concepts that are related to the calculation and collection of tax payments, the rights and obligations of different parties to tax relationships, the procedure for tax control and the responsibility of taxpayers for committing offenses. The DPR Ministry of Revenue and Duties exercises control over the tax system and collects the revenue.

In the LPR, on 30 December 2014, the Law ‘On the taxation system’ was adopted by the LPR People’s Council. It was replaced by the Law of the People’s Council ‘On the taxation system’ of 28 December 2015, which is still in force. The key organ responsible for the taxes is the LPR’s ‘State Committee of Taxes and Duties’, which collects the revenue.

4.2.3.3.1.16 REGULATION OF ENTERPRISES AND PROPERTY

Both Republics have also taken over State property situated in their respective territories through laws adopted on 21 July 2014 in the DPR and 4 November 2014 in the LPR. The D/LPR authorities proceeded to adopt legislative measures aimed at regulating private enterprises and property. Taking control of public property is yet another demonstration of the D/LPR’s exercise of governmental functions in lieu of the GoU’s authority.

4.2.4 CONCLUSION ON OCCUPATION BY PROXY

In order to establish whether the Russian Federation occupies Donbas by proxy, the following must be assessed: 1) whether the Russian Federation exercises overall control over the DPR and LPR; and 2) whether the DPR or LPR are in effective control of the Donetsk and Luhansk oblasts.

That Russia has exercised overall control over the D/LPR armed groups since July 2014 until the present has been established in Section 4.1.2.3.2 (Overall Control: Participants in the Internal Armed Conflict Act on Behalf of the State). Consequently, the current section has considered if, and when, the D/LPR armed groups, acting under Russia’s overall control, exercised effective control over territory in Donbas on account of: 1) their physical presence in the territory without the consent of Ukraine; 2) Ukraine’s substantial or complete incapacity to exert its powers in the territory; and 3) the D/LPR’s exercise of authority over the territory in lieu of the Ukrainian government.

Since March to April 2014, the D/LPR armed groups have been physically present in the Donetsk and Luhansk oblasts without the consent of Ukraine, thus satisfying the first criterion of effective control required to establish occupation by proxy. From April 2014, the D/LPR armed groups began to take over towns and cities in the Donetsk and Luhansk oblasts.

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2914 *Temporary Provision of the Council of Ministers of the DPR “On the tax system” (3 October 2014).*

2915 TASS, “20% income tax is introduced for businessmen in DPR” (3 October 2014).

2916 TASS, “20% income tax is introduced for businessmen in DPR” (3 October 2014).

2917 TASS, “20% income tax is introduced for businessmen in DPR” (3 October 2014).


2919 “Kontakt” Law Firm, “General characteristics of 2016 DPR tax system” (5 May 2016).

2920 “Kontakt” Law Firm, “General characteristics of 2016 DPR tax system” (5 May 2016).

2921 Law of the DPR No. 4-III “On the taxation system” (28 December 2015).

2922 Law of the DPR No. 79-I “On the tax system” (3 October 2014).

2923 Law of the DPR No. 79-I “On the tax system” (3 October 2014).

2924 Law of the DPR No. 79-I “On the tax system” (3 October 2014).

2925 Law of the DPR No. 79-I “On the tax system” (3 October 2014).

2926 Law of the DPR No. 18-5 “On the Ukrainian state property transition to the DPR state property” (21 July 2014).


2928 See e.g., OHCHR, Report on the human rights situation in Ukraine 16 November 2016 to 15 February 2017 (15 March 2017), paras. 103, 123.

2929 For more information, see Section 4.1.2.2.2.2 When was the Intensity Requirement in Eastern Ukraine Satisfied?
Throughout the spring and summer of 2014, the D/LPR armed groups proclaimed their independence and began establishing rudimentary governmental institutions, issuing legislation and establishing law enforcement mechanisms. At the same time, intense hostilities between Ukraine and the D/LPR armed groups with support from Russia raged throughout the Donetsk and Luhansk oblasts. While the D/LPR exhibited some form of control over different towns and cities during this time, it is not possible, based on the currently available evidence, to precisely define exact dates and locations in individual towns and cities where hostilities ceased and Ukraine was forced to withdraw. Instead, this period appears to have been defined by increasing hostilities impacting upon the ability of the D/LPR armed groups to exercise effective control. Consequently, it cannot be concluded that the D/LPR exercised effective control over territory in Donetsk and Luhansk between April and 5 September 2014. However, it is recognised that further investigation could likely establish effective control over individual cities and towns prior to 5 September 2014.

Clear and convincing evidence that hostilities had ceased, and Ukraine had been defeated or withdrawn from a clearly defined territory is only available after 5 September 2014 and the signing of the Minsk-I Agreement. After this point, Ukraine withdrew to the contact line that was established pursuant to Minsk-I. From 5 September 2014, there is clear and convincing evidence that Ukraine was incapable of exercising its authority over the following territory:

- **Donetsk oblast**: Donetsk, Dokuchaievsk, Horlivka, Yanakiieve (except Vuhlehirsk), Zhdanivka, Krestivka, Makiivka, Snizhne, Chistyakove, Khartsyzk, Shakhtarsk, Yasynuvata, as well as separate settlements of Novoazovskyi district, Amvrosivskiy, Starobeshivskiy and Shakhtarskyi districts.
- **Luhansk oblast**: Luhansk, Alchevsk, Antratsyt, Brianka, Holubivka, Khrustalne, Sorokine, Travneve, Rovenky, Dovzhansk, and Kadiivka, as well as settlements of the Antratsytivskyi, Sorokiniskyi, Lutuhynskyi, Perevalskyi, Dovzhanskyi and Slovianoserbskiy districts.

In late February 2015, after the signing of the Minsk-II Agreement on 12 February and the withdrawal of the Ukrainian forces from Debaltseve on 18 February, the area outside the control of Ukraine expanded to include Debaltseve. This area has remained the same until the present (with only minor changes to the regions where certain towns are situated). The territory outside the control of Ukraine has most recently been defined as follows:

- **Donetsk oblast**: Donetsk, Debaltseve, Dokuchaievsk, Horlivka, Yanakiieve, Zhdanivka, Krestivka, Makiivka, Snizhne, Chistyakove, Khartsyzk, Shakhtarsk, Yasynuvata, as well as separate settlements in Amvrosivskiy, Shakhtarskyi, Starobeshivskiy, Bakhmutskyi, Volnovaskiy, Mariinsky, Novoazovskyi, Telmanivskiy, Boykivskiy, Yasynuvatskyi districts.
- **Luhansk oblast**: Luhansk, Alchevsk, Antratsyt, Brianka, Holubivka, Khrustalne, Sorokine, Travneve, Rovenky, Dovzhansk, and Kadiivka, as well as settlements of Antratsytivskyi, Sorokiniskyi, Dovzhanskyi, Novoaidarivskyi, Lutuhynskyi, Popasnianskyi, Perevalskyi, Stanichno-Luhanskyi and Slovianoserbskiy districts.

By the time hostilities in the areas defined above ceased and Ukraine had fully withdrawn, Ukraine was incapable of exercising its authority as demonstrated by its consequent withdrawal of government services, authorities and funding from the area. Consequently, from 5 September 2014 in the territories defined by the Minsk-I Agreement and 18 February 2015 in the territories defined by the Minsk-II Agreement, the second criterion of effective control (i.e., that the effective local government in place at the time of the invasion has been or can be rendered substantially or completely incapable of exerting its powers by virtue of the foreign forces’ unconsented-to presence) was satisfied.

By 5 September 2014, the D/LPR unequivocally exercised authority in lieu of the Ukrainian government in the territory under its control, in satisfaction of the third criterion of effective control. In particular, the D/LPR had begun to:

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2930 See Section 4.1.2.3.1.2 Intervention of Russian Federation Armed Forces Units on the Territory of Ukraine.
2931 Decision of the Cabinet of Ministers of Ukraine No. 1085-п ‘On the approval of the list of the settlements in the territory of which public authorities temporarily don’t exercise the powers, and the list of the settlements which are located on a contact line’ (7 November 2014).
2932 Decree of the President of Ukraine No. 32/2019 ‘On the boundaries and lists of districts, cities, settlements, and villages temporarily occupied in the Donetsk and Luhansk regions’ (7 February 2019).
establish parallel governmental structures from as early as April and May 2014; enact and enforce their own laws from May 2014; formalise their police forces from around September 2014 in Donetsk, and November 2014 in Luhansk; and establish military, and later civil courts. Further evidence of the D/LPR’s effective control over the territory is derived from their authority over: entry and exit checkpoints from the territory under their control for both people and goods; services in their respective territories, including hospitals, banks and educational institutions; the collection of taxes; and the paying of salaries (for government workers) and social payments such as pensions. Taken as a whole, this established clear and convincing evidence to satisfy the third criterion of effective control (i.e., that the foreign forces are in a position to exercise authority over the territory concerned (or parts thereof) in lieu of the local government) by 5 September 2014.

Consequently, it has been established that from 5 September 2014 in the territories defined by the Minsk-I Agreement (and 18 February 2015 in the territories defined by the Minsk-II Agreement) through to the present, Russia has occupied parts of Donetsk and Luhansk by proxy, through its overall control of the D/LPR armed groups. In particular, the following findings are pertinent: 1) since July 2014, Russia has exercised overall control over the D/LPR armed groups; and 2) since 5 September 2014, the D/LPR armed groups have exercised effective control over the territories defined by the Minsk-I Agreement (and 18 February 2015 in the territories defined by the Minsk-II Agreement).

4.3 Applicable Law in Donbas

As concluded above, a NIAC in eastern Ukraine began by 14 April 2014 in Donetsk and 30 April 2014 in Luhansk between Ukraine and the D/LPR. From July 2014, Russia’s overall control over the D/LPR internationalised the NIAC. The NIAC was thus extinguished and an IAC between Ukraine and Russia commenced. Russia has also occupied proxy the areas of Donbas under the effective control of the D/LPR since 5 September 2014 (and 18 February 2015 in Debal’tseve).

As described in the context of Crimea, IHL and IHRL apply concurrently and are the primary international legal frameworks that regulate situations of armed conflict, including situations of occupation. The following sections will provide a broad overview of the IHL and IHRL obligations that arise upon Ukraine (4.3.1.2), Russia (4.3.1.3) and the D/LPR (4.3.1.1) by virtue of the NIAC and subsequent IAC in Donbas. Having already outlined the obligations of Russia as an Occupying Power in the context of the situation in Crimea, these obligations will not be revisited and are accepted similarly to apply in Donbas. Instead, the section 4.3.1.2 will outline the obligations of Russia, Ukraine and the D/LPR in relation to the armed conflict as well as some of the alleged violations that have occurred in the

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2933 See Section 3.5 Applicable Law in Crimea.

2935 See, however, Section 4.3.1.6 State Responsibility of Russia and Ukraine for Violations of Their International Obligations.
context of the hostilities and occupation of Donbas. Subsequently, the section 4.3.1.6 will address the issue of attributing State responsibility for these violations to Russia and/or Ukraine.

### 4.3.1 The Application of IHL and IHRL to the Situation in Donbas

The following section provides a broad overview of the obligations that attach to Ukraine and the D/LPR during the NIAC, and Ukraine and Russia during the IAC, in Donbas.

#### 4.3.1.1 Obligations of the D/LPR in Respect of IHL and IHRL

As will be demonstrated, the D/LPR is bound by both IHL and IHRL. However, the obligations that arise under the law of IHL may differ depending on whether the conflict is classified as a NIAC or an IAC.

It is without doubt that the D/LPR bears IHL obligations in respect of NIACs because the IHL rules applicable to such conflicts apply to the State on whose territory the conflict is being waged as well as to the organised non-state armed group(s) engaged in hostilities with the State.2936 In respect of the NIAC in Donbas, the D/LPR is the non-state armed group engaged in hostilities with Ukraine, the territorial State. Therefore, it is bound by the IHL obligations set out under the law applicable to NIACs.

In contrast, the IHL obligations applicable to IACs are normally binding only upon States,2937 and the question of the applicability of these obligations to a non-state armed group in the context of an occupation by proxy, or an internationalised NIAC, is unsettled.2938 Nevertheless, it appears clear that, at a minimum, these groups are bound by the IHL obligations incumbent upon them in the context of a NIAC.2939

In addition, customary IHL is applicable to all actors in international and non-international armed conflicts, including non-state armed groups who meet the necessary organisational requirements.2940 As established above,2941 by 14 April 2014 in Donetsk and 30 April 2014 in Luhansk, the D/LPR met the necessary requirements of organisation and the hostilities reached sufficient intensity to establish a NIAC. Thus, for these dates, the D/LPR was bound by the IHL obligations set forth under customary IHL.

Finally, with regard to IHRL, it generally accepted that, “at a minimum, armed non-State actors exercising either government-like functions or de facto control over territory and population must respect and protect the human rights of individuals and groups.”2942 As established above, the D/LPR have exercised de facto control over parts of Donbas

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2936 See, Common Article 3 to the Geneva Conventions, para. 1; Additional Protocol II, Article 1(1); Nicaragua Merits Judgement, para. 219; Prosecutor v. Sam Hinga Norman, SCSL-2004-14-AR72(E), Decision on Preliminary Motion Based on Lack of Jurisdiction (Child Recruitment), 31 May 2004, para. 22 (“it is well settled that all parties to an armed conflict, whether states or non-state actors, are bound by international humanitarian law, even though only states may become parties to international treaties” (emphasis in original)). See also, Geneva Academy, ‘Human Rights Obligations of Armed Non-State Actors: An Exploration of the Practice of the UN Human Rights Council’, Academy in-Brief No. 7 (December 2016) (‘Geneva Academy, ‘Human Rights Obligations of Armed Non-State Actors’), pp. 17-18.

2937 Common Article 2 to the Geneva Conventions. See also, N. Melzer, International Humanitarian Law, pp. 54-56.

2938 Legal scholars have noted the potential difficulty these groups may have, in practice, with complying with these IHL rules, particularly as they were drafted for States. See e.g., Sassoli, International Humanitarian Law, p. 176; T. Gal, ‘Unexplored Outcomes of Tadić’ (2014) 12(1) Journal of International Criminal Justice 59 (‘Gal, ‘Unexplored Outcomes of Tadić’), p. 73.

2939 Some argue that the controlling State should be held to the IHL standards of IACs, while the non-state armed group only to the IHL standards of NIACs. However, others have argued that this would make “the entire construction of internationalization through proxy nearly meaningless because IHL of IACs would then not apply to most conduct.” Alternatively, it has been suggested that, in relation to the conduct of the armed group (or at least conduct not effectively controlled by the outside State), IHL applicable to IACs should be adapted functionally to what the group is actually able to comply with. This ‘functional approach’ means that the IHL rules applicable in IACs should be applied to non-state armed groups “in a progressive, gradual manner, depending on the contact between enemy troops and the local population, as well as the degree of control and areas obtained by the enemy troops.” See, M. Sassoli, International Humanitarian Law, p. 176, citing A. Clapham, ‘The Concept of International Armed Conflict’ in Academy Commentary, pp. 25-26; H. Meyrowitz, ‘Le droit de la guerre dans le conflit vietnamiens’ (1967) 13 Annuaire Français de Droit International 153, 168–82; T. Gal, ‘Unexplored Outcomes of Tadić’, pp. 72-75.

2940 Geneva Academy, ‘Human Rights Obligations of Armed Non-State Actors’, p. 18, citing Special Court for Sierra Leone, Prosecutor v Morris Kallon and Brima Buzzy Kamara, SCSL-2004-15-AR72(E) and SCSL-2004-16-AR72(E), Decision on Challenge to Jurisdiction: Lomé Accord Amnesty, 13 March 2004, paras. 45-47 (“There is now no doubt that this article [Common Article 3] is binding on states and insurgents alike, and that insurgents are subject to international humanitarian law. [...] A convincing theory is that [insurgents] are bound as a matter of customary international law to observe the obligations declared by Common Article 3 which is aimed at the protection of humanity.”); L. Moir, The Law of Internal Armed Conflict (CUP 2002), p. 56-58.

2941 See Section 4.1.2.2 Existence of a Non-International Armed Conflict in Eastern Ukraine.

since 5 September 2014 (and 18 February 2015 in Debaltseve). Accordingly, the D/LPR are required to ensure that they do not violate the human rights of those located in the areas of Donbas under their control and they must also prevent other individuals or groups from breaching IHRL in those areas.

4.3.1.2 Obligations of Ukraine, Russia and the D/LPR in Relation to the Conflicts in Donbas

By 14 April 2014 in Donetsk and 30 April 2014 in Luhansk, a NIAC between Ukraine and the D/LPR had commenced. In this context, both Ukraine and the D/LPR, as parties to the NIAC, assumed IHL obligations pertaining to the conduct of hostilities and the protection of persons who do not, or no longer, take part in hostilities for the duration of the NIAC. These obligations are derived from CA 3 to the Geneva Conventions, AP II and customary IHL.

From July 2014, Russia’s overall control over the D/LPR internationalised the NIAC. The NIAC was thus extinguished and an IAC between Ukraine and Russia continued until the general close of hostilities on 18 February 2015 in Debaltseve. As parties to the IAC, Russia and Ukraine were (and continue to be in respect of remaining hostilities) bound by the IHL obligations that regulate the conduct of hostilities, as well as the protection of the civilian population and persons hors de combat. These obligations are enshrined in the four Geneva Conventions, AP I and customary IHL. As described above, at a minimum, the D/LPR remains bound by the IHL obligations pertaining to NIACs.

One of the core objectives of IHL is to protect persons who do not, or no longer, take part in hostilities. These persons include the wounded, sick and shipwrecked, prisoners of war (‘POWs’) and civilians. The protection and care of the wounded, sick and shipwrecked is regulated by conventional IHL rules applicable in both IACs and NIACs, and customary IHL. The treatment of POWs, on the other hand, is governed by the Third Geneva Convention applicable in IACs, as POW status exists only in the context of IACs. That being said, detention can also


See Section 4.1.2.2 Existence of a Non-International Armed Conflict in Eastern Ukraine.


Common Article 3 to the Geneva Conventions imposes obligations on all parties to a NIAC. The last sentence of Common Article 3 states that “the application of the preceding provisions shall not affect the legal status of the Parties to the conflict.” With regard to Additional Protocol II, the requirements for its application in the present situation are fulfilled, as Ukraine is party to Additional Protocol II and the D/LPR control a large amount of territory. For more information with regard to the control of territory, see, ICC, ‘Report on Preliminary Examination Activities’ (2016), para. 160; RULAC, ‘Non-international armed conflict in Ukraine’ (Geneva Academy); KHPG, ‘Violent Crimes Committed During the Armed Conflict in Eastern Ukraine between 2014–2018’ (2018), p. 14.

It is generally accepted that the rules of IHL remain applicable at least until the end of occupation. Although the Hague Regulations do not contain any articles determining the end of their application, the travaux preparatoires confirm that they continue to apply as long as the belligerent occupation, as defined by Article 42 of the Hague Regulations, continues to exist. Regarding the Geneva Conventions, Article 3(b) of Additional Protocol I has effectively revoked the time limit imposed by Article 6(1) of the Geneva Convention IV. The commentary to Additional Protocol I acknowledges that this provision replaced Article 6 and “its main effect is to extend the application in occupied territory beyond what is laid down in the fourth Convention”. See also, Construction of a Wall Advisory Opinion, paras. 167, 178–179 and 254. Pursuant to Article 3(b) of Additional Protocol I, which modified the Fourth Geneva Convention, the Geneva Conventions (and AP I) continue to apply even after the end of the occupation for persons “whose final release, repatriation or re-establishment takes place thereafter. These persons shall continue to benefit from the relevant provisions of the Conventions and of this Protocol until their final release, repatriation or re-establishment.”


See Section 4.3.1.1 Obligations of the D/LPR in Respect of IHRL.

As noted above, these include Common Article 3 to the Geneva Conventions, para. 1; Additional Protocol II, Article 1(1). See also, Nicaragua Merits Judgement, para. 219.


See, Geneva Conventions I and II.

See, Geneva Convention III, which is dedicated in its entirety to the protection of POWs.

See, Geneva Convention IV, Article 4; Additional Protocol I, Article 13; Common Article 3 to the Geneva Conventions; Additional Protocol II, Article 4; ICRC, Customary IHL Database, Rules 1 and 7.

See, Geneva Convention I, Articles 12, 15, 16; Geneva Convention II, Articles. 12, 18, 19; Additional Protocol I, Articles 8, 9, 10, 11; ICRC, Additional Protocol II, Articles 7, 8. It should be noted that the IAC rules governing the protection and care of the wounded, sick and shipwrecked are more comprehensive compared to the NIAC rules. See, E. Crawford and A. Pert, International Humanitarian Law, (2nd ed, CUP 2015), p. 136.

ICRC, Customary IHL Database, Rules 109-111.

occur in the context of a NIAC, and detained persons are provided some, albeit more limited, protection under the treaty law applicable to NIACs.2960

Additionally, combatant status, and the ensuing standards of treatment (i.e., as a POW), also applies only in the context of IACs.2961 Thus, while combatants in IACs are immune from prosecution for having participated in the hostilities and for lawful acts of war,2962 fighters in NIACs are not considered combatants and, thus, do not enjoy such immunity, meaning that they can be prosecuted under domestic law for having taken up arms against the government.2963

Civilians are immune from attack in both types of armed conflict, provided that they do not take a direct part in hostilities.2964 Several other provisions discussed below, which have attained customary IHL status, also afford civilians protection from the effects of hostilities.2965 Beyond the conduct of hostilities, the Fourth Geneva Convention, applicable only in IACs, regulates the treatment of civilians including, among other obligations, the protection of the wounded and sick, the reunification of dispersed families, child welfare and the passage of consignments of relief supplies.2966 In comparison, the conventional IHL rules governing the protection of the civilian population during NIACs are less developed.2967 In addition, the Rome Statute of the ICC sets out a much more extensive list of war crimes which are applicable in an IAC as compared to the more limited list of war crimes applicable in a NIAC.2968

Thus, the classification of an armed conflict as either an IAC or a NIAC remains integral to a determination of the scope of the applicable law with respect to treaty obligations. Nevertheless, customary IHL appears, to a certain degree, to be bridging the gap in treaty regulation between IACs and NIACs. Indeed, the ICRC considers that the large majority of the customary IHL rules applicable to IACs are also applicable in NIACs.2969

On the basis of customary IHL, Ukraine, Russia and the D/LPR are bound to adhere to the following non-exhaustive IHL obligations in respect of the conflicts to which they are party, irrespective of the conflict classification:

1) In the conduct of hostilities:

- To abide by the principle of distinction. This principle requires parties to an armed conflict to distinguish between combatants and civilians, as well as between military objectives and civilian objects at all times, and to only direct their attacks against combatants and military objectives.2970 It should be noted that: 1)

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2961 The Geneva Convention III assigns combatant status to members of the armed forces and of militias and voluntary corps forming part of the armed forces; members of militias, voluntary corps and organised resistance movements that fulfill specific requirements; members of regular armed forces that “profess allegiance to a government, or an authority not recognised by the Detaining Power”; and civilians who spontaneously take up arms without having the time to organise themselves in order to fight the invading forces, the so-called case of ‘levée en masse’. The Geneva Convention III specifically regulates the treatment of POWs. Combatant and POW status is also regulated by Article 44 of Additional Protocol I.


2964 Additional Protocol I, Article 43(2); Additional Protocol II, Article 13.

2965 See, Additional Protocol I, Articles 10, 12, 51, 57, 58 70; Additional Protocol II, Articles 13, 14, 18.

2966 See, Geneva Convention IV, Articles 16-17, 23, 24, 26.

2967 See, J.-M. Hencakerts and L. Doswald-Beck, Customary International Humanitarian Law (CUP 2005), Introduction (“While common Article 3 is fundamental importance, it only provides a rudimentary framework of minimum standards and does not contain much detail. Additional Protocol II usefully supplements common Article 3, but it is still less detailed than the rules governing international armed conflicts contained in Additional Protocol I”).

2968 Rome Statute, Article B.

2969 N. Meiser, International Humanitarian Law, p. 23; Sassolì, International Humanitarian Law, p. 46. See also, Tadić Interlocutory Appeal, para. 127 (“it cannot be denied that customary rules have developed to govern internal strife. These rules, as specifically identified in the preceding discussion, cover such areas as protection of civilians from hostilities, in particular from indiscriminate attacks, protection of civilian objects, in particular cultural property, protection of all those who do not (or no longer) take active part in hostilities, as well as prohibition of means of warfare prescribed in international armed conflicts and ban of certain methods of conducting hostilities”).

2970 See e.g., Additional Protocol I, Articles 48, 51(2) and 52(2); Additional Protocol II, Article 13; ICRC, Customary IHL Database Rules 1 and 7. See also, Prosecutor v. Strugar, IT-01-42-T, Trial Judgement (31 January 2005), para. 225; Kordić & Čerkez Appeal Judgement, para. 54. According to the ICTY, the principle of distinction is a ‘cardinal’ principle of IHL ‘contained in the texts constituting the fabric of humanitarian law. See, Nuclear Weapons Advisory Opinion, para. 78.
civilians who take direct part in hostilities lose their protection for such time that they do so;2971 and 2) civilian objects lose their protection for such time as they are used for military purposes. 2972

- To abide by the principle of proportionality. This principle prohibits the launching of an attack against a lawful target that “may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated.”2973 In determining whether an attack was proportionate, “it is necessary to examine whether a reasonably well-informed person in the circumstances of the actual perpetrator, making reasonable use of the information available to him/her could have expected excessive civilian casualties from the attack.”2974 There are no exact figures as to how many civilians must suffer harm or how much damage must be caused to civilian objects for an attack to be considered disproportionate. Rather, this principle serves as “a guideline to help ensure that military commanders weigh the consequences of a particular attack and refrain from launching attacks that will cause excessive civilian deaths.”2975

- To abide by the principle of precautions in attack. This principle requires that parties to the conflict undertake, to the extent feasible, precautionary measures to minimise collateral damage to civilians and civilian objects.2976 Examples of precautionary measures include, inter alia: 1) taking all feasible measures to verify that the objectives to be attacked are neither civilians nor civilian objects; 2977 2) using precision weapons; 2978 3) adjusting the timing of an attack (e.g., attacking a bridge at night when civilian presence is minimal); 2979 and 4) providing advanced warning before an attack.2980

- To abide by the prohibition against the use of certain methods of warfare. These methods of warfare include, for example, the use of starvation as a method of warfare by attacking, destroying, removing or rendering useless objects indispensable for the survival of the civilian population (such as foodstuffs, agricultural areas, crops, livestock, drinking water installations and supplies and irrigation works).2981

- To abide by the prohibition against the use of certain means of warfare. Means of warfare are those “weapons, projectiles and material and methods of warfare [that are] of a nature to cause superfluous injury or unnecessary suffering.”2982 In addition, several weapons are regulated or prohibited by customary IHL.2983 Examples of weapons regulated by customary IHL include the use of booby traps and anti-personnel mines,2984 while the use of poison and chemical weapons is strictly prohibited.2985

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2972 Katanga Trial Judgement, para. 893; Additional Protocol I, Article 52; ICRC, Customary IHL Database, Rule 10 ‘Civilian Objects’ Loss of Protection from Attack’.

2973 Additional Protocol I, Article 51(5)(b); ICRC, Customary IHL Database, Rule 11 ‘Proportionality in Attack’.

2974 Prosecutor v. Galic, IT-98-29-T, Trial Judgement (5 December 2003), para. 58.


2977 Additional Protocol I, Article 57(2)(a)(i); ICRC, Customary IHL Database, Rule 16 ‘Target Verification’.

2978 Additional Protocol I, Article 57(2)(a)(ii); ICRC, Customary IHL Database, Rule 17 ‘Choice of Means and Methods of Warfare’.


2981 Additional Protocol I, Article 54; Additional Protocol II, Article 14; ICRC, Customary IHL Database, Rule 53 ‘Starvation as a Method of Warfare’ and Rule 54 ‘Attacks against Objects Indispensable to the Survival of the Civilian Population’. See also, GRC’s project titled ‘Accountability for Mass Starvation: Testing the Limits of the Law’.

2982 Additional Protocol I, Article 35(2); ICRC, Customary IHL Database, Rule 70 ‘Weapons of a Nature to Cause Superfluous Injury or Unnecessary Suffering’.

2983 ICRC, Customary IHL Database, Rules 72-86.

2984 ICRC, Customary IHL Database, Rules 80, 81-83.

2985 ICRC, Customary IHL Database, Rules 72, 74.
2) In the protection of the civilian population and persons hors de combat:

- To protect the wounded, sick and shipwrecked, which encompasses obligations to search for, collect and evacuate the wounded, sick and shipwrecked, respect and treat them humanely, as well as the duty to provide them with medical care without any adverse distinction except for urgent medical reasons.  \(^{2986}\)

- To protect against the displacement of civilians unless “the security of the civilians involved or imperative military reasons so demand” and to treat displaced persons humanely, including by undertaking measures to ensure that “the civilians concerned are received under satisfactory conditions of shelter, hygiene, health, safety and nutrition and that members of the same family are not separated.”  \(^{2987}\)

- To abide by the prohibition against the recruitment of children under the age of 15 into the armed forces or armed groups and to take all feasible measures to prevent their involvement in hostilities.  \(^{2988}\)

- To abide by the prohibition against rape and other forms of sexual violence.  \(^{2989}\)

- To allow the undertaking of humanitarian relief activities that are impartial in character, and carried out with no adverse distinction.  \(^{2990}\) In situations where the civilian population is suffering hardship, arbitrarily withholding consent to relief operations may constitute a violation of the prohibition against the use of starvation as a method of warfare.  \(^{2991}\)

- To respect family rights, including the maintenance of the family unit and the facilitation of contact between family members.  \(^{2992}\)

The concurrent application of IHRL and IHL during armed conflict, including occupation, has been addressed in the context of Crimea and remains relevant in the case of Donbas.  \(^{2993}\) As such, it will not be revisited here. Nevertheless, there is some debate regarding the exact relationship between IHL and IHRL in this context.  \(^{2994}\) This issue is of fundamental importance, particularly where the rules of IHL and IHRL diverge or set different standards. For example, IHRL protects the right to life  \(^{2995}\) and determines that lethal force can only be used under strict circumstances and when “absolutely necessary”.  \(^{2996}\) Conversely, the rules of IHL generally permit the use of lethal force against combatants during IACs  \(^{2997}\) and against members of organised armed groups that undertake a continuous combat function in NIACs.  \(^{2998}\)

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\(^{2986}\) Geneva Convention I, Article 12; Geneva Convention II, Article 12; Geneva Convention IV, Article 16, Additional Protocol I, Article 10; Additional Protocol II, Article 7; ICRC, Customary IHL Database, Rule 110 ‘Treatment and Care of the Wounded, Sick and Shipwrecked’.

\(^{2987}\) Geneva Convention IV, Article 49; Additional Protocol II, Article 17(1); ICRC, Customary IHL Database, Rule 131.

\(^{2988}\) Additional Protocol I, Article 77(2); Additional Protocol II, Article 4(3)(c); ICRC, Customary IHL Database, Rule 136 ‘Recruitment of Child Soldiers’.

\(^{2989}\) Geneva Convention III, Article 14; Geneva Convention IV, Article 27; Common Article 3 to the Geneva Conventions; Additional Protocol I, Article 75; Additional Protocol II, Article 4; ICRC, Customary IHL Database, Rule 93 ‘Rape and Other forms of Sexual Violence’.

\(^{2990}\) Geneva Convention IV, Article 23; Additional Protocol I, Article 70; Additional Protocol II, Article 18(2); ICRC, Customary IHL Database, Rules 55-56.

\(^{2991}\) Commentary on the Additional Protocols, Article 18, para. 4885.

\(^{2992}\) Geneva Convention IV, Article 26; Additional Protocol I, Article 74; Additional Protocol II, Article 4(3)(b); ICRC, Customary IHL Database, Rule 105 ‘Respect for Family Life’.

\(^{2993}\) See Section 3.5 Applicable Law in Crimea.


\(^{2995}\) See e.g., ICCPR, Article 6(1), ECHR, Article 2(1).

\(^{2996}\) See e.g., ECHR, Article 2(1); McCann and others v. United Kingdom, Application No. 18984/91, Judgement, Grand Chamber, European Court of Human Rights (27 September 1995), paras. 149-150.

\(^{2997}\) See, Additional Protocol I, Article 43.

\(^{2998}\) Additional Protocol I, Article 43(2); Additional Protocol II, Article 13. IHL also distinguishes combatants from civilians that take part in hostilities sporadically. In both types of armed conflicts, civilians may lose protection from attack for such time as they take a direct part in hostilities provided that the following cumulative requirements are met: 1) the act must be likely to adversely affect the military operations or capacity of a party to an armed conflict or, alternatively, to inflict death, injury or destruction on persons or objects protected against direct attack (‘threshold of harm’); 2) there must be a causal link between the act and the harm likely to result either from that act, or from a coordinated military operation of which that act constitutes an integral part (‘direct causation’); and 3) the act must be specifically designed to directly cause the required threshold of harm in support of a party to the conflict and to the detriment of another (‘belligerent nexus’). See, N. Melzer, Interpretive Guidance on the Notion of Direct Participation in Hostilities under IHL (ICRC, 2009), pp. 46-66. The interpretation of the temporal scope of direct participation in hostilities is debated. See, K. Watkin, ‘Opportunity Lost: Organized Armed Groups and the ICRC Direct Participation in Hostilities Interpretive Guidance’ (2010) 42 New York University Journal of International Law and Politics 641, p. 661; B. Boothby, ‘And for Such Time as: The Time Dimension to Direct
While debate over the interplay between IHL and IHRL during armed conflict remains, jurisprudence appears to favour the view that IHL and IHRL act as complimentary branches of law during armed conflict (and occupation). Accordingly, both branches of law apply concurrently and each can be used as an interpretive tool for the other during an armed conflict. In line with this view, IHL and IHRL frameworks should be considered co-applicable in the context of the armed conflicts and occupation in Donbas and used as interpretive aids to help ensure the satisfaction of the obligations that remain incumbent upon the parties to the conflict.

4.3.1.3 OBLIGATIONS OF RUSSIA IN RESPECT OF ITS PROXY OCCUPATION OF DONBAS

In ‘classic’ occupations, such as Russia’s occupation of Crimea, the Occupying Power’s armed forces are physically present in, and establish effective control over, the occupied territory. In contrast, in an ‘occupation by proxy’, the effective control over territory, while still required, is exercised through “surrogate armed forces” that “are subject to the overall control of the foreign State.” This is the case in Donbas where, as discussed above, it has been established that Russia has occupied by proxy the areas of the Donetsk and Luhansk oblasts under the effective control of the D/LPR, who are in turn under the overall control of Russia, since 5 September 2014 (and 18 February 2015 in Debaltseve).

It is generally considered that occupation by proxy is regulated by the same set of IHL obligations as a situation of classic belligerent occupation. Thus, the theory of occupation by proxy “prevents a legal vacuum arising as a result of a State making use of local surrogates to evade its responsibilities under the law of occupation.”

As noted previously, the content of the IHL obligations placed upon an Occupying Power are primarily enshrined in the Hague Regulations, the Fourth Geneva Convention, some provisions of AP I, and customary international law. In addition, the IHL rules applicable to IACs continue to regulate any hostilities which may occur during the situation of occupation.

Moreover, the provisions of IHRL apply concurrently with the rules of IHL. Thus, for the duration of the occupation, Russia bears extraterritorial IHRL obligations, owing to its effective control over the territory by virtue of its occupation by proxy. This means that it is bound by the human rights obligations enshrined in: 1) the IHL treaties that it has ratified/acceded to, as they apply extraterritorially in the areas under its effective control; and 2) based on a dynamic interpretation, the IHRL treaties that have been ratified/acceded to by Ukraine, pursuant to Russia’s IHL obligation to...

See e.g., Construction of a Wall Advisory Opinion, para. 106; Armed Activities Judgement, para. 216; Hassan v. United Kingdom, Application No. 29750/09, Judgement, Grand Chamber, European Court of Human Rights (16 September 2014), paras. 102 and 104; HRC, General Comment No. 31, para. 11; HRC, General Comment No. 36, para 64; HRC, General Comment No. 35: Liberty and Security of Person, UN Doc CCPR/C/CG/35 (16 December 2014), para. 64; J. Kellenberger, President of the ICRC, International Humanitarian law and other legal regimes: interplay in situations of violence, Statemen to the 27th Annual Round Table on Current Problems of International Humanitarian Law, San Remo, Italy (4–6 September 2003); S. Vite, “The interrelation of the law of occupation and economic, social and cultural rights: the examples of food, health and property” (2008) 90 International Review of the Red Cross 629, pp. 638-640. In relation to the right to life under the ICPR, the HRC commented — echoing the reasoning of the ICJ in its Nuclear Activities Advisory Opinion — that “while rules of IHL may be relevant for the interpretation and application of [the right to life] both spheres of law are complementary, not mutually exclusive.” The HRC further explained that use of lethal force consistent with IHL is, in general, not arbitrary, while practices inconsistent with IHL would also violate the right to life under the ICPR. See, HRC, General Comment No. 36, para. 64.

Commentary on the Geneva Convention III, 2020, Article 2, para. 337.

Commentary on the Geneva Convention III, 2020, Article 2, para. 363. See also, paras. 298-306 on overall control over an entity or an armed group. See also, M. Sassoli, International Humanitarian Law, p. 309.

See Section 4.2 Occupation by Proxy: Is Donbas Occupied?


See Section 3.5.1.1.2 International Obligations of Russia as the Occupying Power in Crimea.

Geneva Convention IV, Articles 2 and 6. See also, Y. Dinstein, Law of Belligerent Occupation, pp. 35-36.


See Section 3.5.1.2 Russia’s Obligations Under IHRL: Extraterritorial Application. See e.g., Armed Activities Judgement, para. 216; Construction of a Wall Advisory Opinion, paras. 107-113.
respect the laws in force in occupied territory and the territorial nature of human rights protections. In addition, notwithstanding its lack of effective control over parts of Donbas, Ukraine must undertake all measures available to it, including through legal and diplomatic means vis-à-vis foreign States and international organisations, to guarantee that its population enjoys its human rights to the maximum extent possible.

The above instruments and principles generally define the international obligations that attach to Russia and Ukraine in the context of Russia’s occupation of Donbas. Nevertheless, it is necessary to examine the protections of the Fourth Geneva Convention more closely in light of Russia’s policy of ‘passportisation’ in Donbas. As obligations contained in the Fourth Geneva Convention apply only in respect of ‘protected persons’, the section will begin by assessing the effect of this policy on the applicability of ‘protected person’ status to individuals in Donbas.

4.3.1.3.1 PROTECTED PERSONS UNDER THE FOURTH GENEVA CONVENTION

Pursuant to Article 4 of the Fourth Geneva Convention, ‘protected persons’ are defined, inter alia, as civilians “who, at a given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which they are not a national”. The ICTY has framed the concept of nationality as a function of allegiance. Accordingly, ‘nationality’ is not determined solely on the basis of formal national characterisations. Rather, the nationality of an individual is assessed on the basis of an individual’s “substantial relations [...] and their bonds with the foreign intervening State”. Meanwhile, the expression “in the hands of” has a broad meaning which exceeds situations where the Party in question exercises direct control over the individual (for instance, a situation of detention). Simply being present in occupied territory, or territory in which an armed conflict is taking place, is sufficient to meet this requirement.

Generally speaking then, Article 4 of the Fourth Geneva Convention applies to the ‘whole civilian population’ in occupied territory. However, exceptions include ‘nationals’ of the Occupying Power, as well as nationals of neutral and co-belligerent States therein and persons protected under one of the three other Geneva Conventions.

Ukrainian nationals in occupied Donbas are generally considered ‘protected persons’ within the meaning of Article 4 of the Fourth Geneva Convention because: 1) they are nationals of Ukraine, i.e., the belligerent of Russia, the

3009 See Section 3.5.1.2.2 The Scope of Russia’s Human Rights Obligations in Occupied Crimea.
3012 See, Geneva Convention IV, Article 4; Y. Dinstein, Law of Belligerent Occupation, para. 196.
3013 Geneva Convention IV, Article 4 (emphasis added).
3014 Tadić Appeal Judgement, paras. 164-166; Delalić Appeal Judgement, paras. 83-84; Prlić Trial Judgement, para. 100; Prlić et al. Appeal Judgement, para. 355; Kordić & Čerkez Appeal Judgement, para. 330; Blaškić Appeal Judgement, paras. 172-176. (For a more detailed discussion of rules regulating the status of ‘protected persons’, see Section 3.5.1.1.1 Protected Persons Under the Fourth Geneva Convention.)
3016 Commentary on the Geneva Convention IV, Article 4, p. 47.
3017 Prlić Trial Judgement, para. 101; Natašić & Martinović Judgment, para. 208; Katanga and Chui Decision on the Confirmation of Charges, para. 289; Tadić Opinion and Judgement, para. 579; Commentary on the Geneva Convention IV, Article 4, p. 47. Additionally, Article 4 stipulates that “nationals of a neutral State who find themselves in the territory of a belligerent State, and nationals of a co-belligerent State, shall not be regarded as protected persons while the State of which they are nationals has normal diplomatic representation in the State in whose hands they are.” See, Geneva Convention IV, Article 4. The article also states that “nationals of a State which is not bound by the Convention are not protected by it.” Considering that the Geneva Conventions are universally ratified, the above sentence appears to be of limited practical significance.
3018 Commentary on the Geneva Convention IV, Article 4, pp. 46, 48.
3019 See, however, an exception in respect of nationals of the Occupying Power that have sought refuge in the territory of the Occupied Power in advance of the outbreak of hostilities. Geneva Convention IV, Article 72.
3020 Commentary on the Geneva Convention IV, Article 4, pp. 46, 48. See also, Prlić Trial Judgement, para. 100.
Occupying Power in Donbas; and 2) they have found themselves in the hands of Russia by virtue of their residence/presence in occupied Donbas. However, Russia has engaged in a policy of Russian naturalisation of the inhabitants of Donbas through its policy of ‘passportisation’. The following sub-section will assess the effect, if any, this process has had on the status of ‘protected persons’ in Donbas.

4.3.1.3.2 The Effect of Russian Naturalisation on the Status of ‘Protected Persons’ in Donbas

Since 24 April 2019, Russia has granted residents of occupied Donbas the opportunity to become Russian citizens through a simplified procedure. This accelerated the naturalisation process for the residents of these territories from at least eight years to under three months pursuant to a presidential decree (Decree No. 183) issued by the Russian President. Under this Decree, residents of these territories could apply for Russian citizenship using an identification document issued by the D/LPR without being required to reside in the Russian Federation, or to renounce their Ukrainian citizenship. The European Council has expressed concern in relation to this development since it only serves to exacerbate tensions between Russia and Ukraine. Moreover, the European Commission has issued a guidance note to its Member States on the non-recognition of Russian passports issued to the residents of the Donetsk and Luhansk oblasts by the Russian authorities. Nevertheless, it has been reported that, pursuant to Decree 183, approximately 530,000 residents of the occupied territories in Donbas have been granted Russian passports as of May 2021. Those who attain Russian citizenship qualify for Russian pensions, as well as the ability to work, study and seek business opportunities in Russia.

4.3.1.3.2.1 The Law

Pursuant to Article 8 of the Fourth Geneva Convention, the rights of protected persons cannot be waived, meaning that the right-holder (i.e., the protected person) may not give up his or her rights or, by doing so, release the Occupying Power from its duty to respect his or her rights guaranteed under the Convention. Under this legal framework, any attempt to pressure or coerce protected persons to renounce their rights would be legally ineffectual. Furthermore, Article 47 of the Fourth Geneva Convention states that “[p]rotected persons who are in occupied territory shall not be deprived, in any case or in any manner whatsoever, of the benefits of the present Convention by any change introduced, as the result of the occupation of a territory, into the institutions or government of the said territory, nor by any agreement concluded between the authorities of the occupied territories and the Occupying Power, nor by any annexation by the latter of the whole or part of the occupied territory.” Lastly, the Hague Regulations protect inhabitants of an occupied territory from being compelled to swear allegiance to the hostile Power. Indeed, “allegiance to the displaced sovereign is not only retained but it cannot be altered by duress.”

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3023 See e.g., Federal Law No. 62-FZ ‘On Russian Federation Citizenship’ (31 May 2002), Article 14; Ukraine Crisis Media Center, ‘Massive Russification: how Russia populates the occupied territories’ (30 July 2021); Vchaso News Agency, ‘“Threatened with dismissal and termination of payments”, - in ORDOLO force to receive passports of the Russian Federation’ (9 April 2021); Y. Krechko, ‘There are more Russians in Donbas: how the population certification will affect the return of the occupied territories’ (3 March 2020); O. Guven and O. Ribberlink, ‘Protection of Nationals Abroad’ in C. Paulussen et al. (eds) Fundamental Rights in International and European Law (Springer 2016), pp. 55, 66.

3024 Stiftung Wissenschaft und Politik, ‘Russia’s Passportisation of the Donbas: The Mass Naturalisation of Ukrainians is More than a Foreign Policy Tool’ (3 August 2020).

3025 EU, ‘Guidance on Handling of Visa Application from Residents of Ukraine’s Donetsk and Luhansk Regions’ (3 October 2019).

3026 It should be noted, however, that Ukraine does not allow dual citizenship. V. Socor, ‘Russia Launches “Passportisation” in Occupied Ukrainian Donbas (Part One)’ (1 May 2019) 16(63) Eurasia Daily Monitor.


3028 EU, ‘Guidance on Handling of Visa Application from Residents of Ukraine’s Donetsk and Luhansk Regions’ (3 October 2019).

3029 Warsaw Institute, ‘What is Behind Russia’s Passportisation of Donbas’ (7 May 2021). See also, TASS, ‘About 200 thousand residents of the DPR and LPR became citizens of Russia in a simplified manner’ (1 January 2020); TASS, ‘Head of the LPR said that more than 200 thousand LPR residents received Russian passports’ (15 April 2021).


3033 Geneva Convention IV, Article 49.

3034 Hague Regulations, Article 45.

3035 Y. Dinstein, Law of Belligerent Occupation, para. 176.
4.3.1.3.2.2 **ASSESSMENT**

In contrast to the situation in Crimea, there is little information to suggest that the Ukrainian nationals who were granted Russian passports in Donbas were coerced into accepting Russian citizenship. In line with jurisprudence of the ICTY, which frames nationality as a function of allegiance, this may suggest that these individuals’ allegiance is to the Russian Federation and, thus, that they cannot be considered ‘protected persons’.\(^{3036}\)

It must be considered, however, that the ICTY jurisprudence on this subject emerged from the context of an inter-ethnic armed conflict wherein victims who possessed the same formal nationality as their captors were subjected to criminal acts on account of their different ethnic identities. Based on a purposive interpretation of Article 4 of the Fourth Geneva Convention, the ICTY Appeals Chamber qualified the victims in such a situation as ‘protected persons’ under the Fourth Geneva Convention.\(^{3037}\) The ICTY reached this finding based on the fact that the main purpose of Article 4 of the Fourth Geneva Convention is “to protect civilians who find themselves in the midst of an international or internationalised, conflict to the maximum extent possible.”\(^{3038}\) In other words, the ICTY interpreted Article 4 expansively in order to expand the protection of civilians in an occupied territory by ensuring that bonds of formal nationality cannot be used by the perpetrators to shield themselves from their obligations under the Fourth Geneva Convention.\(^{3039}\)

It follows that this jurisprudence may be distinguished from the case of Donbas, in relation to which no expanded interpretation of Article 4 is required. Ukrainian citizens in Donbas found themselves in the hands of an Occupying Power of which they were not nationals. As such, they qualify as protected persons under Article 4 of the Fourth Geneva Convention.

In fact, to apply the ICTY approach to this case would result in the exclusion of those Ukrainian nationals who expressed an allegiance to the Russian Federation, whose rights would otherwise have been protected by application of Article 8 of the Fourth Geneva Convention, which provides that protected persons cannot waive their rights under this Convention even if they appear to do so voluntarily.\(^{3040}\) Pursuant to this provision, the rights under the Fourth Geneva Convention of the former Ukrainian citizens residing in Donbas who received Russian passports or citizenship remain inviolable, notwithstanding that they voluntarily renounced their protected status. This means that the IHL obligations of the Russian Federation, as the Occupying Power, towards these individuals remain intact. Accordingly, a more legally sound and cautious interpretation of Article 4 in the context of Donbas, in line with the purpose of this provision and consistent with Article 8, would be one that recognises the Ukrainian nationals who were granted Russian citizenship during the occupation of Donbas as ‘protected persons’ for the purposes of the application of the protections afforded by the Fourth Geneva Convention.

4.3.1.3.2.3 **CONCLUSION**

The above confirms that Russia is bound by IHL and IHRL, including the full body of the law of occupation, in respect of Donbas. Since the content of Russia’s IHL and IHRL obligations, as an Occupying Power, have already been addressed in relation to the discussion of the law applicable to Crimea,\(^{3041}\) this section will not revisit that discussion. The same applies to the discussion of the obligations that continue to bind Ukraine in the occupation context.\(^{3042}\) The discussion will, instead, turn to alleged violations of these duties and issues relating to the assignment of responsibility for these violations in light of the mixed international jurisprudence on the subject of attribution.

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\(^{3037}\) Delalić Appeal Judgement, paras. 96-97 and 106.

\(^{3038}\) Delalić Appeal Judgement, para. 83.

\(^{3039}\) Delalić Appeal Judgement, para. 83.

\(^{3040}\) Geneva Convention IV, Article 8 (“protected persons may in no circumstances renounce in part or in entirety the rights secured to them by the present Convention [...]”). The ICRC Commentary to this provision adds that States Parties “could not release themselves from their obligations towards protected persons, even if the latter showed expressly and of their free will that was what they desired”. See, Commentary on the Geneva Convention IV, Article 8, p. 74.

\(^{3041}\) See Section 3.5.1.1.2 International Obligations of Russia as the Occupying Power in Crimea.

\(^{3042}\) See Section 3.5.1.1.3 International Obligations of Ukraine Under IHL, more generally.
4.3.2 REPORTED IHL AND IHRL VIOLATIONS IN DONBASS

A detailed assessment of the IHL and IHRL obligations alleged to have been violated by Russia, the D/LPR groups, and/or Ukraine in eastern Ukraine since 2014 is beyond the scope of the present Legal Opinion. Nevertheless, this section will endeavour to provide a broad overview of conduct in potential violation of the parties' obligations under IHL and IHRL on the basis of authoritative reporting by organisations such as the OHCHR, OSCE, Human Rights Watch and the ICC.

The OHCHR has recorded approximately 41,000-44,150 conflict-related casualties among the civilian population of Ukraine and members of the armed groups in the conflict area in eastern Ukraine, of which 13,000-13,300 were killed (including 3,077 civilians) and 29,000-31,000 were injured. Moreover, 298 persons died as a result of the downing of Malaysia Airlines flight MH17 on 17 July 2014. Finally, according to the latest available data published by the Ukrainian government, as of 6 July 2021, 1,473,650 people were registered as IDPs in Ukraine, and, according to UN estimates, approximately 745,000 of these IDPs were permanently residing in the government-controlled areas of Ukraine as of February 2021.

In this context, the ICC OTP has found that there is a reasonable basis to believe that, from 30 April 2014 onwards, one or more parties to the conflict(s) in Donbas committed the war crimes of intentionally directing attacks against civilians and civilian objects; intentionally directing attacks against protected buildings; wilful killing/murder; torture and inhuman/cruel treatment; outrages upon personal dignity; and rape and other forms of sexual violence. The ICC also found that, “if the conflict was international in character”, there is a reasonable basis to believe that the following additional war crimes were committed: intentionally launching attacks that resulted in harm to civilians and civilian objects that was clearly excessive in relation to the military advantage anticipated; and unlawful confinement.

Echoing the ICC’s findings, by way of summary only, independent reporting alleges that a number of IHL and IHRL violations have been perpetrated by all sides in the conflict areas of Donbas. Some of these violations are alleged to have been committed during battles in which it has been established that the RAF/AF participated directly (e.g., the Battle of Ilovaisk, the Battle for Donetsk Airport, the attack on Mariupol and the Debaltseve Operation).

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3043 See Sections 3.5.1 Obligations of Ukraine and Russia Under International Humanitarian Law and 4.3.1 The Application of IHL and IHRL to the Situation in Donbas.
3044 See Section 3.5.1.2 Obligations of Ukraine and Russia Under International Human Rights Law and 4.3.1 The Application of IHL and IHRL to the Situation in Donbas.
3045 To learn more about these organisations, see Section 3.5.1.3 Reported IHL and IHRL Violations in Crimea.
3047 OHCHR, “Accountability for killings in Ukraine from January 2014 to May 2016” (25 May 2016), paras. 32, 60.
3048 Ministry of Social Policy of Ukraine, “1,473,650 internally displaced persons were registered” (6 July 2021).
3049 UN Office for the Coordination of Humanitarian Affairs (OCHA), “Humanitarian Needs Overview: Ukraine” (February 2021), p. 38 at fn. 102. According to OCHA, the rest of the IDPs registered by the Ukrainian government live in territories outside government control but regularly crossed the ‘contact line’ into the government-controlled areas (before COVID-19) to access pensions and social benefits (which are available to those who obtained IDP status).
3051 Rome Statute, Article 8(2)(b)(i)-ii or 8(2)(e)(i) (intentionally directing attacks against civilians and civilian objects); Article 8(2)(b)(ix) or 8(2)(c)(i) (torture and inhuman/cruel treatment); Article 8(2)(b)(cxi) or 8(2)(c)(vii) (outrages upon personal dignity); and Article 8(2)(b)(xxi) or 8(2)(e)(vi) (rape and other forms of sexual violence).
3052 Rome Statute, Article 8(2)(b)(iv) (intentionally launching attacks that resulted in harm to civilians and civilian objects that was clearly excessive in relation to the military advantage anticipated (disproportionate attacks)); and Article 8(2)(a)(vii) (unlawful confinement).
3053 HRMMU reports consistently outline a range of facts that suggest the following violations allegedly taking place in the conflict area. See e.g., OHCHR, “Report on the human rights situation in Ukraine 1 February to 31 July 2021” (23 September 2021); OHCHR, “Human Rights in the Administration of Justice in Conflict-Related Criminal Cases in Ukraine April 2014 – April 2020” (27 August 2020); OHCHR, “Human rights violations and abuses and international humanitarian law violations, committed in the context of the Ilovaisk events in August 2014” (9 August 2018); OHCHR, “Conflict-Related Sexual Violence in Ukraine 14 March 2014 to 31 January 2017” (16 February 2017); OHCHR, “Report on the human rights situation in Ukraine 16 August to 15 November 2016” (8 December 2016); OSCE SMM, “Daily and spot reports from the Special Monitoring Mission to Ukraine” (14 April 2021 to present); Human Rights Watch, “Studying Under Fire: Attacks on Schools, Military Use of Schools During the Armed Conflict in Eastern Ukraine” (11 February 2016); UHHRU, “The Occupation Of Crimea: No Markings, No Names And Hiding Behind Civilians” (2019); Š. Skrypnyk (ed), Peninsula of Fear: Five years of unfreedom in Crimea (CHR, RCHR, CCL, ZMINA, UHHRU 2019).
3054 See Section 4.1.2.1.2 Intervention of Russian Federation Armed Forces Units on the Territory of Ukraine. For example, under IHL: Additional Protocol I, Article 51(4) (prohibits indiscriminate attacks); Article 51(5) (prohibits attacks which may be expected to cause incidental loss of civilian life, injury or damage); Article 48 (imposes the obligation at all times “to distinguish between the civilian population and combatants”); Article 52 (distinguishes military objectives and civilian objects); Article 57 (imposes the obligation on those who plan and decide upon an attack to identify the objective before proceeding with the attack). Under IHRL: right to life (ICCPR, Article 6; ECHR, Article 2); freedom from torture (ICCPR, Article 7; ECHR, Article 3); freedom from slavery and forced labour (ICCPR, Article 8; ECHR, Article 4); right to liberty and security of person (ICCPR, Article 9(1); ECHR, Article 5); equality before the courts (ICCPR, Article 14(1); ECHR, Article 6).
Violations reported in this context include, *inter alia*, summary executions of civilians and persons *hors de combat*; ill-treatment and torture of detainees; and indiscriminate shelling of towns and villages.  

Reporting also indicates that, both before and after it came under the ‘overall control’ of Russia, the D/LPR armed groups engaged in the deliberate targeting of civilian objects, including schools and crucial public utilities (*e.g.* water, electricity, railways and sewage facilities); widespread unlawful and arbitrary detentions; abductions and enforced disappearances; ill-treatment and torture of detained civilians, which in some cases has resulted in deaths; sexual violence; forced labour; denial of access to legal assistance and incommunicado detention, among other violations of IHL and IHRL obligations. There is also evidence that armed groups have arbitrarily executed Ukrainian soldiers who had been rendered *hors de combat*.

In addition, in the context of Russia’s occupation by proxy, the D/LPR armed groups have created its own laws and adopted certain Russian Federation legislation as its own in a manner that appears contrary to Russia’s obligation under the law of occupation to respect, unless absolutely prevented, the laws in force in Ukraine. Moreover, they have reportedly engaged in the seizure and nationalisation of Ukrainian State enterprises and properties, private assets, private lands, industrial enterprises and social facilities in the occupied areas of Donbas, contrary to the rules of usufrect and the prohibition on the confiscation of private property under the laws of occupation. Other

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3056 See Section 4.1.2.3.2 Overall Control: Participants in the Internal Armed Conflict Act on Behalf of the State. Russia has exercised overall control over the D/LPR armed groups from July 2014 until the present.


3068 Some D/LPR legislation, such as the Criminal Code of the DPR and the Civil Procedure Code of the DPR, are borrowed completely from the legislation of the Russian Federation. For example, the provisions of the D/LPR Criminal Code prohibiting the rehabilitation of Nazism are nearly identical to the equivalent provision in the Russian Criminal Code, whereas no such prohibition exists in the Ukrainian Criminal Code: see, DPR Criminal Code, Article 425; LPR Criminal Code, Article 437; and Russian Criminal Code, Article 280. Some D/LPR legislation is borrowed from the legislation of the Russian Federation with some editorial amendments, such as the Act of the DNR No. 99-HC ‘On the tax system’ (25 December 2015) and the Act of the DPR No. 28-II ‘On the state civil service of the LPR’ (3 July 2015).

3069 Hague Regulations, Article 43; Geneva Convention IV, Article 64.


3071 Hague Regulations, Article 46 (private property cannot be confiscated); Article 53 (‘An army of occupation can only take possession of cash, funds, and realizable securities which are strictly the property of the State, deposits of arms, means of transport, stores and supplies, and, generally, all movable property belonging to the State which may be used for military operations’); Article 55 (‘The occupying State shall be regarded only as administrator and usufructuary of public [property], and situated in the occupied country. It must safeguard the capital of these properties, and administer them in accordance with the rules of usufrect’) and Article 56 (‘The property of municipalities […] even when State property, shall be treated as private property. All seizure of, destruction or wilful damage done to
reported violations of the D/LPR’s obligations vis-à-vis the civilians residing under their control include the use of arbitrary detentions; enforced disappearances; ill-treatment; and torture, among other unlawful acts, in order to extract confessions or information, particularly from those who have allegedly supported the Ukrainian forces or who hold pro-Ukrainian views. They are also reported to have engaged in routine harassment, torture and kidnapping of Ukrainian and foreign journalists. In addition, contrary to IHL and IHRL, the D/LPR armed groups are alleged to have engaged in propaganda for war by taking control of the media in Donbas to encourage anti-Ukrainian sentiment and by instituting a massive military propaganda campaign, which includes a policy of ‘patriotic education’ aimed at children. ‘Patriotic education’ is alleged to be implemented through military training or other military-related activities with its goal being to encourage the territory’s children to establish the moral and physical readiness to join the armed forces and “defend the Motherland” (i.e., Russia). Reliable reporting also implicates the UAF, SSU, Ukrainian law enforcement authorities and the volunteer battalions (i.e., the Ukrainian forces) in IHL and IHRL violations, particularly during the early years of the conflict in respect of individuals suspected of armed activity against the State. Specifically, it is alleged that the Ukrainian forces have engaged in unlawful and arbitrary detention, enforced disappearance, ill-treatment and torture, sexual violence, the denial of lawyers to detainees, and incommunicado detention. Additionally, authoritative reporting indicates that Ukraine may have also breached a number of its IHL and IHRL obligations with regard to the institutions of this character, historic monuments, works of art and science, is forbidden”;}
individuals located in the temporarily occupied territories of Donbas.\textsuperscript{3084} For example, Ukraine has linked the payment of pensions to IDP registration, which has had the effect of depriving individuals in the D/LPR-controlled areas of Donbas of their pension if they cannot repeatedly cross the contact line in order to confirm their IDP registration.\textsuperscript{3085} This is in potential violation of the IHRL right to social security, which "encompasses the right to access and maintain benefits [...] without discrimination in order to secure protection."\textsuperscript{3086} Additionally, in 2016 the the Operational Headquarters of the AntiTerrorist Operation\textsuperscript{3087} issued ‘Temporary Order on control of the movement of people, transport vehicles and cargos along the contact line in Donets and Luhansk region,’ which severely restricted the delivery of food and medicine to the areas controlled by armed groups.\textsuperscript{3088} This may amount to a violation of Ukraine’s obligation to allow and facilitate rapid and unimpeded passage of humanitarian relief.\textsuperscript{3089}

What follows is a broad overview of potential liability for these alleged violations of IHL and IHRL under the law of State responsibility. In this respect, it is important to note that the provisions of the law of State responsibility “are without prejudice to any question of the individual responsibility under international law of any person acting on behalf of a State”\textsuperscript{3090} Thus, to the extent that allegations of violations of IHL and IHRL amount to international crimes, the individual perpetrators of these acts may attract individual criminal responsibility for their conduct regardless of whether the State may also be held liable.\textsuperscript{3091}

4.3.3 (Non-)State Responsibility of the D/LPR Armed Groups for Violations of IHL and IHRL

Only States can incur responsibility for the breach of international obligations under the law of State responsibility.\textsuperscript{3092} However, IHL is binding also upon individuals.\textsuperscript{3093} Additionally, violations of both IHL and IHRL may constitute crimes under international criminal law for which individuals could be held liable.\textsuperscript{3094} There is also broad acceptance that non-state armed groups “exercising either government-like functions or de facto control over territory and population” assume the obligation to “respect and protect the human rights of individuals and groups.”\textsuperscript{3095}

The D/LPR armed groups are composed of individuals. To the extent that allegations of violations of IHL and IHRL amount to international crimes, members of the D/LPR armed groups may attract individual criminal responsibility for their conduct in contribution to the violations. Moreover, as established above, the D/LPR armed groups, acting under Russia’s overall control, have exerted effective control over territory in Donbas since 5 September 2014 (and 18 February 2015 in Debaltseve). Thus, to the extent that they have violated their obligation to respect and protect human rights in Donbas in this capacity, the D/LPR armed groups could be held responsible for these violations under the framework of IHRL.  

4.3.4 STATE RESPONSIBILITY OF RUSSIA AND UKRAINE FOR VIOLATIONS OF INTERNATIONAL OBLIGATIONS  
Under the law of State responsibility, every breach of an international obligation entails the responsibility of the State concerned. In order to assess the potential responsibility of Russia and Ukraine for breaches of their international obligations in relation to the situation in Ukraine, it is necessary to establish that an internationally wrongful act has been committed. According to Article 2 of the Articles on Responsibility of States for Internationally Wrongful Acts (‘ARSIWA’),

> There is an internationally wrongful act of a State when conduct consisting of an action or omission:  
(a) is attributable to the State under international law; and (b) constitutes a breach of an international obligation of the State.

This approach to assessing State responsibility is reflected in the jurisprudence of the ICJ. Accordingly, in its Judgement in the United States Diplomatic and Consular Staff in Tehran case, the Court held that “[f]irst, it must determine how far, legally, the acts in question may be regarded as imputable to the [State]. Secondly, it must consider their compatibility or incompatibility with the obligations of [the State] under treaties in force or under any other rules of international law that may be applicable.” Having already outlined the international obligations that attach to Russia and Ukraine in Donbas, the breach of which can give rise to State responsibility, the following section will focus only on the subject of attribution to a State of acts or omissions in breach of these obligations, including acts performed by non-state entities.

4.3.4.1 ATTRIBUTION  
A State can be held responsible for violations of its obligations under international law only if the conduct in breach of these obligations can be ‘attributed’ to it (i.e., the action or omission can be considered conduct of the State). According to the rules for attribution set out in Chapter II of ARSIWA, conduct is considered to be an act of a State if, inter alia, it is committed by a State organ; it is committed by persons or entities who are empowered by law to exercise elements of governmental authority; it was directed or controlled by the State; or it was acknowledged and adopted by the State as its own.

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3096 Rome Statute, Article 7 (crimes against humanity require the act to be “committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack”) and Article 8 (to be a ‘war crime’ the crime must be committed in the context of and be associated with an international or non-international armed conflict). See also, UK MoD, Manual of the Law of Armed Conflict, para. 1.10.1.  
3097 See Section 4.2 Occupation by Proxy: Is Donbas Occupied?  
3098 While there are no international fora to which IHRL violations committed by non-state actors can be addressed, complaints about these violations can be brought before domestic courts. See, J. Hesbrugge, 'Human Rights Violations Arising from Conduct of Non-State Actors', pp. 6-7. See also, ‘Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment’, UN Doc A/HRC/34/44 (17 February 2017), paras. 44-45 and 48; Note by the Secretary-General, ‘Human rights defenders’, UN Doc A/65/223 (4 August 2010), para. 21.  
3099 ARSIWA, Article 1. See also, J. Crawford, Brownlie’s Principles, p. 524.  
3100 ARSIWA, Article 2. ARSIWA defines the conditions under which a State can be considered responsible for acts (or omissions) that breach its international obligations and the consequences of such acts. See, ARSIWA Commentary, p. 31; J. Crawford, Brownlie’s Principles, p. 523.  
3102 United States Diplomatic and Consular Staff in Tehran, Judgement, I.C.J. Reports 1980, p. 3, para. 29. See also, Bosnia Genocide Judgement, para. 170; Corfu Channel (United Kingdom v. Albania), Judgement, I.C.J. Reports 1949, p. 4, para. 23. See also, J. Crawford, Brownlie’s Principles, p. 526, citing Dickson Car Wheel Co (USA) v United Mexican States (1931) 4 RIAA 669, 678; Phosphates in Morocco, Preliminary Objections (1938) PCIJ Ser A/B No 74, 28.  
3103 ARSIWA Commentary, pp. 35, 36 and 38. See also, J. Crawford, Brownlie’s Principles, p. 526.  
3104 ARSIWA, Articles 4.11.  
3105 ARSIWA, Articles 4, 5, 8 and 11.
4.3.4.1.1 **ATTRIBUTION OF THE CONDUCT OF STATE ORGANS TO RUSSIA AND UKRAINE**

Direct attribution of the conduct of State organs is relatively straightforward. According to ARSIWA Article 4(1): 3106

The conduct of any State organ shall be considered an act of that State under international law, whether the organ exercises legislative, executive, judicial or any other functions, whatever position it holds in the organization of the State, and whatever its character as an organ of the central Government or of a territorial unit of the State.

In addition to conduct of a State’s legislative, executive and judicial officials, any act or omission of a State’s armed forces, including individual soldiers and officers, is considered an act of that State for the purpose of attribution. 3107

In contrast to the rule applicable to conflict classification, 3108 any argument that the offending personnel acted ultra vires, including through acts contrary to instructions or beyond the scope of the person’s governmental authority, will not relieve a State of responsibility under the law of State responsibility. 3109 Attribution for purposes of State responsibility can occur “even where the organ or entity in question has overtly committed unlawful acts under the cover of its official status or has manifestly exceeded its competence[,] even if other organs of the State have disowned the conduct in question.” 3110 This principle is of particular importance with respect to the conduct of a State’s armed forces during an armed conflict and in relation to administrative practices involving violations of human rights. 3111

As described above, reliable, independent reporting alleges that the RFAF, UAF, various Russian government ministries, including the FSB and GRU, and Ukrainian government ministries have violated obligations that attach to them under IHL and IHRL in the context of the armed conflicts in, and Russia’s occupation of, Donbas. 3112 As these entities are de jure State organs of Russia or Ukraine, their conduct is directly attributable to the respective State in accordance with ARSIWA Article 4. Therefore, if established that the conduct of these organs has indeed violated Russia or Ukraine’s international obligations, then the relevant State could be held responsible for the violation under the law of State responsibility. (Further discussion of attribution of the conduct of State organs in respect of non-state entities is contained below at Section 4.3.1.6.1.3 (Responsibility of a State for its own conduct as relates to non-state entities).)

4.3.4.1.2 **ATTRIBUTION OF THE CONDUCT OF NON-STATE GROUPS TO RUSSIA AND UKRAINE**

The attribution of conduct of a non-state group to a State rests upon a finding of control. 3113 The precise level of control required to attribute this conduct to a State is not fully resolved, with the ICTY and ICJ taking different positions on the matter. 3114 This legal uncertainty bears particular significance in respect of the situation in Donbas, where the finding of Russia’s ‘overall control’ over the D/LPR armed groups has been sufficient for purposes of qualifying Russia as a party to an IAC and an Occupying Power under IHL; but may be insufficient, in and of itself, for the purpose of

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3106 ARSIWA, Article 4(1). This mode of attribution is in line with established jurisprudence and is considered “one of the cornerstones of the law of State responsibility”, grounded in customary international law. See, Bosnia Genocide Judgement, para. 385. See also, J. Crawford, Brownlie’s Principles, p. 527, citing Salvador Commercial Co (1902) 15 RIAA 455, 477; Chatin (1927) 4 RIAA 282, 285–6; Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights, Advisory Opinion, I.C.J. Reports 1999 p. 62, p. 87.

3107 Armed Activities Judgement, para. 213. See also, Hague Regulations, Article 3; Additional Protocol I, Article 91; J. Crawford, Brownlie’s Principles, p. 529.

3108 Mistakes or individual ultra vires acts that are not endorsed by the State cannot suffice to trigger an armed conflict under the rules pertaining to conflict classification under the law of IHL. Commentary on the Geneva Convention III, 2020, Article 3, para. 274.

3109 Armed Activities Judgement, para. 214, citing Geneva Convention IV, Article 3; Additional Protocol II, Article 91. See also, ARSIWA, Article 7; J. Crawford, Brownlie’s Principles, p. 534.

3110 ARSIWA Commentary, p. 45. For example, in Armed Activities on the Territory of the Congo, the ICJ found that officers and soldiers of Uganda’s armed forces (i.e., the “UPDF”) committed acts of plunder and illegal exploitation of the DRC’s resources and that it was “irrelevant for the attribution of their conduct to Uganda whether the UPDF personnel acted contrary to the instructions given or exceeded their authority” (Armed Activities Judgement, paras. 214, 242-243, 246). See also, Hague Convention IV, Article 3 (“A belligerent party which violates the provisions of the said Regulations shall, if the case demands, be liable to pay compensation. It shall be responsible for all acts committed by persons forming part of its armed forces”); Additional Protocol I, Article 91 (“A Party to the conflict which violates the provisions of the Conventions or of this Protocol shall, if the case demands, be liable to pay compensation. It shall be responsible for all acts committed by persons forming part of its armed forces”).

3111 J. Crawford, Brownlie’s Principles, p. 534.

3112 See Section 4.3.1.4 Reported IHL and IHRL Violations in Donbas.

3113 Nicaragua Merits Judgement paras. 109 and 115; Bosnia Genocide Judgement, paras. 391-393, 400 and 407; Tadić Appeal Judgement, para. 122; Commentary on the Geneva Convention III, 2020, Article 3, para. 443.

3114 Nicaragua Merits Judgement, paras. 109 and 115; Bosnia Genocide Judgement, paras. 391-393, 400 and 407; Tadić Appeal Judgement, para. 122.
attributing to Russia the conduct of these groups in violation of Russia’s international legal obligations under IHL, including the law of occupation.

According to the ICTY in Tadić, the appropriate level of control required to attribute the conduct of a non-state organised armed group to a State is the same as that required to internationalise a conflict and establish the existence of an occupation by proxy – that is, ‘overall control’.

The Court has described that the activities of an organised armed group that is subject to a State’s ‘overall control’ “must perforce engage the responsibility of that State” for those activities, regardless of whether each activity “was specifically imposed, requested or directed by the State”.

In essence, the Court equated the organised armed group in this situation to a de facto State organ, whose acts must therefore be attributable to the State.

Similarly, the ICJ has recognised that, for purposes of attribution of a non-state entity’s conduct to a State, “it is appropriate to look beyond legal status alone, in order to grasp the reality of the relationship between the person taking action, and the State to which he is so closely attached as to appear to be nothing more than its agent”.

However, the ICJ has emphasised that “to equate persons or entities with State organs when they do not have that status under internal law must be exceptional” and requires “proof of a particularly great degree of State control over them”.

It has found unpersuasive the ICTY’s argument in favour of the application of the ‘overall control’ test for the purpose of attributing the conduct of non-state organs to a State, describing the test as “unsuitable, for it stretches too far, almost to breaking point, the connection which must exist between the conduct of a State’s organs and its international responsibility.”

Instead of the ‘overall control’ test, the ICJ has put forth two separate tests for attribution (as opposed to classification of conflict), corresponding with ARSIWA Articles 4 and 8. These tests, commonly dubbed the ‘complete dependence’ and ‘effective control’ tests, are further examined below.

4.3.4.1.2.1 ‘COMPLETE DEPENDENCE’ (STRICT CONTROL) TEST

The ICJ has held that the correct test to allow a blanket attribution of conduct of a non-state group to a State for the purposes of State responsibility is the test of ‘complete dependence’.

To establish ‘complete dependence’, the relationship between the State and the non-state group must be “one of dependence on the one side and control on the other” and the State must actually exercise “such a degree of control in all fields as to justify treating the [non-state group] as acting on [the State’s] behalf” (i.e., as a de facto State organ).

The required degree of control is ‘strict control’, whereby the non-state group must be “as closely attached as to appear to be nothing more than its agent”.

It is generally recognised that adequate proof of ‘complete dependence’ “will, in most cases, be very difficult, if not impossible, to advance.”

Three requirements of the ‘complete dependence’ test can be extrapolated from the limited jurisprudence of the ICJ as relates to this form of attribution: (1) the non-state entity must be completely dependent on the outside State at

3115 Tadić Appeal Judgement, para. 122.
3116 Tadić Appeal Judgement, paras. 122, 137. See also, Commentary on the Geneva Convention III, 2020, Article 3, para. 443.
3117 Tadić Appeal Judgement, para. 137. See also, ARSIWA, Article 4 (conduct of organs of a State).
3118 Bosnia Genocide Judgement, para. 392.
3119 Bosnia Genocide Judgement, para. 393.
3120 Bosnia Genocide Judgement, para. 404.
3121 Bosnia Genocide Judgement, para. 406 (“the ‘overall control’ test has the major drawback of broadening the scope of State responsibility well beyond the fundamental principle governing the law of international responsibility: a State is responsible only for its own conduct, that is to say the conduct of persons acting, on whatever basis, on its behalf”).
3122 Nicaragua Merits Judgement, paras. 109 and 115; Bosnia Genocide Judgement, paras. 391-393, 400 and 407. Note that the ‘complete dependence’ test has also been referred to as the ‘strict control’ test, the ‘dependence and control’ test and the ‘agency’ test.
3124 Bosnia Genocide Judgement, paras. 391-393, 400 and 407; Nicaragua Merits Judgement, paras. 109.
3125 S. Talmon, The responsibility of outside powers for the acts of secessionist entities’, p. 501, citing Nicaragua Merits Judgement, para. 111 (“adequate direct proof that all or the great majority of [the non-state armed group’s] activities […] received support has not been, and indeed probably could not be, advanced in every respect”); Tadić Trial Judgement, para. 585 (“the [ICJ] set a particularly high threshold test for determining the requisite degree of control”). See also, Commentary on the Geneva Convention III, 2020, Article 3, para. 443 at fn. 105 (“effective control linked to every single operation is almost impossible to prove because it requires a level of proof that will unlikely be reached”).
the time the wrongful act is alleged to be perpetrated; (2) this complete dependence must extend to all fields of activity of the non-state entity; and (3) the outside State must have actually exercised the potential for control inherent in this dependence. All three requirements must be met to reach a finding of complete dependence and, therefore, to allow blanket attribution of the non-state entity’s conduct to the State.

Moreover, where a non-state group enjoys any margin of independence, this will preclude a finding of ‘complete dependence’. This is so even if the State provides “very important support […] without which [the non-state entity] could not have ‘conduct[ed] its crucial or most significant military and paramilitary activities’” For example, while the Court considers political, military and logistical ties to be suggestive of ‘complete dependence’, these ties must be linked to the pursuit of the same strategic goal and tactics and must exist at the time the impugned conduct was committed. Any “differences over strategic options […] are evidence that the [non-state entity] had some qualified, but real, margin of independence” and, therefore, that the non-state entity was not completely dependent upon the State.

Assessment of whether the D/LPR armed groups could be considered ‘completely dependent’ upon Russia at the specific time of each internationally wrongful act alleged to have been perpetrated by the group, pursuant to the ICJ’s test for attribution under state responsibility, is outside the scope of the present Legal Opinion. However, if it can be established that the D/LPR armed groups were ‘completely dependent’ on Russia in all fields of their activity at the time of their alleged commission of any wrongful act, and that Russia actually exercised the potential for control inherent in the D/LPR’s dependence upon it, then the D/LPR armed groups could be equated with a State organ (i.e., a ‘de facto State organ’) of Russia. Consequently, the entirety of the D/LPR’s conduct could be attributable to Russia under the law of State responsibility for so long as the relationship of complete dependence endured. In this scenario, there would be no need to determine Russian involvement in a particular act of the D/LPR armed groups. Instead, Russia would be considered directly responsible for every wrongful act (i.e., violation of its international obligations) carried out by the D/LPR armed groups as a function of their ‘complete dependence’ upon the Russian State.

Even in the absence of a finding of ‘complete dependence’, certain wrongful acts of the D/LPR armed groups could still be attributable to Russia if these acts were supervised and instructed, or directed or controlled by Russia. This attribution could be made by virtue of the ICJ’s secondary, ‘effective control’, test.

4.3.4.1.2.2 Attribution through Supervision and Instruction, or Direction or Control (‘Effective Control’)

The ICJ has established that there exists a secondary test to ‘complete dependence’, such that if the State is not found to exert the requisite level of strict control to establish ‘complete dependence’, attribution to the State of specific conduct of the non-state entity can still occur “where an organ of the State gave the instructions or provided the direction pursuant to which the perpetrators of the wrongful act acted or where it exercised effective control over the action during which the wrong was committed”. Pursuant to this form of attribution contained in ARSIWA Article 8, the ICJ has indicated that a determination that an individual or group was acting on a State’s instruction, or under its direction or control, “would in no way imply that the perpetrators should be characterized as organs of the [State], or equated with such organs” for the purpose of blanket attribution of the non-state entity’s conduct to the State. Instead, a finding of effective control “would merely mean that the [State’s] international responsibility would be...

3127 Bosnia Genocide Judgement, para. 394.
3128 Bosnia Genocide Judgement, para. 394.
3129 Bosnia Genocide Judgement, para. 394.
3130 Bosnia Genocide Judgement, para. 394. For example, in the Bosnia Genocide case, a finding of ‘complete dependence’ of the Republica Srpska (and its army, the ‘VRS’) vis-à-vis Serbia failed on account of the Court’s determination that the perpetration of the Srebrenica genocide by the VRS departed from the goal they shared with Serbia, which only envisaged the displacement of Bosnian Muslims from Bosnian Serb populated areas, not their destruction. Bosnia Genocide Judgement, paras. 297, 371-372. See also, paras. 279, 283, 285.
3131 ARSIWA, Articles 4, 5, 8 and 11; Bosnia Genocide Judgement, para. 406.
3132 Bosnia Genocide Judgement, para. 406.
3133 Bosnia Genocide Judgement, para. 397.
incurred owing to the conduct of those of its own organs which gave the instructions or exercised the control resulting in the commission of acts in breach of its international obligations."

Thus, in the event that the conduct of the D/LPR cannot be attributed on the whole to Russia on account of a failure to find complete dependence, certain of its activities in violation of international law may, nonetheless, be attributable to Russia. This possibility exists in three disjunctive scenarios: 1) where it can be shown that Russia supervised and instructed the commission of the D/LPR’s acts which were contrary to international law; 2) where it can be shown that Russia directed the group’s conduct that violated international law; or 3) where it can be shown that Russia exercised effective control over the specific operation in which the D/LPR has committed a violation.

Assessment of whether Russia supervised and instructed the D/LPR to commit violations or directed or exercised effective control over each and every operation in which the D/LPR is alleged to have committed unlawful acts is beyond the scope of this Legal Opinion. However, the January 2015 attack on Mariupol serves as an illustrative example of an operation for which there is clear and convincing evidence that the conduct of the D/LPR, in violation of Russia’s international obligations, may be attributed to Russia in accordance with this mode of attribution.

On the morning of 24 January 2015, the 9th Regiment of the D/LPR attacked the Vostochnyi residential district in the eastern part of the Ukrainian city of Mariupol with roughly 100 rocket missiles. According to authoritative reporting by OHCHR, OSCE, Bellingcat and International Partnership for Human Rights (‘IPHR’), as well as an investigation by the SSU, the attack originated from DPR-controlled territory in Ukraine and was effected, inter alia, through the use of several GRAD multiple launch rocket systems (‘MLRS’) provided by Russia. No legitimate military objectives are reported to have been located within this district at the time of the attack, and the weapon system lacked precision such that targeting even “on the outskirts of a town would have assumed the plausible loss of civilian life.” The missiles struck private and public buildings in Mariupol, killing approximately 31 civilians, including 2 children, and injuring more than 100 civilians. As such, the conduct of the D/LPR in this operation appears to have violated, among other prohibitions, the IHL prohibition on indiscriminate attacks.

While there is ample evidence to suggest that Russia directed or maintained effective control over the attack on Mariupol, the test for attribution under ARSIWA Article 8 is disjunctive, as noted above. Thus, it is sufficient for purposes of attribution to show only that Russia supervised and instructed the acts of the D/LPR, which were in breach

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1313 Bosnian Genocide Judgement, para. 397.
1314 See, ARSIWA, Article 8; ARSIWA Commentary, p. 48; Bosnian Genocide Judgement, para. 399; Commentary on the Geneva Convention III, 2020, Article 2, para. 302, citing Nicaragua Merits Judgement, para. 115. See also, Commentary on the Geneva Convention III, 2020, Article 2, para. 302.
1320 Indiscriminate attacks are those which are: 1) attacks not directed at a specific military objective; 2) attacks that employ a method or means of combat that could not be directed at a specific military objective; or 3) attacks that employ a method or means of combat the effects of which cannot be limited and, consequently, are of a nature to strike military objectives and civilians or civilian objects without distinction. Additional Protocol I, Article 51(4). See also, IHL Database – Customary IHL, Rule 11 ‘Indiscriminate Attacks’.
1321 See generally, Bellingcat, ‘Mariupol Artillery Strike’.
1322 ARSIWA Commentary, p. 48.
of Russia’s international obligations. It should be noted in this respect that Russia would not assume risk “in giving lawful instructions to persons who are not its organs” that are then “carried out in an internationally unlawful way.”

Evidence uncovered by Bellingcat’s investigation has established that the Mariupol operation “was instructed, directed and supervised by Russian military commanders in active service with the Russian Ministry of Defense.”

Based on a comprehensive review of Bellingcat’s investigative report on the operation, this finding is accepted to be clear and convincing. The Legal Opinion will thus turn directly to the question of whether the D/LPR was acting within the scope of Russia’s instruction when it appeared to violate the prohibition on indiscriminate attacks during the operation in Mariupol, or whether it acted unlawfully in the context of lawful instructions from Russia.

The results of Bellingcat’s investigation provide clear and convincing evidence that the D/LPR did not act outside the scope of Russia’s authorisation; rather, the group shelled Mariupol on 24 January 2015, in apparent violation of the prohibition against indiscriminate attacks, in full accordance with Russia’s instructions. Telephone intercepts obtained by Bellingcat reveal that, early in the operation, Russian command was informed by units on the ground that missiles being fired by the D/LPR were hitting residential areas of the city, that the fire from some of the launchers was grossly misdirected, and that there were issues with the target coordinates and corrections. Despite this, Russian commanding officers of the RFaf instructed that the shelling continue for six more hours, hitting the Vostochnyi residential district in Mariupol and resulting in mass civilian casualties. To date, the precise target and motivation for the attack remains unknown.

In sum, there is clear and convincing evidence that Russia instructed the D/LPR to act in apparent violation of Russia’s international obligation not to engage in indiscriminate attacks during the 24 January 2015 military operation in Mariupol, and that the D/LPR acted in accordance with these instructions. As a result, this act of the D/LPR, in the course of this particular operation, may be attributed to Russia under the law of State responsibility.

4.3.4.1.2.3 CONSIDERATIONS IN THE APPLICATION OF THE ICJ TESTS FOR ATTRIBUTION IN SITUATIONS OF OCCUPATION BY PROXY

A distinct disadvantage of the ‘strict’ and ‘effective control’ tests, as opposed to the ‘overall control’ test, for purposes of attribution under the law of State responsibility, is that a situation may arise in which acts that are regulated by the law of international armed conflict, and linked to a State, are not attributable to that State. This creates a protection gap wherein States may effectively evade responsibility for violations of their international obligations by acting through proxy forces (i.e., non-state armed groups under the State’s overall control). This gap, between the obligations incumbent upon a State and the protection afforded to civilians, is compounded by the fact that only States, as opposed to non-state armed groups, can incur responsibility under the law of State responsibility.

The ICTY in Tadić addressed this protection gap in its rationale in support of uniform applicability of the ‘overall control’ test for both conflict classification and State responsibility. The Court reasoned that the application of an effective control standard would create a situation whereby “States might easily shelter behind, or use as a pretext, their internal legal system or the lack of any specific instructions in order to disclaim international responsibility.”
Similarly, the ICRC, has described that the use of a test stricter than ‘overall control’ would create “a legal vacuum arising as a result of a State making use of local surrogates to evade its responsibilities under the law of occupation.”\textsuperscript{3157} The ICRC has also added that, in its view, ‘overall control’ is the test more appropriate for attribution “because the notion of overall control better reflects the real relationship between the armed group and the third State.”\textsuperscript{3158}

Scholarship has also addressed the subject of this protection gap in the context of State responsibility and occupation by proxy. For example, it has been posited that “[o]ne possible solution to this problem is to unify the various tests of control, as envisaged by the ICTY” on the basis of the ‘overall control’ standard.\textsuperscript{3159} It has also been argued that the wording of ARSIWA Article 8 and its commentary does not exclude the use of the ‘overall control’ test for attribution of the conduct of organised armed groups.\textsuperscript{3160} However, as also noted in the scholarship, “[t]his has not been applied by international courts and therefore effective control is still a severe limitation on the feasibility of occupation by proxy because it would give a state the ‘get out of jail free card’ under state responsibility even if the occupation was deemed to exist.”\textsuperscript{3161}

Nevertheless, as the ICJ is the principle judicial organ of the UN and is vested with jurisdiction over contentious cases between States,\textsuperscript{3162} its pronouncements command considerable weight in matters of State responsibility.\textsuperscript{3163} Moreover, the issue of State responsibility (as opposed to classification of conflict as described above at Sections 4.1 (Classification of the Armed Conflict) and 4.2 (Occupation by Proxy: Is Donbas Occupied?)), falls outside the mandate of the ICTY.\textsuperscript{3164} Thus, for the time being, it is against the tests of ‘complete dependence’ (ARSIWA, Article 4) and ‘effective control’ (ARSIWA, Article 8) that State responsibility for the acts of non-state entities must be assessed.

However, as will be seen below, even in the case that the conduct of the D/LPR armed groups cannot be directly attributed to Russia for purposes of State responsibility, Russia may still be held directly responsible under the law of State responsibility for its own conduct in relation to the D/LPR, as a function of its overall control over the entity.

4.3.4.1.3 RESPONSIBILITY OF A STATE FOR ITS OWN CONDUCT IN RELATION TO NON-STATE ENTITIES

As discussed above,\textsuperscript{3165} the conduct of a State’s organs is attributable to that State. Obligations placed directly upon States by IHL, including the law of occupation may serve, in part, to narrow the protection gap created by the differing control tests in place for conflict classification (‘overall control’) and State responsibility (‘complete dependence’ or ‘effective control’). Of particular relevance to the situation in Donbas are the duty of vigilance and the principle of non-intervention with which the State organs of Russia (and Ukraine) must abide. Each will be briefly discussed in turn below.

4.3.4.1.3.1 DUTY OF VIGILANCE

Even in the case that the D/LPR’s conduct in violation of Russia’s international obligations cannot be attributed to Russia, Russia could still be held responsible for its own conduct in violating its ‘duty of vigilance’ over the territory it occupies by proxy in Donbas. The duty of vigilance requires States to “exert all good efforts in order to prevent” certain

\textsuperscript{3158} Commentary on the Geneva Convention III, 2020, Article 3, para. 443.
\textsuperscript{3159} T. Gal, “Unexplored Outcomes of Tadic”, pp. 78-79. According to Gal, “[t]his will ensure consistency and coherency between the two questions: that of classification and that of attribution, ensuring that at least in those situations classified as IAC and resulting occupation of a territory violations will be attributed to a state”. Gal also proposes recognising the belligerency of the non-state armed group (a concept that Gal acknowledges is a highly political issue) which would have the effect of making the non-state armed group itself “the bearer of certain rights and duties” and would therefore minimise the protection gap. However, this would still enable the State using said armed groups as proxies to escape responsibility.
\textsuperscript{3160} R. Heinsch, “Conflict Classification in Ukraine: The Return of the “Proxy War”?” (2015) 91 International Law Studies 223, p. 350. According to Heinsch, the “existence of a real link” required by the ARSIWA commentary can be established by “the common objective the supporting State and the organized armed group are pursuing.”
\textsuperscript{3161} A. Gilder, “The Effective Implementation of Occupation by Proxy”, p. 80.
\textsuperscript{3162} UN Charter, Chapter XIV (The International Court of Justice); Statute of the International Court of Justice, 18 April 1946, Chapter II (Competence of the Court).
\textsuperscript{3163} I. Crawford, Brownlie’s Principles, p. 38.
\textsuperscript{3165} See Section 4.3.1.6.1.1 Attribution of the Conduct of State Organs to Russia and Ukraine.
violations from taking place within their territory, or territory over which they exercise control. The ‘duty of vigilance’ stems from a State’s due diligence obligations, obligations which are “primarily connected with state activity involving the exercise of governmental functions over territory and individuals.” An assessment of the extent of a State’s due diligence obligations depends on several factors, including “control over territory, degree of influence of a state over the author of unlawful conduct, level of technological development of the state, and the degree of harm.”

In relation to the applicability of due diligence obligations to IHL, only positive (as opposed to negative) IHL obligations require the application of due diligence. Positive obligations include, inter alia, obligations to protect individuals from other actors and obligations that contain ‘duty of care’ language (e.g., “as far as possible” and “feasible measures”). In relation to the law of occupation, several positive IHL obligations that attach to an Occupying Power must be assessed in light of the concept of due diligence. For example, as described above, the Occupying Power assumes a duty to restore and ensure public order and civil life in occupied territory, in accordance with Article 43 of the Hague Regulations. This duty entails an obligation to protect the population and property in occupied territory. Accordingly, this duty requires the application of due diligence and obliges the Occupying Power to exercise vigilance over the conduct of private actors to prevent any violation of IHL or IHRL.

Similarly, the Occupying Power has a duty of vigilance in relation to violations of IHRL by private actors. As described above, States, including an Occupying Power, must respect, protect and fulfil IHRL in territory under their control. The obligation to ‘to protect’ requires States to “prevent, investigate, punish and ensure redress for human rights violations committed by third parties, e.g., private individuals, commercial enterprises or other non-State actors.”

As the Occupying Power in Donbas, Russia is liable for any failure to exercise its duty of vigilance over the territory. Accordingly, it could be held responsible for failures to prevent or punish violations of IHL or IHRL committed by the D/LPR in occupied Donbas, without regard to whether the underlying conduct may be attributable directly to it.

### 4.3.4.1.3.2 Non-intervention

Russia could also be held responsible for its own conduct in violation of the principle of non-intervention. According to this principle, which is considered customary international law, every State has the right to conduct its internal and external affairs without outside interference from other States. In particular, the principle of non-intervention

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2173 See Section 3.5.1.1.2 International Obligations of Russia as the Occupying Power in Crimea.


2176 See Section 3.5.1.2.1 Russia’s Obligations Under IHRL: Extraterritorial Application.


2180 *Nicaragua Judgement*, paras 202, 205; UNGA Friendly Relations Declaration.
prohibits a State from intervening, directly or indirectly, with or without armed force, in support of an internal opposition in another State.\textsuperscript{3181}

A prohibited intervention is one that has an effect “on matters in which each State is permitted, by the principle of State sovereignty, to decide freely”.\textsuperscript{3182} This includes the choice of its political, economic, social and cultural system, and its formulation of foreign policy.\textsuperscript{3183} Thus, for an intervention by one State in the affairs of another State to be wrongful, the intervening State must use methods of coercion in regard to these choices, the presence of which will be most obvious in cases where an intervention uses force “either in the direct form of military action, or in the indirect form of support for subversive or terrorist armed activities within another State.”\textsuperscript{3184}

Crucially, this principle prohibits States from organising, assisting, fomenting, financing, inciting or tolerating “subversive, terrorist or armed activities directed towards the violent overthrow of the régime of another State” or interfering in an otherwise civil strife within the borders of another State.\textsuperscript{3185} Thus, the ICJ has held that, “if one State, with a view to the coercion of another State, supports and assists armed bands in that State whose purpose is to overthrow the government of that State, that amounts to an intervention by the one State in the internal affairs of the other”.\textsuperscript{3186} This is so regardless of whether the intervening State shares the political objective of the armed bands it supports (e.g., to overthrow the government).\textsuperscript{3187}

For example, in the Nicaragua case, the ICJ determined that the United States, “by training, arming, equipping, financing and supplying the contra forces or otherwise encouraging, supporting and aiding military and paramilitary activities in and against Nicaragua, [had] acted, against the Republic of Nicaragua, in breach of its obligation under customary international law not to intervene in the affairs of another State.”\textsuperscript{3188} As established above,\textsuperscript{3189} since at least July 2014, Russia has occupied Donbas by proxy, providing the D/LPR armed groups with similar support to that provided by the United States to the contra forces. Indeed, there is clear and convincing evidence that, in addition to its direct use of armed force against Ukraine in support of the D/LPR armed groups,\textsuperscript{3190} Russia has trained, armed, equipped and financed the D/LPR forces, and planned and coordinated their operations.\textsuperscript{3191} In so doing, it is clear that Russia has acted against Ukraine, in breach of its customary international law obligation not to intervene in the affairs of another State.

4.3.5 CONCLUSION ON APPLICABLE LAW IN DONBAS

As parties to the IAC, Russia and Ukraine were (and continue to be in respect of remaining hostilities) bound by the IHL obligations that regulate the conduct of hostilities, as well as the protection of the civilian population and persons hors de combat. At a minimum, the D/LPR remains bound in the context of the IAC by the IHL obligations that attach to it in the context of a NIAC. Moreover, for the duration of the occupation, Russia bears extraterritorial IHRL obligations, owing to its effective control over the territory by virtue of its occupation by proxy. In addition, notwithstanding its lack of effective control over the Russian-occupied parts of Donbas, Ukraine must undertake all measures available to it, including through legal and diplomatic means vis-à-vis foreign States and international organisations, to guarantee that its population enjoys its human rights to the maximum extent possible.

\textsuperscript{3181} Armed Activities Judgement, para. 164, citing Nicaragua Judgement, para. 206.
\textsuperscript{3182} Nicaragua Judgement, para. 205.
\textsuperscript{3183} Nicaragua Judgement, para. 205.
\textsuperscript{3184} Nicaragua Judgement, para. 205.
\textsuperscript{3185} Nicaragua Judgement, para. 205.
\textsuperscript{3186} Nicaragua Judgement, para. 206.
\textsuperscript{3187} Nicaragua Judgement, para. 206.
\textsuperscript{3188} Nicaragua Judgement, para. 206.
\textsuperscript{3189} Nicaragua Judgement, para. 206.
\textsuperscript{3190} Nicaragua Judgement, para. 206.
\textsuperscript{3191} Nicaragua Judgement, para. 206.
\textsuperscript{3192} Nicaragua Judgement, para. 292. The ICJ reached a similar decision in the Armed Activities case in which it found “that the Republic of Uganda, by engaging in military activities against the Democratic Republic of the Congo on the latter’s territory, by occupying it... by actively extending military, logistic, economic and financial support to irregular forces having operated on the territory of the DRC, violated the principle of non-use of force in international relations and the principle of non-intervention”. See, Armed Activities Judgement, para. 345.
\textsuperscript{3193} See Section 4.1.2.3.2 Overall Control: Participants in the Internal Armed Conflict Act on Behalf of the State.
\textsuperscript{3194} See Section 4.1.2.3.1.2 Intervention of Russian Federation Armed Forces Units on the Territory of Ukraine.
\textsuperscript{3195} See Section 4.1.2.3.2 Overall Control: Participants in the Internal Armed Conflict Act on Behalf of the State.
Attribution to Russia or Ukraine of violations committed by either State’s organs, such as government ministries or the armed forces is straightforward, as the conduct of any State organ is considered an act of that State under international law.\textsuperscript{3192} With regard to the violations committed by the Russian-controlled D/LPR armed groups, Russia’s responsibility for these violations under the State responsibility legal regime will arise only if it can be established that the D/LPR are ‘completely dependent’ on Russia or that Russia exercised ‘effective control’ over the specific operation(s) in which any alleged violation(s) have taken place.\textsuperscript{3193} At present, under the law of State responsibility, the ‘overall control’ Russia exercises over the D/LPR is not sufficient, in and of itself, to establish Russia’s State responsibility for every wrongful act of the D/LPR.

Nevertheless, even where the tests of attribution are not met, Russia could be held responsible for its own conduct as it relates to the D/LPR. Indeed, on account of its effective control over Donbas,\textsuperscript{3194} Russia bears a duty of vigilance in respect of the territory and may, therefore, be held liable for any failure to exert all good efforts to prevent and punish violations by the D/LPR. Moreover, there is clear and convincing evidence that Russia is liable, through its support of the D/LPR, for its violation of the principle of non-intervention in Ukraine.

Finally, the provisions of the law of State responsibility “are without prejudice to any question of the individual responsibility under international law of any person acting on behalf of a State”.\textsuperscript{3195} Thus, to the extent that allegations of violations of IHL and IHRL amount to international crimes, the individual perpetrators of these acts may attract individual criminal responsibility for their conduct regardless of whether the State may also be held liable.\textsuperscript{3196}

\textsuperscript{3192} ARSIWA, Article 4.
\textsuperscript{3193} See Section 4.3.1.6.1.2 Attribution of the Conduct of Non-State Groups to Russia and Ukraine.
\textsuperscript{3194} Russia’s effective control over Donbas is derived from the clear and convincing evidence that, from July 2014, Russia exercised overall control over the D/LPR armed groups who have exercised effective control from 5 September 2014 in the territories defined by the Minsk-I Agreement and 18 February 2015 in the territories defined by the Minsk-II Agreement, to the exclusion of Ukraine. See Sections 4.1.2.3.2 (Overall Control: Participants in the Internal Armed Conflict Act on Behalf of the State and 4.2 Occupation by Proxy: Is Donbas Occupied?).
\textsuperscript{3195} ARSIWA, Article 58.
\textsuperscript{3196} Rome Statute, Article 7 (crimes against humanity require the act to be “committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack”) and Article 8 (to be a ‘war crime’ the crime must be committed in the context of and be associated with an international or non-international armed conflict). See also, UK MoD, Manual of the Law of Armed Conflict, para. 1.10.1.
5. Summary of Conclusions

5.1 The Situation in Crimea  
5.2 The Situation in Donbas
5. SUMMARY OF CONCLUSIONS

5.1 THE SITUATION IN CRIMEA

5.1.1 IAC IN CRIMEA

While Russia may have deployed its forces into Ukraine in excess of Ukraine’s consent under the BSF Agreement as early as late January 2014, in satisfaction of the conditions for qualification of the situation as an IAC, this information cannot presently be corroborated to a clear and convincing evidential standard. In contrast, the information surrounding the events of 27 February 2014 is clear and convincing. It indicates a hostile use of armed force, by Russian forces, against Ukraine sufficient to trigger an IAC. It is of no consequence that Ukraine did not or could not mount an armed resistance to Russia’s actions, as the unilateral use of force by one State against another suffices to meet the conditions for an IAC, even if the latter does not or cannot respond by military means. Thus, the situation in Crimea amounted to an IAC at least as of 27 February. Accordingly, IHL and the relevant rights and obligations thereunder became applicable on the whole of the territories of Ukraine and Russia at least as of this time. (See Section 3.1 (Classification of the Armed Conflict).)

The IAC continued after this date and appears to have furthered Putin’s stated aim of overtaking and incorporating Crimea into the Russian Federation. Russia’s unilateral resort to armed force, including its takeover of key Ukrainian infrastructure in the Crimean Peninsula, continued and intensified in the period following 27 February 2014. While Ukraine did not resist militarily, neither did its forces surrender. Nevertheless, Russian forces had successfully contained and isolated them, having also blocked access to the Peninsula by forces from the Ukrainian mainland. By 26 March 2014, Russian forces had taken control over all Ukrainian military facilities in Crimea. This marked the conclusion of hostilities in Crimea. However, the conclusion of hostilities did not bring an end to the application of IHL on the Peninsula. Having met the three conditions of effective control, Russia became the Occupying Power in Crimea on 27 February 2014, the same day the IAC began. (See Section 3.1.2.7 (Continued hostilities in Crimea from 28 February until 26 March 2014).)

5.1.2 OCCUPATION OF CRIMEA

There is clear and convincing evidence that Russian armed forces were physically present in Ukrainian territory without the consent of Ukraine by at least 27 February 2014, in satisfaction of the first criteria of effective control. The number of Russian troops present in Crimea has continued to expand since, and Ukraine’s withholding of consent to this presence has remained firm. (See Section 3.2.2.1 (Physical Presence of Russian Forces in Ukraine Without the Consent of the GoU).)

By 27 February 2014, Ukraine also had been rendered substantially, if not completely, incapable of exerting its powers over Crimea by virtue of the Russian forces’ unconsented-to presence on the Peninsula, thus satisfying the second criteria of effective control. This is evidenced, inter alia, by Ukraine’s inability to carry out executive, legislative, security, and judicial functions on the Peninsula from this date. There is no information to suggest that Ukraine has since regained any capacity to exercise its powers over Crimea. (See Section 3.2.2.2 (Substantial or Complete Incapacity of the GoU to Exert its Powers in Crimea).)

At the same time, Russia clearly had assumed a position to effectively exercise executive, legislative, and security authority over Crimea by 27 February 2014, in lieu of Ukraine, and in satisfaction of the third criteria of effective control. This is evidenced by its control over the major land access points to the Peninsula, which blocked Ukrainian troops from the mainland, and secured Russia unfettered access to transfer weapons and personnel into Crimea. It is further evidenced by its seizure of Crimea’s Parliament and Council of Ministers, ensuring the adoption of favourable solutions for Russia, such as the decision to hold a referendum on Crimea’s accession to Russia. Moreover, Russia dismissed incumbent Ukrainian officials, including the Prime Minister of Crimea, and replaced them with Russian loyalists in clear exercise of its authority. Further exercise of authoritative capacity in Crimea is evident from Russia’s
blockade and seizure of Ukraine’s airports, sea harbours, radio and TV stations, and military bases, as well as its signature and ratification of the ‘Treaty on Accession’, which formalised its Russia’s de facto control over Crimea. Russia’s has continued to exercise this authority through adoption of a constitutional law, pursuant to which all of Crimea was integrated into Russia’s economic, financial, credit and legal systems and Crimean residents could receive Russian citizenship. Russia remains in a position to exercise this authority over Crimea until the present day, and continues exercise this authority in fact, to the exclusion of Ukraine. (See Section 3.2.2.3 (The Position of Russia to Exercise Authority over Crimea).)

5.1.3 **Prohibited Use of Force to Effect the Occupation of Crimea**

International law does not distinguish between lawful and unlawful occupation; an Occupying Power bears the same legal obligations regardless of how the occupation was established. Nevertheless, as a means of denying its status as Occupying Power, Russia has advanced a number of arguments to justify its use of force in Ukraine’s Crimean Peninsula, including self-defence, protection of Russian nationals abroad, responsibility to protect (the Russian-speaking population of Crimea) and humanitarian intervention. None of these arguments have been established, whether on the facts or in accordance with international law and, therefore, they cannot negate the finding that Russia occupies Crimea. (See Section 3.3 (Illegality of the Use of Force to Effect the Russian Occupation of Crimea).)

5.1.4 **Annexation of Crimea**

Occupation does not confer sovereignty to the Occupying Power. Nevertheless, Russia has claimed sovereignty over Crimea based on claims of self-determination of peoples and the accession of a lawfully ceded State, in apparent violation of the prohibition of annexation. Russia’s arguments in support of a valid assertion of sovereignty over Crimea have not been established in law or on the facts. None of the alleged ‘peoples’ on the Peninsula had a right of self-determination that could be exercised through unilateral secession. Russia’s claim that it accepted the accession of an ‘independent State’ that seceded on the basis of a lawful declaration of independence also fails. This is due to the declaration’s breach of Ukrainian domestic law, regional and international standards, and international law, and resultant invalidity. Thus, Russia’s arguments that its assertion of sovereignty is legitimate on the basis of either the exercise of the right of self-determination or a declaration of independence cannot preclude the finding that Russia unlawfully annexed Crimea, or negate that Crimea remains occupied. (See Section 3.4 (Sovereignty over Crimea).)

5.1.5 **Applicable Law to the Situation in Crimea**

As the Occupying Power in Crimea, Russia is bound to comply with a wide range of obligations that attach to it under the law of occupation. The law of occupation is primarily enshrined in the Hague Regulations; the Fourth Geneva Convention; provisions of AP I; and customary IHL. These rules of IHL remain applicable until the end of occupation. As such, it is these instruments and principles which primarily define the international obligations under IHL that attach to Russia in the context of its occupation of Crimea. (See Section 3.5.1.1.2 (International Obligations of Russia as the Occupying Power in Crimea).)

Additionally, as Russia has exercised effective control over the territory of Crimea from 27 February 2014 to present day, the whole body of IHRL applies extraterritorially to Russia in respect of Crimea. As such, Russia is obligated to ensure that the human rights of those residing within the territories it occupies are respected, protected and fulfilled. (See Section 3.5.1.2.1 (Russia’s Obligations Under IHRL: Extraterritorial Application).)

Meanwhile, Ukraine is not exonerated of its IHL or IHRL responsibilities, despite its lack of control over the territory of Crimea. Ukraine remains obligated by IHL by virtue of the law applicable to IAC in the context of any hostilities, which may occur. Furthermore, it must undertake all legal and diplomatic measures available to it to ensure that the population of Crimea enjoys human rights to the maximum extent possible. (See Sections 3.5.1.1.3 (International Obligations of Ukraine Under IHL), more generally and 3.5.1.2.3 (Ukraine’s Continued Obligations Under IHRL).)
5.1.6 STATE RESPONSIBILITY FOR VIOLATIONS OF INTERNATIONAL OBLIGATIONS IN CRIMEA

Both Russia and Ukraine are alleged to have engaged in conduct in Crimea in violation of their obligations under IHL and/or IHRL. If these allegations can be established, then they could potentially trigger the international responsibility of Russia and/or Ukraine, in accordance with the law of State responsibility. Such a determination would rest on the attributability of the relevant conduct to the State. In addition to the conduct of a State’s legislative, executive and judicial organs, among others, the acts or omissions of a State’s armed forces, including individual soldiers and officers, are considered acts of that State for the purposes of attribution. (See Sections 3.5.1.3 (Reported IHL and IHRL Violations in Crimea) and 4.3.1.6 (State Responsibility of Russia and Ukraine for Violations of Their International Obligations).) 

5.2 THE SITUATION IN DONBAS

5.2.1 NIAC IN DONBAS

Turning to Donbas, there is clear and convincing evidence that, by 14 April 2014 in Donetsk and 30 April 2014 in Luhansk, both criteria to establish the existence of a NIAC between Ukraine and D/LPR non-state armed groups operating in the region had been satisfied. Namely, the non-state armed group(s) involved were sufficiently organised, and the hostilities had reached a sufficient level of intensity. (See Section 4.1.2.2 (Existence of a Non-International Armed Conflict in Eastern Ukraine).) 

The process of the D/LPR armed groups formalising into organised armed groups took place over several months beginning in March 2014, when various groups formed and participated in pro-Russian protests in Donbas. While not every indicium of organisation was present in each group from the beginning of hostilities, the groups developed significant military capacity and sufficient structure to operate over time, as exhibited by their ability to conduct military operations against the UAF and to control territory. By mid-April, the groups began to display sufficient indicia of organisation for purposes of establishing a NIAC. In Donetsk, the following operated during the hostilities as organised armed groups: Girkin’s group at least by 12 April 2014, Bezler’s group at least by 14 April 2014, the Patriotic Forces of Donbas (Vostok Battalion) at least by 9 May 2014, and the Oplot Battalion at least by 26 May 2014. In Luhansk, the following operated during the hostilities as organised armed groups: the People’s Militia of Luhansk (Prizrak Battalion) at least by 27 April 2014; the Army of the South-East at least by 29 April 2014; the Luhansk Cossack National Guard at least by 3 May 2014; and Dryomov’s group at least by 22 May 2014. Between July 2014 and February 2015, the armed groups transformed into the 1st and 2nd Army Corps, which exhibited organisation comparable to a traditional state army. (See Section 4.1.2.2.1 (Organisation).) 

Where various non-State armed groups act in a coalition, their actions can be considered cumulatively for the purposes of assessing the intensity requirement necessary to establish the existence of a NIAC. There is clear and convincing evidence to suggest that armed groups operating in Donbas acted with a sufficient level of coordination and cooperation to fulfil many of the indicators of coalition.\(^\text{930}\) From as early as April 2014, the groups shared a common enemy (i.e., Ukraine) and conducted coordinated and collaborative military operations against that enemy towards a shared objective (integration of Donbas into Russia). The joint operations conducted by the armed groups demonstrated operational, strategic, and logistical cooperation. (See Section 4.1.2.2.1 (Did the Groups Act as a Coalition?).) Moreover, attempts to formalise the armed groups into a single command that began in July and culminated in the establishment of the 1st and 2nd Army Corps by at least February 2015, evidenced the progression from a loose coalition in April 2014 into a more formalised Army under a single command. (See Sections 4.1.2.2.1.2 (The Formalisation of Groups into a Single Command: July 2014 – February 2015) and 4.1.2.2.1.1 (Did the Groups Act as a Coalition?).)
Consequently, it has been established that – at least by the time each of the armed groups satisfied the organisational requirement[^931] – the armed groups operated as part of a coalition and their actions could be considered cumulatively for the purpose of the intensity assessment. Therefore, when assessing the intensity requirement, the actions of the individual groups were assessed cumulatively from the time they became sufficiently organised.

The hostilities in Donbas reached the required level of intensity by at least 14 April 2014 in Donetsk and 30 April 2014 in Luhansk. From this time in Donetsk, what were previously sporadic and isolated acts of violence that occurred during protests had clearly transformed into protracted violence between organised armed groups and Ukrainian forces, which had been deployed to the area and also reinforced. There was a significant increase in the seriousness and frequency of attacks and armed clashes, and the groups had taken control over key cities and towns. From this time, the armed groups had access to and utilised a significant quantity of weaponry, including heavy weaponry. The violence had also begun to impact significantly on the civilian population, causing a wave of refugees to flee the area.

Moreover, the hostilities had attracted the attention of the UN Security Council and other international organisations, including the OSCE, which issued its first report on the situation on 14 April 2014, and the HRMMU, which issued its first report on 15 April 2014. ([See Section 4.1.2.2.2.2 (When was the Intensity Requirement in Eastern Ukraine Satisfied?).]

In Luhansk, there were no active hostilities during April. However, the organised armed groups were able to take and maintain control over territory from 28 April. The severity of the circumstances was confirmed on 30 April 2014, when the Ukrainian government conceded it had lost control over the situation in the area. These factors were determinative in assessing that the intensity threshold was fulfilled in Luhansk by at least 30 April 2014. From these dates, other indicators of intensity were also present. These included the involvement in serious armed clashes of heavily armed (and organised) groups, in significant numbers; the involvement of Ukraine’s armed forces; the increasingly negative impact on the local population, including significant civilian casualties; and the attention received from international organisations, including the UNSC. ([See Section 4.1.2.2.2.2 (When was the Intensity Requirement in Eastern Ukraine Satisfied?).]

Thereafter, the conflict in Donbas intensified further throughout the spring and summer of 2014, with the Ukrainian forces launching several offensive operations to re-establish control over territory lost to the D/LPR armed groups. During this period, there was an increasing number of casualties and a serious effect on the civilian population. The use of heavy weaponry also increased through the spring and summer of 2014, particularly as the armed groups began receiving supplies of weaponry from Russia.[^932] ([See Section 4.1.2.2.2.2 (When was the Intensity Requirement in Eastern Ukraine Satisfied?).] Clashes between Ukrainian forces and the organised armed groups have continued to date. ([See Section 4.1.2.3.1.4 (Russian Intervention after the Minsk-II Agreements (post-February 2015)).])

5.2.2 IAC IN DONBAS

Having established the existence of a NIAC between the Ukrainian forces and the D/LPR armed groups, it was necessary to examine whether an IAC between Russia and Ukraine existed either: 1) in parallel to the NIAC as a result of any direct intervention by Russia in the conflict in support of the non-state armed groups; or 2) in place of the NIAC, in the case that the non-state armed groups acted under Russia’s overall control, thereby internationalising the conflict. ([See Section 4.1.2.3 (Existence of an International Armed Conflict in Eastern Ukraine).])

In relation to Russia’s direct intervention, numerous reports and testimonies, predominately emanating from Ukrainian sources, allege that individual RFAF units and FSB and GRU agents intervened in the conflict from the beginning of April 2014, and that Ukrainian positions were shelled from Russian territory from the end of April (particularly towards the end of June and the beginning of July). While such evidence may establish the existence of an IAC between Russia and Ukraine, in the absence of independent and reliable corroborating evidence and/or any

[^931] See Section 4.1.2.2.1 Organisation, above.
[^932] See Section 4.1.2.3.2.7.1 Provision of Military Equipment.
evidence to establish that these individuals were acting as agents of the Russian State (as opposed to acting in an individual capacity or ultra vires), it is not possible to determine that Russia directly intervened in the conflict and, therefore, that an IAC existed at that time. Nevertheless, a likelihood exists that further investigation may provide clear and convincing evidence of the existence of an IAC in this time period, particularly in view of Russia’s belligerent statements around the time. (See Sections 4.1.2.3.1.1 (Early Mobilisation of Russian Armed Forces and Shelling Along the Border with Ukraine: April – May 2014), 4.1.2.3.1.2 (Early Indications of the Physical Presence and Activity of Russian Units: June – July 2014), 4.1.2.3.2.3.1.1 (Presence of FSB Officers: 2013 – April 2014) and 4.1.2.3.2.3.2.1 (Members of the Russian Armed Forces, including GRU Officers: Spring 2014).)

The first instance of Russia’s direct intervention on the territory of Ukraine that is sufficiently corroborated to satisfy the clear and convincing standard occurred on 11 July 2014 when the RFAF shelled Ukrainian forces in Zelenopillya, Luhansk oblast, in support of the D/LPR armed groups. From August 2014 until 18 February 2015, there is clear and convincing evidence that Russia conducted several operations on Ukrainian territory to support the D/LPR armed groups, namely in Ilovaisk, Donetsk airport, Mariupol and Debaltseve. (See Section 4.1.2.3.1 (Direct Intervention in Support of Non-State Armed Groups).) There is also clear and convincing evidence of the deployment of RFAF officers into the D/LPR armed forces in Ukraine from around September 2014 onwards through the 12th Reserve Command (‘RC’), later renamed the 8th Combined Arms Army, of the Southern Military District of the Russian Ministry of Defence. (See Section 4.1.2.3.2.3.2 (Officers and Servicemen of the Russian Armed Forces, including the GRU).)

Evidence that Russia directly intervened in Ukraine from 11 July 2014 until 18 February 2015 through cross-border artillery strikes, and onwards through the deployment of Russian officers and servicemen into the D/LPR armed groups in Ukraine, is sufficient to establish the existence of an IAC between Russia and Ukraine from 11 July 2014, running parallel to the NIAC between Ukraine and the D/LPR armed forces. Nonetheless, due to clear and convincing evidence that Russia exercised overall control over the D/LPR armed groups starting from July 2014, it is more accurate to conclude that the NIAC became internationalised from July 2014. (See Section 4.1.2.3.3.2 (Overall Control: Participants in the Internal Armed Conflict Act on Behalf of the State).)

To establish overall control, the circumstances need to be considered as a whole, on a case-by-case basis. Underpinning Russia’s contributions to the D/LPR armed groups have been shared military and territorial goals – namely, the intention to ensure Ukrainian territory in Donetsk and Luhansk is under the effective control of the D/LPR, and outside the de facto control of Ukraine. Russia’s consistent actions from 2014 until the present to support, influence and control the D/LPR armed groups in furtherance of their continued control over territory in Donbas, as well as measures to further incorporate the territory controlled by the armed groups into the orbit of Russia, support this conclusion. (See Section 4.1.2.3.2.2 (Shared Goals between Russia and the D/LPR).)

While there is some indication that Russia exercised influence over the D/LPR forces from as early as March/April 2014, further investigation is required to establish a relationship of overall control during this time period. Indeed, the totality of evidence indicating control between March and July 2014 is insufficient to clearly and convincingly show that, in addition to financing, training, and equipping the D/LPR armed forces, Russia also played a role in organising, coordinating, or planning their military actions. Instead, the evidence shows that Russia’s exercise of overall control was an evolving process that began with influence in April 2014 and developed into the requisite level of control to constitute overall control in July 2014. (See Section 4.1.2.3.3.2 (Overall Control: Participants in the Internal Armed Conflict Act on Behalf of the State).)

By July 2014, evidence of Russia’s overall control over the D/LPR armed groups is clear and convincing. Taking the evidence as a whole, the nature and scale of Russia’s involvement, when combined with the correspondence of aims and objectives, militates against a finding that individuals from organs of the Russian State (including the FSB, GRU, RFAF and political leadership) were acting in a personal capacity or otherwise ultra vires from July 2014. Instead, the only reasonable conclusion is that the Russian State utilised its apparatus to ensure overall control over the D/LPR
armed groups in furtherance of their shared territorial and military aims. (See Section 4.1.2.3.2 (Overall Control: Participants in the Internal Armed Conflict Act on Behalf of the State.))

To begin, from July 2014, there is clear and convincing evidence that Russia increased its direction and supervision over the D/LPR military forces through key military supervisors, such as Vladimir Ivanovich, Nikolai Fedorovich Tkachev, Igor Egorov and Oleg Vladimirovich Ivannikov, who had commanding roles within the D/LPR armed groups in the summer of 2014. Russia was also able to exert influence over, and control the activities of, key military personnel in the D/LPR, including Alexander Borodai, Igor Girkin, Sergey Dubinsky, Igor Bezler, Valerii Bolotov and Ihor Plotnytskyi. Crucially, Russia’s direct intervention in the conflict in Ukraine began in July 2014, and the RFAF coordinated, planned and commanded joint operations with the D/LPR (e.g., in Ilovaisk, Donetsk airport, Mariupol and Debaltseve) between August 2014 and February 2015. Russia’s influence over the D/LPR’s political leadership was also aided by Russia’s appointment of Vladislav Surkov as curator in Donbas in July 2014 who, on Russia’s behalf, oversaw and controlled political developments in the D/LPR. (See Section 4.1.2.3.2.4.9.2 (Vladislav Surkov).) Control over the political leadership was maintained by forcibly removing those who opposed Russia’s policies and ensuring they were replaced with those willing to follow Russia’s instructions and work toward the same objectives. (See Section 4.1.2.3.2.4 (The Russian Federation’s Direction and Supervision of the D/LPR).)

After the promulgation of the Minsk-II Agreements in February 2015, and the subsequent stabilisation of areas under the control of the D/LPR armed groups, the need for Russia’s large-scale direct intervention and the immediacy of its military support decreased. However, Russia’s overall control over the D/LPR forces continued and actually increased. After the establishment of the 1st and 2nd Army Corps in the D/LPR, Russia’s control over the armed groups’ military formalised with a system of sending its own military officers and personnel to serve in Donbas through the 12th Reserve Command/8th Army of the Southern Military District of the RFAF. The incorporation of Russian commanding officers into the leadership of the 1st and 2nd Army Corps, and the similarities between the military ranks and structures of the State and the armed group, furthered Russia’s control over the organisation, planning and coordination of the D/LPR’s military activities. (See Section 4.1.2.3.2.3 (Transfer of Intelligence and Military Officers and Personnel from Russia).)

Russia’s ability to plan, organise and coordinate the military and political activities of the D/LPR was maintained and supported through the D/LPR’s severe dependence on the Russian Federation. In particular, Russia’s financial assistance that began in spring 2014, increased throughout 2014, resulting in the D/LPR’s gradual economic dependence on Russia, particularly after the Ukrainian Government ceased social payments and economic support in winter 2014 to 2015. The provision of weapon supplies and training, which began in spring 2014 and increased throughout summer 2014, also became more systematic after the establishment of the 1st and 2nd Army Corps. By August 2015, Russia had established a vast network of at least 54 training camps in Russia, 30 in Crimea and 58 in Donetsks, to train and deploy troops into the D/LPR forces. These contributions upheld the D/LPR’s dependency on the Russian Federation for their continued survival and, consequently, enabled Russia’s continued exercise of overall control over the groups. (See Sections 4.1.2.3.2.5 (Training of the D/LPR Forces by the Russian Federation), 4.1.2.3.2.6 (Financial Assistance and Economic Dependency on the Russia Federation) and 4.1.2.3.2.7 (Supply and Provision of Logistical Support by the Russian Federation).)

Russia’s overall control over the D/LPR, effected through the same means, continues through to the present. For example, in addition to the continued provision of economic assistance, training, military supplies and logistical support, Russia’s 12th RC/8th Army of the Southern Military District has continued to play a pivotal role in organising, coordinating, and planning the activities of the D/LPR’s 1st and 2nd Army Corps. (See Section 4.1.2.3.2.3 (Transfer of Intelligence and Military Officers and Personnel from Russia).) Russia has also persisted with its system of curators, with Vladislav Surkov continuing to act as the main curator overseeing the D/LPR political sphere until 2020, before being succeeded by Dmitry Kozak in the winter of the same year. To the present day, Kozak is said to define politics, strategy and ‘foreign relations’ in the D/LPR, while also representing Russia in diplomatic negotiations. He is assisted
in his work by the subordinate Department for Cross-Border Cooperation of the Administration of the President of the Russian Federation, headed by Alexei Filatov. (See Section 4.1.2.3.2.4.9 (Russian Curators/Advisors: 2014 – Present).)

Considering the full scope and cumulative effect of Russia’s contributions to the D/LPR armed groups – including organising, planning and directing their military and political activities, as well as the D/LPR’s continued dependency on Russia as a result of its assistance in the form of military supplies, training and economic assistance – and within the context of Russia’s continued territorial aims in Donbas, the evidence clearly and convincingly establishes a relationship of overall control. These circumstances militate against any other reasonable conclusions that could be drawn from the evidence.

Thus, in sum, there is clear and convincing evidence to establish that from 14 April 2014 in Donetsk and 30 April 2014 in Luhansk, a NIAC existed between Ukraine and the D/LPR organised armed groups. From July 2014, the NIAC was transformed by the relationship of overall control into an IAC between Russia (through the D/LPR armed forces) and Ukraine. (See Section 4.1.3 (Conclusion on the Classification of Armed Conflict in Donbas).)

5.2.3 OCCUPATION BY PROXY OF DONBAS

Having established that the Russian Federation has exercised overall control over the D/LPR, it was necessary to assess whether the D/LPR has been in effective control of the Donetsk and Luhansk oblasts. This would lead to a finding that Russia occupies Donbas by proxy. (See Section 4.2 (Occupation by Proxy: Is Donbas Occupied?).)

The D/LPR armed groups, while acting under Russia’s overall control, could be said to exercise effective control over territory in Donbas if the follow indicia were satisfied: 1) they were physically present in the territory without the consent of Ukraine; 2) Ukraine had been rendered substantially or completely incapable of exerting its powers in the territory on account of their military presence; and 3) the D/LPR had assumed a position to exercise authority over the territory in lieu of the Ukrainian government. (See Section 4.2.2 (The Law).)

From March to April 2014, the D/LPR armed groups have been physically present in the Donetsk and Luhansk oblasts without the consent of Ukraine, thus satisfying the first criterion of effective control required to establish occupation by proxy. (See Section 4.2.3.1 (Physical Presence of the Armed Forces in a Foreign Territory).)

Turning to the second and third indicators of effective control, the D/LPR armed groups proclaimed their independence and began establishing rudimentary governmental institutions in the spring and summer of 2014, issuing legislation and establishing law enforcement mechanisms. At the same time, intense hostilities between Ukraine and the D/LPR armed groups with support from Russiaragethroughout the Donetsk and Luhansk oblasts. While the D/LPR exhibited some form of control over different towns and cities during this time, it is not possible, based on the currently available evidence, to precisely define exact dates and locations in individual towns and cities where hostilities ceased and Ukraine was forced to withdraw. Instead, this period appears to have been defined by increasing hostilities impacting upon the ability of the D/LPR armed groups to exercise effective control. Consequently, it cannot be concluded that the D/LPR exercised effective control over territory in Donetsk and Luhansk between April and 5 September 2014. However, it is recognised that further investigation could likely establish effective control over individual cities and towns prior to 5 September 2014.

Clear and convincing evidence that hostilities had ceased, and Ukraine had been defeated or withdrawn from a clearly defined territory is only available after 5 September 2014 and the signing of the Minsk-I Agreement. After this point, Ukraine withdrew to the contact line that was established pursuant to Minsk-I. From 5 September 2014, there is clear and convincing evidence that Ukraine was incapable of exercising its authority over the following territory:

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933 See Section 4.1.2.3.1.2 Intervention of Russian Federation Armed Forces Units on the Territory of Ukraine.
- Donetsk oblast: Donetsk, Dokuchaievsk, Horlivka, Yenakiieve (except Vuhlehirsk), Zhdanivka, Kirovkse (currently – Krestivka), Makiiivka, Snizhne, Torez (currently – Chystyakove), Khartsyzk, Shakhtarsk, Yasynuvata, as well as separate settlements of Novoazovskyi district, Amvrosiivskyi, Starobeshivskyi and Shakhtarskyi districts.

- Luhansk oblast: Luhansk, Alchevsk, Antratsyt, Brianka, Kirovsk (currently – Holubivka), Krasnyi Luch (currently -Khrustalne), Krasnodon (currently – Sorokine), Pervomaisk, Rovenky, Sverdovsk (currently – Dovzhanski), and Stakhanov (currently – Kadiivka), as well as settlements of the Antratsytivskyi, Krasnodonskyi (currently – Sorokinskyi), Lutuhynskyi, Perevalskyi, Sverdlovskyi (Currently – Dovzhanski) and Slovianoserbskyi districts.

(See Section 4.2.3.2.1.2 (Signing of the Minsk-I Agreement and the Withdrawal of the Ukrainian Forces (September 2014)).)

In late February 2015, after the signing of the Minsk-II Agreement on 12 February and the withdrawal of the Ukrainian forces from Debaltseve on 18 February, the area outside the control of Ukraine expanded to include Debaltseve. This area has remained the same until the present (with only minor changes to the regions where certain towns are situated). The territory outside of the control of Ukraine has most recently been defined as follows:

- Donetsk oblast: Donetsk, Debaltseve, Dokuchaievsk, Horlivka, Yenakiieve, Zhdanivka, Kirovkse (currently – Krestivka), Makiiivka, Snizhne, Torez (currently – Chystyakove), Khartsyzk, Shakhtarsk, Yasynuvata, as well as separate settlements in Amvrosiivskyi, Shaktarskyi, Starobeshivskyi, Artemivskyi (currently – Bakhmutskyi), Volnovaskyi, Marinskyi, Novoazovskyi, Telmanivskyi, Boykovskyi, Yasynuvatskyi districts.

- Luhansk oblast: Luhansk, Alchevsk, Antratsyt, Brianka, Kirovsk (currently – Holubivka), Krasnyi Luch (currently -Khrustalne), Krasnodon (currently – Sorokine), Pervomaisk, Rovenky, Sverdovsk (currently – Dovzhanski), and Stakhanov (currently – Kadiivka), as well as settlements of Antratsytivskyi, Krasnodonskyi (currently – Sorokinskyi), Sverdlovskyi (Currently – Dovzhanski), Novoaidarivskyi, Lutuhynskyi, Popasnianskyi, Pervalskyi, Stanychno-Luhanskyi and Slovianoserbskyi districts.

(See Section 4.2.3.2.1.3 (Donetsk Airport and Debaltseve (September 2014 – February 2015)).)

By the time hostilities in the areas defined above ceased and Ukraine had fully withdrawn, Ukraine was incapable of exercising its authority as demonstrated by its consequent withdrawal of government services, authorities and funding from the area. Consequently, from 5 September 2014 in the territories defined by the Minsk-I Agreement and 18 February 2015 in the territories defined by the Minsk-II Agreement, the second criterion of effective control (i.e., that the effective local government in place at the time of the invasion has been or can be rendered substantially or completely incapable of exerting its powers by virtue of the foreign forces’ unconsented-to presence) was satisfied.

(See Section 4.2.3.2.2 (Incacity of Local Government).)

By 5 September 2014, the D/LPR unequivocally exercised authority in lieu of the Ukrainian government in the territory under its control, in satisfaction of the third criterion of effective control. In particular, the D/LPR had begun to: establish parallel governmental structures from as early as April and May 2014; enact and enforce their own laws from May 2014; formalise their police forces from around September 2014 in Donetsk, and November 2014 in Luhansk; and establish military, and later civilian courts. Further evidence of the D/LPR’s effective control over the territory is derived from their authority over: entry and exit checkpoints from the territory under their control for both people and goods; services in their respective territories, including hospitals, banks and educational institutions; the collection of taxes; and the paying of salaries (for government workers) and social payments such as pensions. Taken as a whole, this established clear and convincing evidence to satisfy the third criterion of effective control (i.e., that the foreign forces are in a position to exercise authority over the territory concerned (or parts thereof) in lieu of the local government) by 5 September 2014.
Consequently, it has been established that from 5 September 2014 in the territories defined by the Minsk-I Agreement (and 18 February 2015 in the territories defined by the Minsk-II Agreement) through to the present, Russia has occupied parts of Donetsk and Luhansk by proxy, through its overall control of the D/LPR armed groups. In particular, the following findings are pertinent: 1) since July 2014, Russia has exercised overall control over the D/LPR armed groups; and 2) since 5 September 2014, the D/LPR armed groups have exercised effective control over the territories defined by the Minsk-I Agreement (and 18 February 2015 in the territories defined by the Minsk-II Agreement).

5.2.4 Applicable Law in the Occupation of Donbas

It is generally considered that occupation by proxy is regulated by the same set of IHL obligations as a situation of classic belligerent occupation. Thus, the theory of occupation by proxy “prevents a legal vacuum arising as a result of a State making use of local surrogates to evade its responsibilities under the law of occupation.” (See Section 4.2.2.1 (Occupation by Proxy).)

The content of the IHL obligations placed upon an Occupying Power are primarily enshrined in the Hague Regulations, the Fourth Geneva Convention, some provisions of AP I, and customary international law. In addition, the IHL rules applicable to IACs continue to regulate any hostilities which may occur during the situation of occupation. (See Sections 3.5.1.1 (Law of Occupation and 4.3.1.3 Obligations of Russia in Respect of its Proxy Occupation of Donbas).)

As parties to the IAC, Russia and Ukraine were (and continue to be in respect of remaining hostilities) bound by the IHL obligations that regulate the conduct of hostilities, as well as the protection of the civilian population and persons hors de combat. These obligations are enshrined in the four Geneva Conventions, AP I and customary IHL. At a minimum, the D/LPR remains bound in the context of the IAC by the IHL obligations that attach to it in the context of a NIAC. (See Sections 4.3.1.1 (Obligations of the D/LPR in Respect of IHL and IHRL) and 4.3.1.2 (Obligations of Ukraine, Russia and the D/LPR in Relation to the Conflicts in Donbas).)

Moreover, the provisions of IHRL apply concurrently with the rules of IHL. Thus, for the duration of the occupation, Russia bears extraterritorial IHRL obligations, owing to its effective control over the territory by virtue of its occupation by proxy. This means that it is bound by the human rights obligations enshrined in: 1) the IHRL treaties that it has ratified/acceded to, as they apply extraterritorially in the areas under its effective control; and 2) based on a dynamic interpretation, the IHRL treaties that have been ratified/acceded to by Ukraine, pursuant to Russia’s IHL obligation to respect the laws in force in occupied territory and the territorial nature of human rights protections. In addition, notwithstanding its lack of effective control over the Russian-occupied parts of Donbas, Ukraine must undertake all measures available to it, including through legal and diplomatic means vis-à-vis foreign States and international organisations, to guarantee that its population enjoys its human rights to the maximum extent possible. (See Section 3.5.1.2 (Obligations of Ukraine and Russia under International Human Rights Law).)

5.2.5 State Responsibility for Violations of International Obligations in Donbas

Russia, the D/LPR and Ukraine are all alleged to have engaged in conduct in Donbas in violation of their obligations under IHL and/or IHRL. Russia or Ukraine could be held responsible under the law of State responsibility for conduct alleged to violate their international obligations if the violation can be proven and the conduct attributed to either State. Conduct by Russia’s or Ukraine’s State organs, such as the RFAF, UAF or the ministries of either government, can be attributed to Russia or Ukraine since the conduct of a State organ is considered an act of the State. In relation to conduct of the D/LPR, the ability to attribute its actions directly to Russia depends on the level of its dependence upon Russia or the control Russia exercises over the D/LPR. (See Sections 4.3.1.4 (Reported IHL and IHRL Violations in Donbas) and 4.3.1.6 (State Responsibility of Russia and Ukraine for Violations of Their International Obligations).)

Examination of whether the D/LPR was ‘completely dependent’ upon Russia at the time of each alleged violation for purposes of blanket attribution of its conduct to Russia under the law of State responsibility was beyond the scope of the present Legal Opinion. However, if the D/LPR were to be found ‘completely dependent’ upon Russia at the relevant points in time, it could be equated to a Russian State organ in accordance with ARSIWA Article 4 (i.e., a ‘de facto State
organ’) and the entirety of its conduct could be attributed to Russia for so long as the complete dependence relationship has persisted. (See Section 4.3.1.6.1.2.1 (‘Complete dependence’ (strict control) test).)

In the alternative, specific conduct of the D/LPR could be attributed to Russia under ARSIWA Article 8 if Russia instructed or directed the violation, or exercised ‘effective control’ over the specific operation in which a violation of its international obligations occurred. While assessment of Russia’s responsibility for each violation by the D/LPR within the framework of ARSIWA Article 8 was beyond the scope of this Legal Opinion, the D/LPR’s conduct in the January 2015 attack on Mariupol served as an illustrative example. In this case, there is clear and convincing evidence that the D/LPR’s conduct in violation of Russia’s international obligations is attributable to Russia by virtue of Russia’s instructions to the D/LPR to perpetrate the violation. (See Section 4.3.1.6.1.2.2 (Attribution through supervision and instruction, or direction or control (‘effective control’)).)

Even if the D/LPR’s conduct in violation of Russia’s international obligations could not be attributed to Russia, Russia could still be held responsible for its own conduct in relation to the conduct of the D/LPR on account of the relationship of overall control. As the Occupying Power in Donbas, Russia bears a duty of vigilance in respect of the territory. Consequently, Russia is legally responsible for any failure to exert all good efforts to prevent and punish violations by the D/LPR. Moreover, Russia is liable, through its support of the D/LPR, for its violation of the principle of non-intervention in Ukraine. (See Section 4.3.1.6.1.3 (Responsibility of a State for its own conduct as it relates to non-state entities).)

Finally, the provisions of the law of State responsibility “are without prejudice to any question of the individual responsibility under international law of any person acting on behalf of a State”. Thus, to the extent that allegations of violations of IHL and IHRL amount to international crimes, the individual perpetrators of these acts may attract individual criminal responsibility for their conduct regardless of whether the State may also be held liable. (See Section 4.3.5 (Conclusion on State Responsibility).)

934 ARSIWA, Article 58.
Dear colleagues,

We are pleased to inform you that Global Rights Compliance (GRC) has commenced a new project in Ukraine, supported by the Swedish MFA. The project titled “International Law and Defining Russia’s Involvement in Crimea and Donbas” will last from May 2020 until July 2021.

Bringing together the best local and international expertise, the project titled “International Law and Defining Russia’s Involvement in Crimea and Donbas” is designed to provide Ukraine and its allies with an authoritative international legal opinion concerning Russia’s involvement in Crimea and in Donbas. Based upon the most comprehensive assessment of the facts (including those collected by state authorities, multilateral organisations and civil society), the legal opinion will consider fundamental international humanitarian law (IHL) questions concerning Russia’s control over Crimea and their support for the non-state armed groups operating in Donbas, including DPR and LPR: for example, has Russia’s support for such groups turned into a de facto occupation?

These questions are critical to a full understanding of the relevant IHL framework, Russia specific international rights and responsibilities in Crimea and Donbas, and whether Russia has violated international law in Ukraine’s territory. Although Ukrainian governmental bodies and civil society organisations have worked fearlessly to gather information on the various issues and have submitted it to various international organisations, the current project will be the first attempt to try to assemble the pieces of information into a broad picture that will describe the status of Crimea and Donbas under the IHL framework.

The answers will help Ukraine to meet its international obligations in ending the war and enacting a fair and comprehensive transitional justice plan that accurately determines truth, and meets the multiple challenges of durable peace, reconciliation, accountability, respect for the rule of law, and redress for harms done. The report produced in the end of the project may be submitted to international and national judicial bodies and used as an advocacy tool internationally, e.g. advocating for continuation of sanctions against the Russian Federation and protecting human rights of those living under any occupation.

The project includes four phases, namely

- **Phase I:** Information gathering - GRC will collate the most comprehensive body of facts concerning Russia’s involvement from a range of government institutions and civil society organisations regarding the status of Crimea and Donbas and the basis upon which they may be considered occupied under the framework of IHL;

- **Phase II:** Early 2021 - Two international conferences – in Kyiv - to gather the views of those affected by Russia’s involvement in Crimea and Donbas and – in Stockholm - to obtain expert commentary on the facts of the alleged occupations from the world’s leading international legal occupation experts;

- **Phase III:** Drafting a legal opinion – based upon Phase I facts, GRC’s international leading experts will prepare a legal opinion that describes the legal status of Russia in Crimea and Donbas, particularly those relevant to IHL occupation and any violations of international law relevant to any effective transitional justice plan;

- **Phase IV:** Dissemination - GRC experts will cooperate with Ukrainian Government and civil society, to disseminate and integrate the findings of the legal opinion, which will include outreach with a range of relevant civil society organisations and government agencies to operationalise the findings/ recommendations and to enhance the implementation of IHL and international human rights obligations.
As noted, in order to ensure that the opinion concerning Russia’s involvement in Crimea and Donbas is objective and comprehensive, we intend to review and analyse the broadest possible scope of facts obtained by domestic and international governmental and non-governmental institutions and organisations. We would like to kindly invite you to meet (online or in person) in the next couple of weeks to discuss the possibility of cooperation with you. Please do let us know about your availability.

Please, do not hesitate to contact my Ukrainian colleagues Anna Mykytenko at annamykytenko@globalrightscompliance.co.uk and Maria Tomak at mariatomak@globalrightscompliance.co.uk if you have any questions.

We look forward to hearing from you.

Best regards,

Managing Director of GRC

Wayne Jordash QC

GRC is an international legal partnership committed to enhancing compliance that specialises in on-the-ground international humanitarian law (IHL) and international human rights law (IHRL) issues in conflict-affected and high-risk areas around the world, working to identify, prevent and mitigate adverse IHL and human rights impacts.

Since its arrival to Ukraine in 2015, GRC has been the most active IHL experts, in-country, working on issues of occupation and violations arising from it with a range of government and non-government actors, including advising on the implementation of domestic legislation in occupied territories and the investigation of international crimes reportedly committed by the occupying authorities, providing services to high-ranking officials in a range of government ministries and also supporting civil society organisations in seeking remedies for violations of international law by the Russian Federation.
ANNEX B: RESEARCH QUESTIONS

CRIMEA

1) Concluding that Russia is in temporary occupation of Crimea, the UNGA has affirmed Ukraine’s sovereignty over Crimea and condemned abuses of human rights and fundamental freedoms. How far do these resolutions represent international law?
   a. Is Russia in occupation of Crimea?
      i. What were the events leading to Russia’s takeover of Crimea?
      ii. Did the Russian armed forces invade Crimea? When and how?
      iii. The number of Russian troops, weapons, equipment etc. present in Crimea in early 2014;
      iv. Was any non-conventional/hybrid warfare employed; if so, what was it?
      v. Response of the Ukrainian government and army;
      vi. Did any of the above lead to violations of IHL/IHRL?
   b. Legality of the 2014 referendum: Was the result of the referendum a lawful act of self-determination or in violation of the norms of international law e.g., force leading to an illegal referendum?
      i. How was the referendum held, including who voted, the question posed, procedural violations, observers etc.;
      ii. National and international responses, including Russia, Ukraine, UNGA, COE, EU;
      iii. The role of the non-regular forces (so-called Crimean Self-defence);
      iv. What irregular forces/armed groups were operating in Crimea from late February 2014;
      v. What was the role of those groups in the events in late-February – late-May 2014;
      vi. Were they under the control of the Russian Federation;
      vii. What was the role of propaganda in the events in Crimea since late-February 2014;
      viii. How can such propaganda be assessed in the context of IHL and IHRL;
      ix. What was Ukraine’s role;
   c. Depending upon the legal status of Russia’s takeover, what is the nature of the administration of Crimea e.g. if Occupation?
      i. Governmental structures;
      ii. Appointment of the Crimean Governor and the relationship to the Russian government;
      iii. Functioning of state institutions;
         1. Military presence (the number of the Russian troops, weapons, military bases);
         2. Local and federal elections;

3. Reporting system and an hierarchy of power;
4. How the territory is administered;
5. Large scale infrastructure projects (Tavrida highway, Kerch bridge, etc.) in the context of the IHL and IHRL;

d. Life of civilian population:
   i. Legislation in place;
   ii. Passports and citizenship;
   iii. Currency and bank system;
   iv. Public services;
   v. Property;
   vi. Other;

e. Does Russia’s administration of Crimea violate IHL and IHRL?
   i. Changes in the demographic composition of Crimea starting from late February 2014?
   ii. Other fundamental human rights.

DONBAS

2) Does Russia’s support for the L/DPR in Donbas amount to an occupation of Ukraine?

a. What were the events leading to the armed conflict in Donbas?
   i. Protests against the central government;
   ii. Taking over administrative buildings and structures;
   iii. Creation of the L/DPR;

b. Armed conflict:
   i. If Russian Federation was engaged in the armed conflict from the very beginning, when exactly and how exactly did Russia step in?
   ii. Evidence of Russian AF support for the L/DPR, including troops, weapons, military equipment, etc.
   iii. Evidence of direct engagement, e.g. Ilovaysk, shelling from the Russian territory
   iv. Was any non-conventional/hybrid warfare employed?
      1. If so, what was it and how it aligns with IHL/IHRL?
   v. Evidence of Russia’s political support for the L/DPR
   vi. Was there any propaganda of war during the events in Donbas starting from the mid-April 2014?
      1. If so, how can such propaganda be assessed in the context of IHL and IHRL?

c. Administration of the territory:
   i. Referendums in the L/DPR and their legality;
ii. Appointment of local leaders;

iii. Command/hierarchical structure of the L/DPR;

iv. Evidence of Russia’s political and financial support for the L/DPR;

v. If Russia’s support for the L/DPR is established, does it violate IHL/ IHRL?

d. Life of civilian population:

   i. Legislation in place;

   ii. Passports and citizenship;

   iii. Fundamental human rights;

   iv. Currency and bank system;

   v. Public services;

   vi. Property;

   vii. Other.

**POSSIBLE LINKS BETWEEN CRIMEA AND DONBAS**

3) Are there any facts confirming that the events in Crimea and Donbas are essentially elements of the same armed conflict?

   a. Personalities, *i.e.*, military and political figures that appear in both conflicts;

   b. Economics, *i.e.*, how the Crimean and Donbas economics might be interlinked and dependant on the Russian support;

   c. Policies, *i.e.*, any similarities/patterns in the administration, governance, silencing the opposition (if any) in Crimea and Donbas;

4) Legal status of Ukrainian citizens arrested in the context of the armed conflict according to IHL and IHRL:

   a. What is the legal status of Ukrainian citizens arrested and/or captured in Crimea starting from late-February 2014?

      i. Those who were/are being held by the armed groups;

      ii. Those who were arrested by Russian law enforcement officers;

      iii. Those who were arrested in Crimea and transferred to the Russian Federation;

   b. What is the legal status of Ukrainian citizens arrested and/or captured in Donbas starting from mid-April 2014?

      i. Civilians;

      ii. Servicemen captured during the armed clashes.
ANNEX C: PARTICIPATION OF RUSSIAN CITIZENS IN THE SEIZURE OF THE LUHANSK AND DONETSK REGIONAL ADMINISTRATION BUILDINGS: APRIL 2014

Several reports allege that FSB officers were present in Donbas between April and May 2014. For example, from 6 to 7 April 2014, individuals, including Russian special forces officials, were allegedly involved in the seizure of the administrative buildings in Donetsk and Kharkiv, and the SSU buildings in Donetsk and Luhansk.

In relation to the events in the Kharkiv region, the evidence is limited to the testimonies of several pro-Russian activists involved in sabotage activities who admitted having been in contact with the Russian FSB during the spring of 2014.

Regarding the event in the Luhansk region, however, the information is more extensive and suggests that Russian FSB and GRU officers participated in the seizure of the administrative buildings.

Specifically, Oleksandr Petrulevych, an SSU Major-General and the Head of the SSU in the Luhansk region in April 2014, had been detained in the SSU building in Luhansk on 6 April 2014 after the building had been seized by pro-Russian activists. Petrulevych testified that around 9 p.m. that day, individuals in balaklavs came to the room where he was detained, introduced themselves as FSB officers and showed him their FSB IDs. Those officers, according to Petrulevych, told him that they had collected information about him and proposed that he work for them (he would maintain his military title (Major-General) and his salary would be increased). They also inquired as to why had not he given the order to fire at a protest crowd. Petrulevych’s interrogation by the FSB officers is corroborated by an eyewitness.

Another SSU officer, Oleh Zhivotov, an SSU Colonel and the Deputy Head of the SSU in the Luhansk region in April 2014, testified that the Army of the South-East were agents of the FSB and GRU. According to Zhivotov, at that time, the FSB and GRU were not unified in their plans: the FSB preferred to continue peaceful protests and seek a ‘Crimean-style’ referendum, while the GRU planned an armed uprising. He also claimed that the storming of the Luhansk SSU building was so sudden that FSB and GRU officers arrived at the building after the building had been seized. This version of events does not contradict the testimony of Oleksandr Petrulevych, who claimed that the FSB officers came to interrogate him late in the evening on the day the SSU building was seized.

Yet another SSU officer, unnamed for security reasons, claimed in an interview that, after the Luhansk SSU building was stormed by protestors, the FSB took control of the building. He also stated that among the protestors storming the building were Russian military men, however, they did not command the storming but were merely participants.

Another SSU officer who served in Luhansk in April 2014 claimed that in addition to the FSB, GRU officers also

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936 The list includes only information about acting FSB officers, not retired such as Igor Girkin.
937 Information provided by the Government of Ukraine.
938 Information provided by the Government of Ukraine.
939 N. Dvali, “Former head of the Luhansk SSU Petrulevich: Terrorist groups of the GRU of Russia are already in Kiev and are waiting for a signal” (GordonUA, 2 July 2014); B. Butkevych, “How the Luhansk SSU was taken” (Ukrayinskyi Tyzhden, 12 December 2015).
940 N. Dvali, “Former head of the Luhansk SSU Petrulevich: Terrorist groups of the GRU of Russia are already in Kiev and are waiting for a signal” (GordonUA, 2 July 2014).
941 N. Dvali, “Former head of the Luhansk SSU Petrulevich: Terrorist groups of the GRU of Russia are already in Kiev and are waiting for a signal” (GordonUA, 2 July 2014).
942 N. Dvali, “Former head of the Luhansk SSU Petrulevich: Terrorist groups of the GRU of Russia are already in Kiev and are waiting for a signal” (GordonUA, 2 July 2014).
943 Information provided by the Government of Ukraine and VostokSOS.
944 N. Dvali, “Colonel Oleg Zhivotov: We did not surrender Luhansk SSU” (Ukrayinskyi Tyzhden, 25 March 2016).
945 N. Dvali, “Colonel Oleg Zhivotov: We did not surrender Luhansk SSU” (Ukrayinskyi Tyzhden, 25 March 2016).
946 N. Dvali, “Colonel Oleg Zhivotov: We did not surrender Luhansk SSU” (Ukrayinskyi Tyzhden, 25 March 2016).
947 N. Dvali, “Former head of the Luhansk SSU Petrulevich: Terrorist groups of the GRU of Russia are already in Kiev and are waiting for a signal” (GordonUA, 2 July 2014).
948 O. Hudetska, “SSU officer on the role of Russia, Alexander Efremov and the leadership of regional security forces in shaking up separatism” (Insider, 9 October 2014).
949 O. Hudetska, “SSU officer on the role of Russia, Alexander Efremov and the leadership of regional security forces in shaking up separatism” (Insider, 9 October 2014).
participated in the seizure of the Luhansk SSU building on 6 April 2014.\(^{950}\) A civilian eyewitness also testified that Russian servicemen were among those who seized the Luhansk SSU building.\(^{951}\)

Further, Andriy Parubiy, the Secretary [Head] of National Security and Defence Council of Ukraine in April 2014, participated in negotiations with the Army of the South-East after the seizure of the Luhansk SSU building on 6 April 2014. Parubiy, said that, in his opinion, the representatives of the militants in these negotiations “were not independent. Moreover, as far as I know, at a certain stage groups from Russia and Crimea have already arrived - groups of coordinators from the GRU and the FSB, they were called ‘Older Sister’ and ‘Little Sister’, who coordinated these actions. And according to the intercepted data I received from the representatives of our special services, I clearly understood that it is the Russian curators who are doing everything to prevent any agreements, and most importantly - to prevent the liberation of the SSU.”\(^{952}\)

\(^{950}\) B. Butkevych, “The Surrender of Luhansk SSU” (Ukrainskyi Tyschden, 23 December 2015).

\(^{951}\) Information provided by the Government of Ukraine.

\(^{952}\) Ukrinform, ‘The RF special services sabotaged the negotiations with militants in 2014’ (5 July 2017).
**ANNEX D: PRESENCE OF THE RUSSIAN ARMED FORCES, INCLUDING GRU OFFICERS, IN DONBAS: JULY 2014 – 2015**

Starting from July 2014, the following units of the RFAF have been identified as alleged participants in hostilities in the territory of Ukraine:

- **Reconnaissance teams (at least from 14 July 2014):**
  - 2nd Spetsnaz [Special Forces] Brigade (Pskov region, Russia);\(^{953}\)
  - 10th Spetsnaz Brigade (Molkino, Krasnodar region, Russia);\(^{954}\)
  - 45th Guards Spetsnaz Regiment of the VDV [Airborne Troops] (Kubinka, Moscow region, Russia);\(^{955}\)
  - 173rd Guards Separate Recce Company (106th Guards Airborne Division);\(^{956}\)
  - Recce Battalion of the 9th Motor-Rifle Brigade (formerly the 84th Independent Reconnaissance Battalion);\(^{957}\)
  - Recce Battalion of the 18th Guards Motor-Rifle Brigade (formerly the 18th Independent Reconnaissance Battalion).\(^{958}\)

- **Battalion tactical groups (at least from 11 August 2014):**
  - 17th Motor-Rifle Brigade (Shali, Chechen Republic, Russia);\(^{959}\)
  - 18th Guards Motor-Rifle Brigade;\(^{960}\)
  - 21st Motor-Rifle Brigade (Totskoye, Orenburg region, Russia);\(^{961}\)
  - 31st Guards Air-Assault Brigade (Ulyanovsk, Russia);\(^{962}\)
  - 33rd (Mountain) Motor-Rifle Brigade;\(^{963}\)
  - 104th Guards Air-Assault Regiment (76th Guards Air-Assault Division);\(^{964}\)

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\(^{964}\) I. Sutyagin, ‘Russian Forces in Ukraine’ (2015) Royal United Services Institute (RUSI), p. 2; I. Komahidze, “Confession of a Pskov paratrooper” (InformNapalm, 18 November 2015); M. Solopov, “RBC investigation: where did Russian soldiers come from in Ukraine” (RBC, 2 October 2014); Ukrainska Pravda, “Almost a squadron of
The analysis of the General Staff of AFU regarding the Armed Conflict in Ukraine: Military Support of Illegal Armed Formations: DPR and LPR by Russian Federation (UHHRU 2018).

137th Guards Airborne Regiment (106th Guards Airborne Division) (Tula, Russia), 247th Guards Air-Assault Regiment (7th Guards Air-Assault Division) (Novorosiysk, Krasnodarskiy Kray, Russia), 331st Guards Airborne Regiment (98th Guards Airborne Division), 2nd Spetsnaz Brigade (Pskov region, Russia).

- Units deployed in the Northern Operational Area (Debal'c'he, Donetsk and Luhansk, as well as the central area of rebel-controlled territory in the east of Ukraine) (at least from February 2015):
  - Motorised infantry:
    - 2nd Guards (Tamanskaya) Division (elements of), 8th Guards Brigade (Borzoy, Chechen Republic, Russia), 18th Brigade (Hanka, Chechen Republic, Russia), 19th Brigade (Vladikavkaz, Republic of North Ossetia, Russia), 20th Guards Brigade (Volgograd, Russia), 23rd Guards Brigade (Samara, Russia), 27th Guards Brigade, 28th Brigade.
- 32nd Brigade (Shylovo, Novosibirsk region, Russia); 977
- 33rd (Mountain) Brigade; 978
- 37th Brigade (Kyakhta, Republic of Buryatia, Russia). 979

Airborne and air-assault:
- 104th Guards Air-Assault Regiment (76th Guards Air- Assault Division); 980
- 137th Guards Airborne Regiment (106th Guards Airborne Division) (Tula, Russia); 981
- 217th Guards Airborne Regiment (98th Guards Airborne Division). 982

Spetsnaz [special forces]:
- 10th Brigade; 983
- 25th Separate Special Forces Regiment (Stavropol, Russia); 984
- 346th Separate Special Forces Brigade (Prokhladny, Russia); 985
- FSB Special Operations Centre (elements of). 986

Ministry of Interior:
- 107th Operational Brigade; 987
- Dzerzhinskiy Division (elements of); 988
- Chechen Mol combined Battalion. 989

Armoured:
5th Guards Brigade (Ulan-Ude, Republic of Buryatia, Russia),990
6th Separate Brigade (Mulino, Nizhniy Novgorod region, Russia);991

- Rocket and artillery:
  - 1st Guards Missile Brigade;993
  - 79th Guards Brigade;994
  - 232nd MRL Brigade (Chebarkul, Chelyabinsk region, Russia),995
  - 288th Artillery Brigade, divisions of (Mulino, Nizhniy Novgorod region, Russia),996
  - 291st Artillery Brigade, combined division of (Troitsk, Ingushetia, Russia),997
  - 385th Artillery Brigade;998
  - 573rd Separate Artillery Reconnaissance Battalion (67th Air Defence Brigade),999
  - 1065th Guards Artillery Regiment (98th Guards Airborne Division).1000

- Combat (Service) Support:
  - 25th Railway Brigade (Bryansk, Russia),1001
  - 74th SIGINT Regiment (Vladikavkaz, Russia),1002
  - 78th Materiel Support Brigade (Stavropolskii Krai, Russia);1003
  - 282nd Armaments Repair Base (Voronezh region, Russia),1004
  - 7015th Armaments Maintenance Base (Mulino, Nizhny Novgorod region),1005

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990 Information provided by the Government of Ukraine; I. Sutyagin, *Russian Forces in Ukraine* (2015) Royal United Services Institute (RUSI), p. 3; N. Mahno and M. Kuznetsov, *"War Buryats of the Russian World": Russian 5th Tank Brigade in Donbas* (InformNapalm, 12 January 2016); E. Kostuchenko, *We all knew what we agree to and how it can be* (Novaya Gazeta, 4 March 2015).
- 7016th Armaments Maintenance Base (Maykop, Republic of Adygea).\textsuperscript{1006}

- Units deployed in the Southern Operational Area (Russian and rebel forces deployed near Mariupol) (at least from February 2015):
  - Motorised infantry:
    - 2nd Guards (Tamanskaya) Division, elements of;\textsuperscript{1007}
    - 9th Brigade (Nizhniy Novgorod, Russia);\textsuperscript{1008}
    - 138th Brigade, units of (Kamenka, Leningrad region, Russia).\textsuperscript{1009}
  - Airborne and air-assault:
    - 11th Guards Air-Assault Brigade.\textsuperscript{1010}
  - Spetsnaz [special forces]:
    - 45th Guards Airborne Spetsnaz Regiment;\textsuperscript{1011}
    - 54th Reconnaissance units Training Centre;\textsuperscript{1012}
    - 561st Naval Spetsnaz Battalion.\textsuperscript{1013}
  - Ministry of Interior:
    - Dzerzhinskiy Division (elements of).\textsuperscript{1014}
  - Armoured:
    - 12th Guards Regiment (4th Guards [Kantemirovskaya] Division).\textsuperscript{1015}
  - Rocket and artillery:
    - 200th Artillery Brigade;\textsuperscript{1016}
    - 268th Guards Artillery Brigade;\textsuperscript{1017}
    - 1140th Guards Artillery Regiment (76th Guards Air-Assault Division).\textsuperscript{1018}
  - Combat (Service) Support:
    - 31st Engineer Regiment,\textsuperscript{1019}


\textsuperscript{1007} I. Sutyagin, “Russian Forces in Ukraine” [2015] Royal United Services Institute (RUSI), p. 3; SSU YouTube Channel, “SSU continues fixing war crimes of RFAF to submit to the international courts” (7 May 2018), 3:43.


\textsuperscript{1009} Information provided by the Government of Ukraine; I. Sutyagin, “Russian Forces in Ukraine” [2015] Royal United Services Institute (RUSI), p. 3; Ukrainska Pravda, “There are 6000 Russian servicemen fighting on Donbas – General Staff” (6 September 2016).

\textsuperscript{1010} I. Sutyagin, “Russian Forces in Ukraine” [2015] Royal United Services Institute (RUSI), p. 3; I. Komahidze, “Cargo 200 was delivered to Ulan Ude, Buryatia” (InformNapalm, 24 January 2015).


\textsuperscript{1019} I. Sutyagin, “Russian Forces in Ukraine” [2015] Royal United Services Institute (RUSI), p. 3; iPress, “Russian army casualties in Donbas for the previous day: 29 killed and 50 wounded” (21 January 2015).

\textsuperscript{1019} Information provided by the Government of Ukraine; I. Sutyagin, “Russian Forces in Ukraine” [2015] Royal United Services Institute (RUSI), p. 3.
Further, a number of civilian and Ukrainian servicemen eye witnesses testified that members of the RFAF were present, and held command positions, in the D/LPR armed groups in Donbas from July 2014 to 2015. Specifically:

- A Ukrainian serviceman testified to capturing two Russian GRU officers, identified by their IDs, in the Luhansk region in July 2014. One of the captured officers admitted to serving in the GRU.  

- Two Ukrainian civilians claimed to be interrogated by Russian citizens, military or intelligence officers in July 2014 in Luhansk.

- In July 2014, the Ukrainian forces captured a major of the Russian Army who had his Russian military ID and weapons and admitted to being a Russian officer accompanying a military unit in the Luhansk region.

- Another Ukrainian serviceman testified that, in July 2014, a Russian reconnaissance group and artillery divisions, identified on the basis of their equipment, uniform, weapons and preparedness, were deployed in the Donetsk region.

- On 8 August 2014, the Financial Times reported that 12 GRU officers were killed in eastern Ukraine. According to this article, a senior UK security officer stated that “serving Russian operatives and special forces are ‘undoubtedly’ operating extensively in eastern Ukraine”.  

- In August 2014, Ukrainian servicemen found an airborne armoured vehicle ('BMD'), the board number of which identified it as belonging to a Russian military unit.

- On 21 August 2014, during a prisoners swap following the Battle of Ilovaisk, a Ukrainian officer saw and identified a general lieutenant of the RFAF who oversaw the swap.

- In October 2014, a Horlivka resident detained by the armed groups since June 2014 overheard a conversation which indicated that two of the militants in the detention centre were Russian servicemen and that a General arrived from Russia to oversee the activities of the militants.

- In December 2014, an individual detained in Luhansk saw several dozen Russian servicemen identified by their uniforms, chevrons and accent.

- In approximately March 2015, a civilian interacted with a group of Russian officers who had occupied his building, one of whom admitted to being a chief of artillery and others were identified as Russian by their chevrons and shoulder boards.

- A Ukrainian officer detained in Luhansk in early 2015 testified that the detention centre where he was held was coordinated by Russian officers identified as such by their IDs.
• Ukrainian servicemen detained in the Donetsk region in winter 2015 testified to having been interrogated by Russian officers.  

• In May 2015, the Ukrainian forces detained two Russian servicemen – Captain Evgeny Erofeev and Sergeant Aleksandr Aleksandrov – who, during their interrogation, claimed that they had come to Ukraine in March 2015 together with other members of the 3rd Guard Special Forces Brigade of the GRU. They stated that the 16th Tambov Brigade (Separate Special Purpose Brigade of the GRU) was also deployed in the Luhansk and Donetsk oblasts. Part of the GRU’s assignment consisted of collecting intelligence about the location and the quantity of the Ukrainian forces. Erofeev provided a list of more than 60 officers of the GRU’s 3rd Guard Special Forces Brigade who were present in eastern Ukraine.  

• In May 2015, a Ukrainian combatant noticed several servicemen wearing uniforms with Russian insignia in the Luhansk region. Finally, the Ukrainian government alleges that five other units of the GRU; eight units of the RFAF’s Southern Military District; a unit of the RFAF’s Western Military District; three units of the RFAF’s Central Military District; three units of the Russian Airborne Forces; and three units of the Russian Navy were present in the territory of Ukraine in 2014 and 2015. These units will not be named for security and confidentiality reasons.
ANNEX E: SENIOR RUSSIAN OFFICERS PRESENT IN DONBAS SINCE 2014

1) RUSSIAN OFFICERS TRANSFERRED TO COMMANDING POSITIONS IN THE D/LPR THROUGH THE 12TH RESERVE COMMAND

The Russian officers that were transferred to command positions in the D/LPR armed groups through the 12th RC/CVT/8th Army include:

- Major General of the RFAF, Andrey Gurulev: – Commander of the 58th Army of the Southern Military District at the time of his service in the D/LPR and was in charge of the 1st and 2nd Army Corps (‘AC’) of the D/LPR through the 12th RC (from autumn 2014 to spring 2015). Gurulev’s presence in Donetsk in 2015 was confirmed by at least one account of hearsay evidence.


- Lieutenant General Sergei Kuzovlev (aka ‘Tambov’): Kuzovlev was the Commander of the 2nd AC of the LPR and operated under the name ‘Sergei Ignatov’ (from October 2014 to approximately March 2015). Kuzovlev is reported to have led the encirclement of Debaltseve in February 2015. In 2014 to 2015, he officially served as the Commander of the 58th Army of the Southern Military District.

- Major General Sergei Yudin: Commander of the 2nd AC of the LPR (in 2015). From 2012 to 2015, Yudin served as Commander of the organisational and mobilisation department of the RFAF’s Western Military District RFAF. In 2016, he received the rank of Lieutenant General of the RFAF. Following Kuzovlev’s withdrawal in approximately spring 2015, Yudin took the command of the 2nd AC.

- Major General Yevgeniy Nikiforov: Commander of the 2nd AC of the LPR (from spring 2015 to July 2016). Officially, Nikiforov served as the commander of the 20th Combined Arms Army of the Western Military

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1038 Ministry of Defence of the Russian Federation, ‘Andrey Viktorovich Gurulev’; CRIME, ‘Intelligence said how the Russian army created “DPR” (+audio)’ (14 April 2016); Defence Intelligence of Ukraine, ‘Servicemen of the Russian Armed Forces who took part in combat actions in Ukraine’; I. Komahidze, ‘Corrupt Russian General Gurulev Exposed by Soldiers of Russian Army 136th Brigade’ (InformNapalm, 19 September 2017); Information provided by the Government of Ukraine.
1039 Information provided by the Government of Ukraine.
1040 Information provided by the Government of Ukraine; Argument, ‘Russian war criminals: Major General O. Tsekov, General S. Yudin and Major General S. Kuzovlev’ (5 April 2016); NV, ‘GUR established the further future of RFAF generals who participated in Donbas aggression’ (4 April 2016); Defence Intelligence of Ukraine, ‘Servicemen of the Russian Armed Forces who took part in combat actions in Ukraine’; Dokaz, ‘Russian generals are going to create the separate units for fighting in Donbas’ (5 October 2017).
1041 Bellingcat, ‘Russian Colonel General Identified as Key MH17 Figure’ (8 December 2017).
1042 RusTeam Media, ‘Kuzovlev Sergey Yuryevich’ (20 February 2019); Current Time, ‘Vis: servicemen commanding on Donbas officially work in Motherland’ (6 July 2015).
1044 The Council of the European Union Decision 2014/145/CFSP of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine.
1045 Argument, ‘Russian war criminals: Major General O. Tsekov, General S. Yudin and Major General S. Kuzovlev’ (5 April 2016); NV, ‘GUR established the further future of RFAF generals who participated in Donbas aggression’ (4 April 2016); Defence Intelligence of Ukraine, ‘Servicemen of the Russian Armed Forces who took part in combat actions in Ukraine’.
1046 Defence Intelligence of Ukraine, ‘War criminal, RFAF General Lieutenant YUDIN Serhii Serhiyivych’.
1047 Decree of the President of Russian Federation No. 276 ‘On the assignment of military ranks of senior officers, special ranks of senior commanding staff and class ranks’ (11 June 2016).
1048 Ukraine Crisis Media Center, ‘The Administration of the President presented the undeniable evidence of Russian armed aggression against Ukraine’ (31 August 2018).
1049 R. Coalson, ‘Who Are the Russian Generals That Ukraine Says are Fighting in the Donbas (Updated)’ (RFE/RL, 28 August 2015); F. Orzyshchuk, ‘ATO Anniversary: Against whom does Zelensky’s Ukraine fight on Donbas, or Unrecognized Terrorists’ (UIGA, 14 April 2020).
1050 S. Repin, ‘Unexpected casting moves of Russian generals in Southern Military District’ (InformNapalm, 18 January 2017); Defence Intelligence of Ukraine, ‘Servicemen of the Russian Armed Forces who took part in combat actions in Ukraine’; R. Coalson, ‘Who Are the Russian Generals That Ukraine Says are Fighting in the Donbas (Updated)’ (RFE/RL, 28 August 2015).
After serving in Donbas, he served as the Commander of the 58th Army of the Southern Military District (he replaced Kuzovlev). 1054

- **Major General Igor Krasin:** Commander of the 2nd AC of the LPR (from winter 2016 to summer 2017). 1055 Until July 2016, Krasin officially served as Chief of Staff of the 20th Guards Combined Arms Army. In July 2016, the then Commander of the formation, Major General Sergei Kuzovlev, informed the media that Krasin “was promoted”. 1056 In 2017, he was appointed Deputy Commander of the 8th Army of the Southern Military District, which at that point was headed by Kuzovlev. 1057

- **Major General Valery Sharagov:** Commander of the 2nd AC of the LPR (from summer 2017 to winter 2018). 1058

As of May 2017, Sharagov served as Deputy Commander of the 29th Combined Arms Army, 1059 and Deputy Commander of the Combined Arms Army of the RFAF’s Eastern Military District in 2020. 1060

- **Major General Mikhail Zusko:** Commander of the 1st AC of the DPR (in 2014). 1061 In 2011 he was appointed Commander of 34th Separate Motorised Rifle Mountain Brigade of the Southern Military District. 1062 Currently, Zusko commands the 58th Army of the Southern Military District. 1063 Ukrainian intelligence published an intercepted communication from 1 November 2014 between Gurulev and Zusko during which Zusko reported to Gurulev on the situation on the frontline. 1064

- **Major General Valerii Solodchuk:** Commander of the 1st AC of the DPR (from autumn 2014 to winter 2015). 1065 As to Solodchuk’s official place of service during his time in Donbas, there are contradictory reports that Solodchuk was a Division Commander in Novorossiysk, Deputy Commander of the 5th Combined Arms Army or Deputy Commander of the Primorsky Combined Arms Formation of the Eastern Military District. 1066 In 2020, he was Commander of the 36th Combined Arms Army of the RFAF. 1067

- **Major General Aleksei Zavizion:** Commander of the 1st AC of the DPR (from February to July 2015). 1068 In the beginning of 2014, Zavizion was appointed First Deputy Commander of the 41st Army. 1069 After information about his service in Donbas was published in March 2015, Russian media outlet Kommersant made inquiries to the 41st Army and received the following information from the operational officer on duty: “[w]e do not have such a general, he is now serving in another place that I cannot reveal to you”. 1070 According to another Kommersant source in the operational military command, Zavizion was officially involved “in the creation of...
the operational-strategic command ‘North’. In 2020, Zavision, already Lieutenant General, served as First Deputy Commander of the Western Military District.

- Major General Valery Asapov: Commander of the 1st AC of the DPR (from August 2015 to October 2016). According to a Russian source from 2015, Asapov was sent on a mission to Rostov-on-Don, Russia (a city on the border with Ukraine) where he was likely to remain in the command of the Southern Military District. However, the fact that Asapov served as Commander of the 1st AC was also confirmed to Reuters by his brother and several militants. In summer 2016, Asapov received the rank of Lieutenant General by Order of the Russian President. Asapov was subsequently killed in Syria.

- Major General Vladimir Lugovoy: Commander of the 1st AC of the DPR located in Donetsk (from autumn 2016 to summer 2017). Between 2013 and 2017, Lugovoy held the posts of Chief of Staff and First Deputy Commander of the 41st Army of the Central Military District, Deputy Commander of the Reserve of the 12th Command Reserve of the Southern Military District and temporarily held the position of Deputy Commander of the 8th Army of the Southern Military District.

- Major General Roman Breus: Commander of the 1st AC of the DPR and located in occupied Donetsk (from summer 2017 to summer 2018). Commander of the 7th Guards Mountain Air Assault Division of the RFAF from 2014 to 2019.

- Major General Arutuyn Darbinyan: Commander of the 1st AC of the DPR and located in occupied Donetsk (from summer 2018 to winter 2019). In 2017, Darbinyan was appointed Chief of Staff of the Deputy Commander of the 8th Army of the Southern Military District.

2) OTHER SENIOR RUSSIAN ARMED FORCES OFFICERS PRESENT IN DONBAS

Other identified senior RFAF officers present in Donbas include:

- Major General Dmitriy Klimenko: according to Bellingcat, responsible for choosing and sending artillery Commanders and artillery equipment to Donbas.

- Major General Oleg Tsekov: Commander of the 2nd Brigade of the separatist forces near Donetsk (from Autumn 2014 to spring 2015). In 2017, Tsekov was appointed Deputy Head of the Commander of the 8th Army of the Southern Military District. The Commander of the 8th Army at that point was Lieutenant General Sergei Kuzovlev.

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1071 I. Barabanov, I. Safronov and L. Suslova, “They served at home” (Kommersant, 6 July 2015).
1072 Ministry of Defence of Russian Federation, “Headquarters Commander-First Deputy Commander of WMD started the working trip to Kaliningrad oblast” (25 June 2020).
1074 Defence Intelligence of Ukraine, “Servicemen of the Russian Armed Forces who took part in combat actions in Ukraine” (26 September 2017). The General Girkin acknowledged that Russian generals Asapov and Lugovoy were fighting on Donbas.
1077 M. Tsepkov, “Fog of Ukraine’s war: Russian soldiers were in charge of ocupants on Donbas” (Kommersant, 6 July 2017).
1078 Ministry of Defence of Russian Federation, “On the assignment of military ranks of senior officers, special ranks of senior commanding staff and class ranks” (11 June 2016).
1079 M. Tsepkov, “Fog of Ukraine’s war: Russian soldiers were in charge of ocupants on Donbas” (Kommersant, 6 July 2017).
1080 Ministry of Defence of Russian Federation, “On the assignment of military ranks of senior officers, special ranks of senior commanding staff and class ranks” (11 June 2016).
1081 F. Onychukh, “ATO Anniversary: Against whom does Zelenskiy’s Ukraine fight on Donbas, or Unrecognized Terrorists” (UIGA, 14 April 2020).
1082 I. Safronov, “South-west was gingered up by combat generals” (Kommersant, 9 July 2017).
• Major General Igor Timofeyev (Sokolov): Commander of the 3rd Separate Motorised Rifle Brigade of the 1st AC; 1085

• Colonel Oleg Kuvshinov: according to Bellingcat, responsible for choosing and sending artillery Commanders and artillery equipment to Donbas; 1086

• Colonel Sergey Lisay: according to Bellingcat, responsible for choosing and sending artillery Commanders and artillery equipment to Donbas; 1087

• Colonel Yevgeniy Chirkov: Commander for Personnel of the 1st AC Commander; 1088

• Colonel Andrey Ruzynskiy: Commander of the 2nd Separate Motorised Rifle Brigade of the 2nd AC; 1089

• Colonel Dmitriy Bondarev: Commander of the 9th Separate Motorised Rifle Regiment of the Marine Corps of the 1st AC; 1090

• Colonel Petr Bolgariev: Commander of the 4th Separate Motorised Rifle Brigade (Alchevsk) of the 2nd AC (Luhansk, Ukraine); 1091

• Colonel Igor Kapliy: Commander of the 5th Separate Motorised Rifle Brigade (Donetsk) of the 1st AC (Donetsk, Ukraine); 1092

• Colonel Aleksandr Bushuyev: Commander of the 7th Separate Motorised Rifle Brigade (Debaltseve, Ukraine) of the 2nd AC (Luhansk, Ukraine); 1093

• Colonel Vadim Pankov: Commander of the 7th Separate Mechanised Rifle Brigade (Debaltseve, Ukraine); 1094

• Colonel Stanislav Yershov: Deputy Commander of the 6th Separate Motorised Rifle Regiment (Stakhanov, Ukraine) of the 2nd AC (Luhansk, Ukraine); 1095

• Colonel Vladimir Volykhin: Deputy Commander of the 3rd Separate Motorised Rifle Brigade (Horlivka, Ukraine) of the 1st AC (Donetsk, Ukraine); 1096

• Colonel Aleksandr Kiriyenkov: HR Deputy Commander of the 7th Separate Mechanised Brigade (Debaltseve, Ukraine) of the 2nd AC (Luhansk, Ukraine); 1097

• Colonel Vadim Lipkievich: HR Deputy Commander of the 5th Separate Motorised Rifle Brigade (Donetsk, Ukraine) of the 1st AC; 1098

1085 Defence Intelligence of Ukraine, ‘Servicemen of the Russian Armed Forces who took part in combat actions in Ukraine’; TSN, ‘A mistress in “DPR” and smuggling: the SSU counterintelligence smoked out Russian general Timofeyev’ (10 October 2017).


1088 Defence Intelligence of Ukraine, ‘War criminal, Colonel of the Armed Forces of the Russian Federation CHYRKOV Yevhen Volodymyrovych’.

1089 Defence Intelligence of Ukraine, ‘Servicemen of the Russian Armed Forces who took part in combat actions in Ukraine’.

1090 Euromaidan Press, ‘Ukrainian military intelligence identifies top Putin’s generals conducting war in Ukraine’ (9 March 2016); Defence Intelligence of Ukraine, ‘Servicemen of the Russian Armed Forces who took part in combat actions in Ukraine’; Tribun, “High commanders of Russian military are trying to escape from Donbas” (7 March 2016).


1093 Defence Intelligence of Ukraine, ‘Servicemen of the Russian Armed Forces who took part in combat actions in Ukraine’; Tribun, “High commanders of Russian military are trying to escape from Donbas” (7 March 2016).

1094 EUROMIDAIN, Press, ‘Ukrainian military intelligence identifies top Putin’s generals conducting war in Ukraine’ (9 March 2016); Defence Intelligence of Ukraine, ‘Servicemen of the Russian Armed Forces who took part in combat actions in Ukraine’; Tribun, “High commanders of Russian military are trying to escape from Donbas” (7 March 2016).

1095 Defence Intelligence of Ukraine, ‘Servicemen of the Russian Armed Forces who took part in combat actions in Ukraine’; Tribun, “High commanders of Russian military are trying to escape from Donbas” (7 March 2016).

1096 Defence Intelligence of Ukraine, ‘Servicemen of the Russian Armed Forces who took part in combat actions in Ukraine’; Tribun, “High commanders of Russian military are trying to escape from Donbas” (7 March 2016).

1097 Defence Intelligence of Ukraine, ‘Servicemen of the Russian Armed Forces who took part in combat actions in Ukraine’; Tribun, “High commanders of Russian military are trying to escape from Donbas” (7 March 2016).

1098 Defence Intelligence of Ukraine, ‘Servicemen of the Russian Armed Forces who took part in combat actions in Ukraine’; Tribun, “High commanders of Russian military are trying to escape from Donbas” (7 March 2016).
• Colonel Aleksandr Malyshev: Commander of the MLRS Battalion of the 2nd Separate Motorised Rifle Brigade (Luhansk) of the 2nd AC Lieutenant;¹⁰⁹⁹

• Colonel Aleksandr Osipov: former Deputy Commander of the 2nd AC on armament (Luhansk, Ukraine);¹¹⁰⁰

• Lieutenant Colonel Roman Titov: Commander of the 11th Separate Motorised Rifle Regiment (Makiïvka) of the 1st AC (Donetsk, Ukraine);¹¹⁰¹

• Lieutenant Colonel Sergey Kuralev: former Commander of the Reconnaissance Department and Deputy Chief of the intelligence staff of the 2nd Separate Motorised Rifle Brigade of the 2nd Army Corps (from 2015 to 2017);¹¹⁰²

• Lieutenant Colonel Yevgeniy Kobzar: chief of the Air Defence of the 1st AC (Donetsk, Ukraine);¹¹⁰³

• Lieutenant Colonel Aleksandr Maksimov: Commander of the Motorised Rifle Battalion of the 3rd Separate Motorised Rifle Brigade (Horlivka) of the 1st AC (Donetsk, Ukraine);¹¹⁰⁴

• Lieutenant Colonel Andrey Bolichev: Commander of the air defence Battalion of the 3rd Separate Motorised Rifle Brigade (Horlivka, Ukraine) of the 1st AC (Donetsk, Ukraine);¹¹⁰⁵

• Lieutenant Colonel Fedor Panov: HR deputy Brigade Commander of the 2nd Separate Motorised Rifle Brigade (Luhansk, Ukraine) of the 2nd AC (Luhansk);¹¹⁰⁶

• Lieutenant Colonel Igor Illinskiy: Deputy Commander for logistics of the 3rd Separate Motorised Rifle Brigade (Horlivka) of the 1st AC (Donetsk, Ukraine);¹¹⁰⁷

• Lieutenant Colonel Aleksandr Kozlovskiy: Executive Officer of the 2nd Separate Motorised Rifle Brigade (Luhansk, Ukraine) of the 2nd AC (Luhansk);¹¹⁰⁸

• Lieutenant Colonel Anatolii Kudinov: Chief of the operations section – Deputy Executive Officer of the 2nd Separate Motorised Rifle Brigade (Luhansk, Ukraine) of the 2nd AC (Luhansk);¹¹⁰⁹

• Lieutenant Colonel Dmitriy Tsereregordtsev: Chief of artillery section of the 2nd Separate Motorised Rifle Brigade (Luhansk) of the 2nd AC;¹¹¹⁰

• Lieutenant Colonel Vladimir Sazonov: Commander of Howitzer SP Artillery Battalion of the 2nd Separate Motorised Rifle Brigade (Luhansk) of the 2nd AC;¹¹¹¹

¹⁰⁹⁹ Defence Intelligence of Ukraine, ‘War criminals – the career artillery officers of the Russian Armed Forces’.
¹¹⁰⁰ Defence Intelligence of Ukraine, ‘Servicemen of the Russian Armed Forces who took part in combat actions in Ukraine’; Defence Intelligence of Ukraine, ‘War criminal, Colonel of the Armed Forces of the Russian Federation OSPOD Oleksandr Borysovych’.
¹¹⁰² Defence Intelligence of Ukraine, ‘Servicemen of the Russian Armed Forces who took part in combat actions in Ukraine’; Defence Intelligence of Ukraine, ‘War criminal, Lieutenant Colonel of the Russian Armed Forces KURALIOV Serhii Serhiyovych’; TSN, ‘Counterintelligence smoked out two regular Russian officers who participated in Donbas hostilities on the terrorists’ side’ (1 March 2019).
¹¹⁰³ Defence Intelligence of Ukraine, ‘War criminal, Lieutenant Colonel of the Armed Forces of the Russian Federation Kobzar Yevhen Antonovych’.
¹¹⁰⁴ Defence Intelligence of Ukraine, ‘Servicemen of the Russian Armed Forces who took part in combat actions in Ukraine’; Defence Intelligence of Ukraine, ‘War criminal, Lieutenant Colonel of the Russian Armed Forces MAKSYMOV Oleksandr Valeriyovych’.
¹¹⁰⁶ Defence Intelligence of Ukraine, ‘Servicemen of the Russian Armed Forces who took part in combat actions in Ukraine’; Defence Intelligence of Ukraine, ‘War criminal, Lieutenant Colonel of the Russian Armed Forces PANOV Fedir Yevhenovych’; LIGA, ‘RF AF officer was reprimanded for mass dismissals on Donbas’ (24 May 2016).
¹¹⁰⁷ Defence Intelligence of Ukraine, ‘War criminals: Captain of the Russian Armed Forces CHEPKASOV Oleksii Volodymyrovych, Lieutenant Colonel of the Russian Armed Forces LIUNSKYI Ihor Oleksiovych’; Apostrophe, ‘Inelligence got to know about the illegal business of Putin’s officers on Donbas’ (5 May 2016).
¹¹⁰⁸ Defence Intelligence of Ukraine, ‘Servicemen of the Russian Armed Forces who took part in combat actions in Ukraine’; Defence Intelligence of Ukraine, ‘War criminal, Lieutenant Colonel of the Armed Forces of the Russian Federation KOZLOVSKYI Oleksandr Oleksandrovych’.
¹¹⁰⁹ Defence Intelligence of Ukraine, ‘Servicemen of the Russian Armed Forces who took part in combat actions in Ukraine’; Defence Intelligence of Ukraine, ‘War criminal, Lieutenant Colonel of the Armed Forces of the Russian Federation KUDINOV Anatoli Anatoliovych’.
¹¹¹⁰ Defence Intelligence of Ukraine, ‘War criminals – the career artillery officers of the Russian Armed Forces’.
¹¹¹¹ Defence Intelligence of Ukraine, ‘War criminals – the career artillery officers of the Russian Armed Forces’.
• Lieutenant Colonel Kirill Pirkkaliev: Commander of the Howitzer Artillery Battalion of the 2nd Separate Motorised Rifle Brigade (Luhansk) of the 2nd AC; 1112
• Lieutenant Colonel Aleksey Sharygin: Officer of the Department of Electronic Intelligence and Communications, from March to July 2016, Donetsk; 1113
• Lieutenant Colonel Yevgeniy Spiridonov, Chief of Troops and Security Service of the 2nd Separate Motorised Rifle Brigade (Luhansk) of the 2nd AC (Luhansk); 1114
• Major Aleksand Izotov: Commander of the Motorised Rifle Battalion of the 11th Separate Motorised Rifle Regiment (Makiivka) of the 1st AC (Donetsk, Ukraine); 1115
• Major Vitaliy Sukuev: Commander of the 1st Separate Special Forces Battalion (Donetsk) of the 1st AC (Donetsk, Ukraine); 1116
• Major Zalibek Umaiev: chief of the engineer service of the 1st AC (Donetsk, Ukraine); 1117
• Major Anatoliy Grebliyev: HR Deputy Commander of the 3rd Separate Motorised Rifle Brigade (Horlivka, Ukraine) of the 1st AC (Donetsk, Ukraine); 1118
• Major Yury Striuk: Deputy Commander for armament of the 3rd Separate Motorised Rifle Brigade (Horlivka, Ukraine) of the 1st AC (Donetsk, Ukraine); 1119
• Major Ruslan Iskuzhenov: Chief of Staff and Deputy Commander of the 1st Motorised Rifle Battalion of the 3rd Separate Motorised Rifle Brigade (Horlivka, Ukraine) of the 1st AC (Donetsk, Ukraine); 1120
• Major Sergey Tikhonov: Chief of the missile and artillery supply of the 7th Separate Motorised Rifle Brigade (Debaltseve, Ukraine) of the 2nd AC (Luhansk, Ukraine); 1121
• Major Ivan Baidikov: Chief of the engineer service of the 3rd Separate Motorised Rifle Brigade (Horlivka) of the 1st AC (Donetsk); 1122
• Major Aleksey Yefremov: Chief of the human resources section of the 2nd Separate Motorised Rifle Brigade (Luhansk) of the 2nd AC (Luhansk); 1123
• Major Leonid Pashkevich: Commander of the Commandant’s Company (Debaltseve) of the Separate Commandant’s Regiment (Luhansk) of the 2nd AC (Luhansk); 1124

1112 Defence Intelligence of Ukraine, “War criminals – the career artillery officers of the Russian Armed Forces”.
1114 Defence Intelligence of Ukraine, “Servicemen of the Russian Armed Forces who took part in combat actions in Ukraine”; TSN, “Two Russian officers were punished for the militant’s desertion” (2 June 2016).
1115 Defence Intelligence of Ukraine, “Servicemen of the Russian Armed Forces who took part in combat actions in Ukraine”; Glavred, “A Russian major has been spotted in Makeyevka – deserted against a violent regimental commander” (17 May 2016).
1116 Defence Intelligence of Ukraine, “War criminal, Major of the Russian Armed Forces SUKUEV Vitaliy Volodymyrovych”; Interfax, “RF Af Major Sukuev from Buriatiya is in charge of one of the special forces battalion in Donetsk – Ukrainian intelligence” (24 March 2016).
1119 Defence Intelligence of Ukraine, “Servicemen of the Russian Armed Forces who took part in combat actions in Ukraine”; Ukinform, “Intelligence smoked out another two Russian officers on Donbas” (22 April 2016).
1120 Defence Intelligence of Ukraine, “Servicemen of the Russian Armed Forces who took part in combat actions in Ukraine”; Defence Intelligence of Ukraine, “War criminal, Major of the Armed Forces of the Russian Federation ISKUZHENOV Ruslan Tulihenovych”; CRIME, “Carrots” are over. FSB regales the Russian officers on Donbas with “sticks” (17 May 2016).
1121 Defence Intelligence of Ukraine, “Servicemen of the Russian Armed Forces who took part in combat actions in Ukraine”; Defence Intelligence of Ukraine, “War criminal, Major of the Armed Forces of the Russian Federation TIKHONOV Serhiy Volodymyrovych”.
1122 Defence Intelligence of Ukraine, “Servicemen of the Russian Armed Forces who took part in combat actions in Ukraine”; Defence Intelligence of Ukraine, “War criminal, Major of the Russian Armed Forces BAIKOV Ivan Viktorovych”.
1124 Defence Intelligence of Ukraine, “War criminal, Major of the Armed Forces of the Russian Federation PASHEVYCH Leonid Volodymyrovych”; O. Tyschuk, “Russian madman-commander sold peaceful civilians on Donbas” (Fakty, 8 May 2016).
• Major Aleksandr Pavlenko: Chief of Intelligence of the 3rd Separate Motorised Rifle Brigade (Horlivka) of the 1st AC (Donetsk, Ukraine);\(^{1125}\)

• Major Sergey Rybakov: Executive Officer of the artillery section of the 2nd Separate Motorised Rifle Brigade (Luhansk) of the 2nd AC;\(^{1126}\)

• Major Vitaliy Protsiuk: Deputy Commander of the Howitzer SP Artillery Battalion for armament of the 2nd Separate Motorised Rifle Brigade (Luhansk) of the 2nd AC;\(^{1127}\)

• Major Dmitry Pavlov: Deputy Commander of the Rocket-Propelled Artillery Battalion for Armament of the 2nd Separate Motorised Rifle Brigade (Luhansk) of the 2nd AC;\(^{1128}\)

• Major Grigoriy Khizhenkov: Executive Officer – Deputy Commander of the Rocket-Propelled Artillery Battalion of the 2nd Separate Motorised Rifle Brigade (Luhansk) of the 2nd AC;\(^{1129}\)

• Major Denis Sevriukov: Deputy Commander of the Howitzer Artillery Battalion for Armament of the 2nd Separate Motorised Rifle Brigade (Luhansk) of the 2nd AC;\(^{1130}\)

• Major Boris Ivanov: Executive Officer – Deputy Commander of the Howitzer Artillery Battalion of the 2nd Separate Motorised Rifle Brigade (Luhansk) of the 2nd AC;\(^{1131}\)

• Major Aleksandr Grishyn: Officer of the Department of Electronic Intelligence and Communications, from March to July 2016;\(^{1132}\)

3) **JUNIOR RUSSIAN ARMED FORCES OFFICERS PRESENT IN DONBAS**

Other identified RFAF officers present in Donbas include:

• Captain Askar Sirayev, Commander of a tank battalion of the 2nd Separate Motorised Rifle Brigade of the 2nd AC (summer 2015 – 2017);\(^{1133}\)

• Captain Aleksandr Scherbak, Commander of the 4th Mechanised Brigade of the 2nd AC of the LPR;\(^{1134}\)

• Captain Ruslan Gainullin, Executive Officer – Deputy Commander of the Howitzer SP Artillery Division of the 2nd Separate Motorised Rifle Brigade (Luhansk, Ukraine) of the 2nd AC (Luhansk);\(^{1135}\)

• Captain Aleksy Chepakasov, Deputy Commander for Armament of the 1st Motorised Rifle Battalion of the 3rd Separate Motorised Rifle Brigade (Horlivka) of the 1st AC (Donetsk, Ukraine);\(^{1136}\)

• Captain Vasily Malakhevich, Commander of the separate UAV company of the 2nd Separate Motorised Rifle Brigade (Luhansk) of the 2nd AC (Luhansk);\(^{1137}\)

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1125 Defence Intelligence of Ukraine, "Servicemen of the Russian Armed Forces who took part in combat actions in Ukraine"; Defence Intelligence of Ukraine, "War criminal, Major of the Armed Forces of the Russian Federation PAVLENKO Oleksandr Serhiiovych."  
1126 Defence Intelligence of Ukraine, "War criminals – the career artillery officers of the Russian Armed Forces."  
1127 Defence Intelligence of Ukraine, "War criminals – the career artillery officers of the Russian Armed Forces."  
1128 Defence Intelligence of Ukraine, "War criminals – the career artillery officers of the Russian Armed Forces."  
1129 Defence Intelligence of Ukraine, "War criminals – the career artillery officers of the Russian Armed Forces."  
1130 Defence Intelligence of Ukraine, "War criminals – the career artillery officers of the Russian Armed Forces."  
1131 Defence Intelligence of Ukraine, "War criminals – the career artillery officers of the Russian Armed Forces."  
1132 Ministry of Defence of Ukraine, "The use of unmanned aerial vehicles for air reconnaissance remained high during the week" - GUR MDU representative Vadym Skibitsky (28 October 2016).  
1133 TSN, "Counterintelligence smoked out two regular Russian officers who participated in Donbas hostilities on the terrorists' side" (1 March 2019).  
1134 BBC News, "Russian serviceman detained in the east of Ukraine" (27 June 2017); UNIAN, "Brigade commander told about the neutralizing the militants’ SSG under Zholobok (photo)" (26 June 2017); A. Dmytruk, "The General Staff gave the name of a Russian officer killed in action on Donbas" (Hromadske; 27 June 2017; Ukrainska Pravda, "The General Staff disclosed the name of the RF officer eliminated on Saturday by UAF" (27 June 2017).  
1135 Business News of Ukraine, "Serviceman of the Russian Armed Forces who took part in combat actions in Ukraine"; Defence Intelligence of Ukraine, "War criminal, Captain of the Russian Armed Forces CHEPKASOV Oleksiy Volodymyrovych, Lieutenant Colonel of the Russian Armed Forces ILINSKYI Ihor Oleksiyovych."  
1136 Defence Intelligence of Ukraine, "War criminals: Captain of the Russian Armed Forces CHEPKASOV Oleksiy Volodymyrovych, Lieutenant Colonel of the Russian Armed Forces ILINSKYI Ihor Oleksiyovych."  
1137 Defence Intelligence of Ukraine, "War criminals: Captain of the Armed Forces of the Russian Federation MALAKHEVICH Vasyl Rodionovych."
• Captain Arkadiy Mitrofanov, assistant Commander of the Motorised Rifle Battalion for artillery of the 2nd Separate Motorised Rifle Brigade (Luhansk) of the 2nd Army (Luhansk),\footnote{Defence Intelligence of Ukraine, ‘War criminals – the career artillery officers of the Russian Armed Forces’}.

• Captain Aleksey Averianov, assistant Commander of the Motorised Rifle Battalion for artillery of the 2nd Separate Motorised Rifle Brigade (Luhansk) of the 2nd Army,\footnote{Defence Intelligence of Ukraine, ‘War criminals – the career artillery officers of the Russian Armed Forces’}.

• Captain Aleksey Kapkov, assistant Commander of the Motorised Rifle Battalion for artillery of the 2nd Separate Motorised Rifle Brigade (Luhansk) of the 2nd Army,\footnote{Defence Intelligence of Ukraine, ‘War criminals – the career artillery officers of the Russian Armed Forces’}.

• Captain Sergey Gorevoy, 18th Separate Motorised Brigade of the 58th Army, Southern Military District of the RFAF,\footnote{Defence Intelligence of Ukraine, ‘War criminals – the career artillery officers of the Russian Armed Forces’}.

• Captain Ivan Chernigov, 18th Separate Motorised Brigade of the 58th Army, Southern Military District of the RFAF,\footnote{Defence Intelligence of Ukraine, ‘War criminals – the career artillery officers of the Russian Armed Forces’}.

• Senior Lieutenant Oscar Ramazanov, 18th Separate Motorised Brigade of the 58th Army, Southern Military District of the RFAF,\footnote{Defence Intelligence of Ukraine, ‘War criminals – the career artillery officers of the Russian Armed Forces’}.

• Senior Lieutenant Dmitriy Simaiev, 18th Separate Motorised Brigade of the 58th Army, Southern Military District of the RFAF,\footnote{Defence Intelligence of Ukraine, ‘War criminals – the career artillery officers of the Russian Armed Forces’}.

• Lieutenant Abubakar Lom-Alievich Batalov, 18th Separate Motorised Brigade of the 58th Army, Southern Military District of the RFAF,\footnote{Defence Intelligence of Ukraine, ‘War criminals – the career artillery officers of the Russian Armed Forces’}.

• Senior Warrant Officer Guseyn Abdurazakov, 18th Separate Motorised Brigade of the 58th Army, Southern Military District of the RFAF,\footnote{Defence Intelligence of Ukraine, ‘War criminals – the career artillery officers of the Russian Armed Forces’}.

• Senior Warrant Officer Sergey Volozhanin, 18th Separate Motorised Brigade of the 58th Army, Southern Military District of the RFAF,\footnote{Defence Intelligence of Ukraine, ‘War criminals – the career artillery officers of the Russian Armed Forces’}.

• Senior Warrant Officer Valeriy Nazarchuk, 18th Separate Motorised Brigade of the 58th Army, Southern Military District of the RFAF,\footnote{Defence Intelligence of Ukraine, ‘War criminals – the career artillery officers of the Russian Armed Forces’}.

• Senior Warrant Officer Andrey Titarovskiy, 18th Separate Motorised Brigade of the 58th Army, Southern Military District of the RFAF,\footnote{Defence Intelligence of Ukraine, ‘War criminals – the career artillery officers of the Russian Armed Forces’}.

• Warrant Officer Gennadiy Bespalov, 18th Separate Motorised Brigade of the 58th Army, Southern Military District of the RFAF,\footnote{Defence Intelligence of Ukraine, ‘War criminals – the career artillery officers of the Russian Armed Forces’}.

\footnote{Defence Intelligence of Ukraine, ‘War criminals – the career artillery officers of the Russian Armed Forces’}.
- Sergeant Sergey Degtiariov, Squad Leader of the Special Forces group of the Special Forces company of the Special Forces Battalion of the 45th separate Special Forces Brigade of the Russian Airborne Forces;¹¹⁵¹

- Junior Sergeant Alexandr Kuleiev, Squad Leader of the Special Forces company of the Special Forces Battalion of the 45th Separate Special Forces Brigade of the Russian Airborne Forces;¹¹⁵²

- Junior Sergeant Timur Abusalimov, 18th Separate Motorised Brigade of the 58th Army, Southern Military District of the RFAF, sustained minor combat injury on 19 August 2015 on the territory of Ukraine;¹¹⁵³

- Junior Sergeant Visarhan Visarhanov, 18th Separate Motorised Brigade of the 58th Army, Southern Military District of the RFAF, sustained moderate combat injury on 13 August 2015 on the territory of Ukraine;¹¹⁵⁴

- Junior Sergeant Sergey Morgun, 18th Separate Motorised Brigade of the 58th Army, Southern Military District of the RFAF, sustained minor combat injury on 18 August 2015 on the territory of Ukraine;¹¹⁵⁵

- Private Yevgeniy Perov, scout-instructor of the Special Forces company of the Special Forces Battalion of the 45th Separate Special Forces Brigade of the Russian Airborne Forces;¹¹⁵⁶

- Andrey Pivovarov, Head of the Operations and Intelligence Department, 346th Separate Brigade of Special Purpose of the GRU General Staff (’GS’), military unit 31681 – April to August 2016, Alchevsk, Luhansk region;¹¹⁵⁷

- Kirill Samokhin, Commander of the special forces group 4 of the detachment, 346th Separate Brigade of Special Purpose of the GRU GS, military unit 31681, February to June 2016, Luhansk;¹¹⁵⁸

- Maksim Yumatov, Commander of the special forces group 1 of the detachment, 346th Separate Brigade of Special Purpose of the GRU GS, military unit 31681, January to August 2016, Donetsk and Makiivka, Donetsk region;¹¹⁵⁹

- Aleksandr Nikolayev, Commander of the 2nd detachment, 346th Separate Brigade of Special Purpose of the GRU GS, military unit 31681, March to July 2016, Luhansk;¹¹⁶⁰

- Dmitriy Naumov, sniper group Commander of the 2nd detachment, 346th Separate Brigade of Special Purpose of the GRU GS, military unit 31681, March to July 2016, Luhansk;¹¹⁶¹

- Andrey Evgrafov, Head of the Organisational and Planning Department, 346th Separate Brigade of Special Purpose of the GRU GS, military unit 31681, May to August 2016, Luhansk;¹¹⁶²

¹¹⁵¹ Defence Intelligence of Ukraine, “War criminals – the servicemen of the 45th separate Special Forces brigade of the Airborne Forces of the Russian Armed Forces (military unit 28337, Kubinka, Moscow oblast)”.

¹¹⁵² Defence Intelligence of Ukraine, “War criminals – the servicemen of the 45th separate Special Forces brigade of the Airborne Forces of the Russian Armed Forces (military unit 28337, Kubinka, Moscow oblast)”.

¹¹⁵³ Defence Intelligence of Ukraine, “War criminals – servicemen from the 18th SepMRBgd (military unit 27777, settlements Hankala and Kalynivska, the Chechen Republic of RF)”.

¹¹⁵⁴ Defence Intelligence of Ukraine, “War criminals – servicemen from the 18th SepMRBgd (military unit 27777, settlements Hankala and Kalynivska, the Chechen Republic of RF)”.

¹¹⁵⁵ Defence Intelligence of Ukraine, “War criminals – servicemen from the 18th SepMRBgd (military unit 27777, settlements Hankala and Kalynivska, the Chechen Republic of RF)”.

¹¹⁵⁶ Defence Intelligence of Ukraine, “War criminals – the servicemen of the 45th separate Special Forces brigade of the Airborne Forces of the Russian Armed Forces (military unit 28337, Kubinka, Moscow oblast)”.

¹¹⁵⁷ Defence Intelligence of Ukraine, “On the identification of regular RFAF servicemen who execute the illegal orders of the RF National Command Authority and participate in hostilities on the temporarily occupied territories on the east of Ukraine”.

¹¹⁵⁸ Defence Intelligence of Ukraine, “On the identification of regular RFAF servicemen who execute the illegal orders of the RF National Command Authority and participate in hostilities on the temporarily occupied territories on the east of Ukraine”.

¹¹⁵⁹ Defence Intelligence of Ukraine, “On the identification of regular RFAF servicemen who execute the illegal orders of the RF National Command Authority and participate in hostilities on the temporarily occupied territories on the east of Ukraine”.

¹¹⁶⁰ Defence Intelligence of Ukraine, “On the identification of regular RFAF servicemen who execute the illegal orders of the RF National Command Authority and participate in hostilities on the temporarily occupied territories on the east of Ukraine”.

¹¹⁶¹ Defence Intelligence of Ukraine, “On the identification of regular RFAF servicemen who execute the illegal orders of the RF National Command Authority and participate in hostilities on the temporarily occupied territories on the east of Ukraine”.

¹¹⁶² Defence Intelligence of Ukraine, “On the identification of regular RFAF servicemen who execute the illegal orders of the RF National Command Authority and participate in hostilities on the temporarily occupied territories on the east of Ukraine”.

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• Sergey Polyakov, Brigade Commander, 346th Separate Brigade of Special Purpose of the GRU GS, military unit 31681, March to July 2016.\note{1163}

• Viktor Khorkhorin, Commander of the Special Forces Groups of the 1st detachment, 346th Separate Brigade of Special Purpose of the GRU GS, military unit 31681, May to August 2016.\note{1164}

• Sergey Zamulin, chief of personnel, 346th Separate Brigade of Special Purpose of the GRU GS, military unit 31681, February to June 2016, Donetsk;\note{1165}

• Andrey Oreshkin, Commander of the first detachment, 346th Separate Brigade of Special Purpose of the GRU GS, military unit 31681, February to July 2016, Donetsk;\note{1166}

• Aleksey Nesterkin, Commander of the group of snipers of the 4th detachment, 346th Separate Brigade of Special Purpose of the GRU GS, military unit 31681, February to June 2016, Khartsyzsk, Donetsk region;\note{1167}

• Vladimir Izvarin, unit Commander, 2140th group of information and psychological operations of the RFAF, military unit 03128, February to August 2016.\note{1168}

• Yuliia Evgrafova, department officer, 2140th group of information and psychological operations of the RFAF, military unit 03128, March to August 2016.\note{1169}

• Maksim Kostrykin, Head of the department, 2140th group of information and psychological operations of the RFAF, military unit 03128, April to July 2016, Luhans region;\note{1170}

• Zurab Zhgenti, Division Officer, 2140th group of information and psychological operations of the RFAF, military unit 03128, January to May 2016, Milove settlement, Luhans region;\note{1171}

• Dmitriy Mokhov, Squad Officer, 2140th group of information and psychological operations of the RFAF, military unit 03128, April to August 2016, Nikolske settlement, Luhans region;\note{1172}

• Anatoliy Agaryov, Artilleryman of the artillery units of the 9th Separate Assault Motorised Rifle Regiment of the Marine Infantry (Novoazovsk) of the 1st AC (Donetsk);\note{1173}

• Aleksandr Agaryov, Artilleryman of the artillery units of the 9th Separate Assault Motorised Rifle Regiment of the Marine Infantry (Novoazovsk) of the 1st AC (Donetsk);\note{1174}

\note{1163} Defence Intelligence of Ukraine, ‘On the identification of regular RFAF servicemen who execute the illegal orders of the RF National Command Authority and participate in hostilities on the temporarily occupied territories on the east of Ukraine’.

\note{1164} Defence Intelligence of Ukraine, ‘On the identification of regular RFAF servicemen who execute the illegal orders of the RF National Command Authority and participate in hostilities on the temporarily occupied territories on the east of Ukraine’.

\note{1165} Defence Intelligence of Ukraine, ‘On the identification of regular RFAF servicemen who execute the illegal orders of the RF National Command Authority and participate in hostilities on the temporarily occupied territories on the east of Ukraine’.

\note{1166} Defence Intelligence of Ukraine, ‘On the identification of regular RFAF servicemen who execute the illegal orders of the RF National Command Authority and participate in hostilities on the temporarily occupied territories on the east of Ukraine’.

\note{1167} Defence Intelligence of Ukraine, ‘On the identification of regular RFAF servicemen who execute the illegal orders of the RF National Command Authority and participate in hostilities on the temporarily occupied territories on the east of Ukraine’.

\note{1168} Defence Intelligence of Ukraine, ‘On the identification of regular RFAF servicemen who execute the illegal orders of the RF National Command Authority and participate in hostilities on the temporarily occupied territories on the east of Ukraine’.

\note{1169} Defence Intelligence of Ukraine, ‘On the identification of regular RFAF servicemen who execute the illegal orders of the RF National Command Authority and participate in hostilities on the temporarily occupied territories on the east of Ukraine’.

\note{1170} Defence Intelligence of Ukraine, ‘On the identification of regular RFAF servicemen who execute the illegal orders of the RF National Command Authority and participate in hostilities on the temporarily occupied territories on the east of Ukraine’.

\note{1171} Defence Intelligence of Ukraine, ‘On the identification of regular RFAF servicemen who execute the illegal orders of the RF National Command Authority and participate in hostilities on the temporarily occupied territories on the east of Ukraine’.

\note{1172} Defence Intelligence of Ukraine, ‘On the identification of regular RFAF servicemen who execute the illegal orders of the RF National Command Authority and participate in hostilities on the temporarily occupied territories on the east of Ukraine’.

\note{1173} Defence Intelligence of Ukraine, ‘War criminals – artillerymen of the artillery units of the 9th separate assault motorized rifle regiment of the Marine Infantry (Novoazovsk)’.

\note{1174} Defence Intelligence of Ukraine, ‘War criminals – artillerymen of the artillery units of the 9th separate assault motorized rifle regiment of the Marine Infantry (Novoazovsk)’.
• Dmitriy Dolev, Artilleryman of the artillery units of the 9th Separate Assault Motorised Rifle Regiment of the Marine Infantry (Novoazovsk) of the 1st AC (Donetsk);\textsuperscript{1175}

• Yevgeniy Gudz, Artilleryman of the artillery units of the 9th Separate Assault Motorised Rifle Regiment of the Marine Infantry (Novoazovsk) of the 1st AC (Donetsk);\textsuperscript{1176}

• Ruslan Khukhizyanov, Artilleryman of the artillery units of the 9th Separate Assault Motorised Rifle Regiment of the Marine Infantry (Novoazovsk) of the 1st AC (Donetsk);\textsuperscript{1177}

• 76 servicemen of the 6th Motorised Rifle Company of the 2nd Motorised Rifle Battalion of the 60th Separate Motorised Rifle Brigade of the RFAF which arrived to accomplish “service-combat duties” in the temporarily occupied territories of eastern Ukraine.\textsuperscript{1178}

Additionally, the Ukrainian Government identified another 34 Russian servicemen, senior and junior, who were allegedly present in Donbas.\textsuperscript{1179} However, this information is based on a witness statement that is uncorroborated. Accordingly, those 34 servicemen will not be named.

\textsuperscript{1175} Defence Intelligence of Ukraine, "War criminals – artillerymen of the artillery units of the 9th separate assault motorized rifle regiment of the Marine Infantry (Novoazovsk)."

\textsuperscript{1176} Defence Intelligence of Ukraine, "War criminals – artillerymen of the artillery units of the 9th separate assault motorized rifle regiment of the Marine Infantry (Novoazovsk)."

\textsuperscript{1177} Defence Intelligence of Ukraine, "War criminals – artillerymen of the artillery units of the 9th separate assault motorized rifle regiment of the Marine Infantry (Novoazovsk)."

\textsuperscript{1178} Defence Intelligence of Ukraine, "War criminals – servicemen of the 6th motorized rifle company of the 2nd motorized rifle battalion of the 60th separate motorized rifle brigade of the Russian Armed Forces".

\textsuperscript{1179} Information provided by the Government of Ukraine.
ANNEX F: TESTIMONIES OF D/LPR MILITANTS CORROBORATING THE PRESENCE OF RUSSIAN OFFICERS IN DONBAS

Testimonies of D/LPR militants detained by the UAF corroborate the evidence that Russian officers were present in the 1st and 2nd AC and that they were sent through the 12th RC (8th Army):

- An LPR militant stated that his Brigade had advisors/senior officers of the RFAF who were the de facto Commanders the 10th Artillery Brigade of the 2nd AC.\(^{1180}\)
- An LPR militant who fought in autumn 2014 in an LPR unit stated that two of its members were GRU officers;\(^{1181}\)
- A DPR militant, a Russian citizen who voluntarily came to the DPR in 2014, stated that, by the end of 2014/beginning of 2015, a Commander of his military unit had a dozen of Russian advisors from the GRU.\(^{1182}\)
- A DPR militant who served from 2014 to 2015 testified that the Vice Commander of the 1st AC of the DPR was an officer of the RFAF.\(^{1183}\)
- A militant from the 2nd AC of the LPR stated that the leadership positions of the corps were filled by military personnel who were Russian citizens, including several dozen Russian servicemen whom he was able to identify.\(^{1184}\)
- A DPR militant, who served from 2014 to 2017, stated that all the top commanding officers of the 1st and 2nd AC and all their units were Russian citizens operating undercover.\(^{1185}\)
- An LPR militant who served from 2014 to 2015 stated that the Commander of the 2nd AC was an onsite representative of the Russian army. Additionally, he stated that all positions of senior officers, both in his unit and in the 2nd AC as well as lower-ranking positions of commanding officers of the units of the 2nd AC of the People’s Police of the LPR, were filled by career officers of the RFAF. Finally, he stated that the Russian officers directly commanded the 2nd AC of the People’s Police, including during the fighting with the ATO forces.\(^{1186}\)
- A DPR militant stated during his interrogation in 2017 that Russian citizens served in his unit of the 1st AC of the DPR. He added that locals held positions of Battalion Commanders, but they all had to shadow Battalion Commanders who were Russian professional servicemen. He also stated that that inspectors from Russia visited his unit.\(^{1187}\)
- In June 2017, Ukrainian forces detained Russian serviceman Viktor Ageev in the Luhans region.\(^{1188}\) He was detained after a confrontation between the UAF and the 4th Mechanised Brigade of the 2nd AC of the LPR.\(^{1189}\)

The head of the LPR’s group, Russian officer Aleksandr Scherba (sometimes spelled Scherbak), was killed.\(^{1190}\) Ageev served at military unit 65246 located in Novocherkassk.\(^{1191}\) Later Ageev stated that he made those testimonies under pressure and that he came to Donbas on his own.\(^{1192}\) However the fact that he was an acting serviceman was confirmed by his mother who stated that he served in the 22nd Special Purpose GRU

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\(^{1180}\) Information provided by the Government of Ukraine.\(^{1181}\) Information provided by the Government of Ukraine.\(^{1182}\) Information provided by the Government of Ukraine.\(^{1183}\) Information provided by the Government of Ukraine.\(^{1184}\) Information provided by the Government of Ukraine.\(^{1185}\) Information provided by the Government of Ukraine.\(^{1186}\) Information provided by the Government of Ukraine.\(^{1187}\) Information provided by the Government of Ukraine.\(^{1188}\) BBC News, “Russian serviceman detained in the east of Ukraine” (27 June 2017); LB.ua, “Russian serviceman detained on Donbas” (27 June 2017).\(^{1189}\) BBC News, “Russian serviceman detained in the east of Ukraine” (27 June 2017).\(^{1190}\) O. Pavlichenko and O. Martynenko (eds), “Armed conflict in Ukraine: military support of the illegal armed formations of the “DPR” and the “LPR” by the Russian Federation” (UHRU 2018), p. 22; UNIAN, “Brigade commander told about the neutralizing the militants’ SSG under Zhelebok (photo)” (26 June 2017); A. Dmytruk, “The General Staff gave the name of a Russian officer killed in action on Donbas” (Hromadske, 27 June 2017); UNIAN, “Immediately dispatched to Donbas”: detained serviceman Ageev confirmed he served under a contract in Russia" (9 July 2017).\(^{1191}\) UNIAN, “Immediately dispatched to Donbas”: detained serviceman Ageev confirmed he served under a contract in Russia” (9 July 2017); BBC News, “Russian serviceman Viktor Ageev who was detained on Donbas was convicted by Ukrainian court for 10 years” (26 January 2018).\(^{1192}\) O. Musafirova, “‘You see – he is not a Russian serviceman...’” (Novaya Gazeta, 4 December 2017).
Brigade. He also had an RFAF military ticket, which demonstrated he underwent army service in the RFAF.

- In June 2017, as a result of fighting between the UAF and the 4th Mechanised Brigade of the 2nd AC of the LPR, Russian officer Aleksandr Scherba, the Commander of the LPR forces, was killed.

- Another DPR militant, Volodymyr Baklanov, who arrived in the territory controlled by the Ukrainian government in May 2018, stated in July 2018 that “[t]he 1st and 2nd AC are part of the Russian army. For some reason, everyone thinks that the DPR army is a corps. The corps has nothing to do with the DPR army. This is really the local population plus the top leaders - the Russians. We called them ‘humanitarian aid’ or ‘occupiers’. Because they behave like masters.”

- In 2018, Reuters stated that three militants revealed that Lieutenant General Valerii Asapov was not the first general to command the troops and that the rotation of Russian separatist commanders continued in 2018.

- In 2021, a militant who had served in a zenithally-rocket platoon of the Tank Battalion of the 1st Sloviansk Brigade (1st AC) of the DPR from 2014 to spring 2021, stated that RFAF officers held leadership positions in this Brigade, one of whom was ‘Strannik’, the Commander of the Battalion.

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1193 Censor, “I believed that we are not present in Ukraine. There were official statements that there are no ours there”, - mother of the RF serviceman Ageev who was detained. VIDEO (30 June 2017).

1194 GordonUA, ‘A Russian contractee was captured in Luhansk region - media’ (27 June 2017).

1195 BBC News, “Russian serviceman detained in the east of Ukraine” (27 June 2017).

1196 UNIAN, “Brigade commander told about the neutralizing the militants’ SSG under Zhelobok (photo)” (26 June 2017); A. Dmytruk, “The General Staff gave the name of a Russian officer killed in action on Donbas” (Hromadske, 27 June 2017).

1197 Dokaz, “DPR” ex-militant gave in important information on the RF army” (18 July 2018).

1198 M. Tsvetkova, “Fog” of Ukraine’s war - Russian's death in Syria sheds light on secret mission” (Reuters, 29 January 2018).

1199 SSU YouTube Channel, “SSU exposed the IAG “DPR” member: he gives important testimonies regarding the Russian armed aggression in Ukraine.” (InformNapalm, 14 July 2020).

1200 SSU YouTube Channel, “SSU exposed the IAG “DPR” member: he gives important testimonies regarding the Russian armed aggression in Ukraine” (21 April 2021), 0:15.

At least four high-ranking Russian officers have been identified as those who coordinated and supervised the D/LPR’s operations on the ground:

- FSB Colonel General Andrey Burlaka ('Vladimir Ivanovich'), according to a Bellingcat investigation, Ivanovich was a high-ranking FSB official who, no later than the beginning of July 2014 until at least the end of July 2014, had overall authority to supervise D/LPR operations in Ukraine and authorise the movement of weapons across the border with Russia. Testimony provided to Bellingcat revealed that Ivanovich “played a critical role in the chain of command between ostensibly local militants and the Russian government”. He was described by Borodai (then-‘Prime Minister’ of the DPR – see Section 4.1.2.3.2.4.4.1 (Alexander Borodai)) as the Commander of the operation whom Borodai contacted to deal with military matters in the D/LPR and who, in July 2014, instructed Borodai on issues concerning conflicts between militant groups. Another intercepted conversation on 31 July 2014 reveals that Igor Girkin (then-‘Defence Minister’ of the DPR – see Section 4.1.2.3.2.4.4.2 (Igor Girkin)) stated ‘Ivanovich must give me tasks to fulfill and not go above my head to command my people.’ After the close of active hostilities, Ivanovich received the highest Russian State award – ‘Hero of the Russian Federation’.

- Colonel Nikolai Fedorovich Tkachev (aka ‘Dolphin’): Tkachev was a Chief Inspector of the RFAF’s Central Military District. In July 2014, under the leadership of Tkachev, a joint general staff for the D/LPR was created in Krasnodon. According to another source, Tkachev was based in Krasnodon, Luhansk region part-time, from where he dealt with the reorganisation and coordination of the militant groups in the LPR. Igor Girkin stated in an interview that he met Tkachev in Krasnodon in July 2014, and that Tkachev, being accustomed to military discipline, had trouble commanding the dispersed LPR forces. Girkin also stated that Tkachev “did all that he could, but he was not able to take full command. He was only able to coordinate between separate units.”

- FSB Colonel Igor Egorov (aka ‘Elbrus’), from ‘Vympel’. In an intercepted phone conversation between Egorov and Yuri Kotov, a Colonel of the Federal Protective Service, Egorov says that he came “‘there” (i.e., to Donbas) as First Deputy Commander, to which Kotov asks “under S [(meaning Strelkov, i.e., Igor Girkin)] or under another one?” Egorov replies: “No, of everything.” Egorov was based in Luhansk from where he coordinated militant units of the LPR and, partially, the DPR.

1201 I. Barabanov and others, ‘Burlaka on the Don. Who is “Vladimir Ivanovich” whom the MH17 investigation is looking for’ (BBC News, 28 April 2020); Insider, ‘Crosses all boundaries. The key defendant in the case of the downed Boeing is the deputy head of the FSB Border Service, General Burlaka’ (28 April 2020); SSU YouTube Channel, ‘SSU detained a freelance GRU officer who was one of the curators of the DPR leadership’ (7 July 2020).
1202 Bellingcat, ‘Key MH17 Figure Identified As Senior FSB Official: Colonel General Andrey Burlaka’ (28 April 2020); INSIDER, ‘Crosses all boundaries. The key defendant in the case of the downed Boeing is the deputy head of the FSB Border Service, General Burlaka’ (28 April 2020).
1203 Bellingcat, ‘Key MH17 Figure Identified As Senior FSB Official: Colonel General Andrey Burlaka’ (28 April 2020).
1204 Politie, ‘MH17 – Investigation requests Russian military to share information’.
1205 In July 2014 there was a conflict between two DPR military formations: Igor Girkin’s military group and that of Igor Bezler.
1206 Testimony provided to Bellingcat revealed that Ivanovich “played a critical role in the chain of command between ostensibly local militants and the Russian government”. He was described by Borodai (then-‘Prime Minister’ of the DPR – see Section 4.1.2.3.2.4.4.1 (Alexander Borodai)) as the Commander of the operation whom Borodai contacted to deal with military matters in the D/LPR and who, in July 2014, instructed Borodai on issues concerning conflicts between militant groups. Another intercepted conversation on 31 July 2014 reveals that Igor Girkin (then-‘Defence Minister’ of the DPR – see Section 4.1.2.3.2.4.4.2 (Igor Girkin)) stated ‘Ivanovich must give me tasks to fulfill and not go above my head to command my people.’ After the close of active hostilities, Ivanovich received the highest Russian State award – ‘Hero of the Russian Federation’.
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1208 Bellingcat, ‘Key MH17 Figure Identified As Senior FSB Official: Colonel General Andrey Burlaka’ (28 April 2020).
1209 Bellingcat, ‘Key MH17 Figure Identified As Senior FSB Official: Colonel General Andrey Burlaka’ (28 April 2020).
1210 Bellingcat, ‘Key MH17 Figure Identified As Senior FSB Official: Colonel General Andrey Burlaka’ (28 April 2020).
1211 Bellingcat, ‘Key MH17 Figure Identified As Senior FSB Official: Colonel General Andrey Burlaka’ (28 April 2020).
1212 Bellingcat, ‘Key MH17 Figure Identified As Senior FSB Official: Colonel General Andrey Burlaka’ (28 April 2020).
1213 Stefan Eide, ‘Russia’s role in the conflict in Ukraine’ (27 December 2017); TSN, ‘Russia’s role in the conflict in Ukraine’ (27 December 2017).
1214 Bellingcat, ‘Key MH17 Figure Identified As Senior FSB Official: Colonel General Andrey Burlaka’ (28 April 2020).
1215 Russian curator of a General – traitor Shaitanov may be involved into the MH17 downing - Bellingcat (24 April 2020).
1216 Russian Colonel General Identified as Key MH17 Figure’ (8 December 2017). Bellingcat, ‘Russian Colonel General Identified as Key MH17 Figure’ (8 December 2017).
GRU officer Oleg Vladimirovich Ivannikov (aka ‘Orion’).\(^{1217}\) Ivannikov was a high-ranking Russian GRU officer from 2014 until September 2017. According to multiple reports by Russian militant Commanders and separatists, he was known as ‘Andrey Ivanovich’, a military advisor and *de facto* handler of the political leadership of the LPR in 2014.\(^{1218}\) During his deployment to Donbas, in the first half of 2014 and early 2015, he coordinated and supervised the military activities of the LPR forces, including Russian militants, pro-Russian separatists and the Wagner Group.\(^{1219}\) He also organised the procurement of weapons from Russia.\(^{1220}\) According to a Bellingcat researcher, Ivannikov “did not command everything in the [LPR], but he was, so to speak, a curator in the [LPR]”.\(^{1221}\)

\(^{1217}\) Bellingcat, ‘MH17 - Russian GRU Commander ‘Orion’ Identified as Oleg Ivannikov’ (25 May 2018).

\(^{1218}\) Bellingcat, ‘MH17 - Russian GRU Commander ‘Orion’ Identified as Oleg Ivannikov’ (25 May 2018).

\(^{1219}\) Bellingcat, ‘MH17 - Russian GRU Commander ‘Orion’ Identified as Oleg Ivannikov’ (25 May 2018).

\(^{1220}\) Bellingcat, ‘MH17 - Russian GRU Commander ‘Orion’ Identified as Oleg Ivannikov’ (25 May 2018).

\(^{1221}\) A. Stanko, ‘The top leadership of the Russian Federation knew about the movement of “Buk” in the Donbas - an interview with a researcher of the MH17 crash’ (25 May 2018).
There are several reports of the supply of military equipment, beginning in May 2014. These included artillery systems, rocket launchers, tanks and armoured personnel carriers. For instance:

- In May 2014, Russia supplied the D/LPR armed groups with shoulder-fired and self-propelled Strela-10M short-range systems.\(^{1222}\)

- In July 2014, a video was uploaded to YouTube showing the movement of a military convoy in Rostov-on-Don, Russia, heading west towards Ukraine.\(^{1223}\)

- In late summer 2014, T-72B armoured main battle tanks and howitzers were filmed or photographed close to Novoazovsk after the town was taken. A Bellingcat report confirmed that these had been transferred from Russia to Ukraine.\(^{1224}\)

- On 14 August 2014, a column of at least 23 armoured personnel carriers and military trucks crossed the Russia-Ukraine border from Russian territory. This information came from Ukraine’s Anti-Terrorist Centre. This was also confirmed by Shaun Walker and Roland Oliphant, two witnesses to the passage of this convoy.\(^{1225}\)

- In August 2014, a convoy of vehicles was filmed moving through Staraya Stanitsa, Russia. In the convoy, a BMP-2 infantry fighting vehicle can be seen with the word ‘lavina’ on its trailer. In February 2014, a YouTube video showing combatants in Vuhlehirsk, Ukraine, depicts the same BMP-2.\(^{1226}\)

- In September 2014, Al-Jazeera filmed the movement of an Msta-S system through Novoazovsk in Ukraine, again heading west.\(^{1227}\) There are various details (including the same overall camouflage pattern, a white paint blotch on the turret, discoloration in the same spots and a unique, hand-painted rail cargo marking) that, taken together, suggest both videos depict the same unit.

- On 6 November 2014, a Ukrainian military spokesman, Andriy Lysenko, said a convoy made up of 32 tanks, 16 howitzer cannons and 30 trucks of troops and equipment crossed the border into the armed group-controlled Luhansk region.\(^{1228}\)

For security and confidentiality reasons, a detailed list of reports of the provision of military supplies will not be provided.

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\(^{1222}\) M. Kofman and others, ‘Lessons from Russia’s Operations in Crimea and Eastern Ukraine’ (RAND 2017), p. 42; Splus0 YouTube Channel, ‘Armored Vehicles with the inscriptions To Kiev and To Lviv 5.07’ (6 July 2014).


\(^{1224}\) S Case and others, The Burning Road to Mariupol: Attacks from Russia during the Novoazovs’k Offensive of August 2014’ (Bellingcat, 3 December 2015).

\(^{1225}\) Information provided by the Government of Ukraine; S Walker, ‘Aid convoy stops short of border as Russian military vehicles enter Ukraine’ (The Guardian, 15 August 2014).


\(^{1227}\) Al Jazeera English YouTube Channel, ‘Ukraine Rebels Advance towards Mariupol’ (5 September 2014).

\(^{1228}\) INSIDER, ‘32 Tanks Enter Ukraine From Russia, According To Kiev’ (7 November 2014); G Botelho, ‘Ukraine accuses Russia of sending dozens of tanks into its territory’ (CNN, 7 November 2014).
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Annex I: Structures of the DPR and LPR Governments

Ministry of State Security (‘MGB’)

The respective MGBs in both the DPR and LPR function pursuant to the Laws “On the Ministry of State Security”. They perform their activities in the following main areas:

- intelligence and counterintelligence;
- countering terrorism and extremism;
- fight against crime;
- border control;
- information security.

The Border Guard Services also function within the MGB’s structures.

The news published by the MGB in the DPR demonstrate that the MGB mainly: detains individuals on charges of political crimes (e.g., espionage, treason), counteracts the alleged intelligence activities of the SSU, etc.

The Border Guard Service regulates the process of border crossing.

In the LPR, the MGB regulates, e.g., the order of crossing the State border; the order of issuing permits on entrance to the border area and temporary stay there; as well as the conduct of industrial or other activities in the border area; delimiting the border area; inspecting the state of compliance with the legislation on State secrets; etc.

The news published by the MGB additionally demonstrates that, similarly to the DPR, the MGB counteracts alleged intelligence and sabotage activities of the SSU; prevents and exposes crimes connected with drugs, weapons and State security; etc.

Ministry of Internal Affairs (‘MIA’)

The main tasks of the DPR’s MIA are:

- development and implementation of state policy in the area of internal affairs, migration, execution of sentences;
- legal regulation of internal affairs;
- ensuring the protection of life, health, rights and freedoms of citizens of the DPR, foreign citizens, stateless persons, combating crime, protecting public order and property, ensuring public safety;
- management of internal affairs authorities and internal troops of the MIA;
- execution of criminal punishments, detention of persons suspected or accused of committing crimes, ensuring law and order and legality in institutions executing criminal sentences in the form of imprisonment, and in pre-trial detention centres;

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1232 Website of the Ministry of State Security of the DPR, ‘News of the MGB DPR’.
1233 Website of the Ministry of State Security of the DPR, ‘The Border Guard Service of the MGB DPR’.
1234 Website of the Ministry of State Security of the LPR, ‘legislation’.
1236 Website of the Ministry of State Security of the LPR, ‘News’.
• ensuring social and legal protection of employees of the internal affairs authorities, military personnel of the internal troops, civilian employees of the MIA, citizens dismissed from service in the internal affairs and from military service, members of their families, other persons. 1237

The DPR Migration Service also functions within the MIA’s structures.

In the LPR, the MIA and its constituents serve the same functions. 1238 The MIA incorporates several key services and agencies. They include: the LPR Police, Directorate of the Migration Service of the LPR, Directorate of the State Traffic Inspection of the LPR, Directorate of the State Guard of the LPR, Directorate for Combating Illicit Drug Trafficking, Expert Forensic Centre and Directorate for the Execution of Sentences. 1239 Each of the bodies performs functions in their respective fields of competences, e.g., protection of public order and combatting crimes, informing population on crime rates, regulating migration issues, maintaining prisons and ensuring execution of sentences, etc. 1240

The DPR MIA’s recent documents include: regulations on conveying of dangerous materials; organisation of the operation of registers of the secret service information; regulation of ranks of MIA officers and their entitlements to social payments; regulating the issuance of permanent residence permits; instructions on administration of materials in cases of misdemeanours; regulation of the procedure of issuing passports to the DPR citizens, etc. 1241

In the LPR, every agency or directorate of the MIA conducts its own regulatory activity. For example:

• The State Migration Service regulates issues pertaining to passports and residence permits, temporary registration of persons staying in the LPR, migration account of foreigners, etc. 1242

• In the sphere of guarding services, the LPR MIA issues regulations on licensing of private security companies, prices on the services of the State Guard of the LPR, etc.

• In the sphere of traffic control, the LPR MIA issues regulations on registration of vehicles, prices on services of State Traffic Inspection of the LPR, etc. 1243

MINISTRY OF JUSTICE

In the DPR and LPR, their respective Ministries of Justice function pursuant to the governments’ regulations. 1244 The Ministries develop and implement state policy and legal regulation in the fields of:

• notary;
• advocacy;
• bankruptcy;
• state registration (legalisation) of non-profit organisations;
• state registration of acts of civil status;
• state registration of real rights to real estate and their restrictions (encumbrances), technical inventory, accounting and appraisal of real estate;
• state registration of restrictions (encumbrances) of movable property;
• state registration of normative legal acts of state executive bodies and local self-government bodies;

1237 Website of MIA of DPR, ‘About the Ministry’.
1238 Decree of the People’s Council of the LPR No 02-04/91/15 ‘On Approval of the Regulations on the Ministry of Internal Affairs of the Lugansk People’s Republic’ (11 April 2015), Sections II–III.
1240 As of January 2022, websites of the LPR MIA and its directorates provide only partial information as to the functions of respective institutions and their regulatory acts. See e.g., Website of the Directorate for the Execution of Sentences of the LPR, ‘About Us’; Website of the Ministry of Internal Affairs of the DPR, ‘Normative acts of the DMS of the Ministry of Internal Affairs of the LPR’; Website of the Ministry of Internal Affairs of the LPR, ‘News Feed’.
1241 Website of MIA of DPR, ‘Documents’.
1242 Website of the Ministry of Internal Affairs of the LPR, ‘Normative acts of the Ministry of Internal Affairs of the LPR’.
1243 Website of the Ministry of Internal Affairs of the LPR, ‘Normative acts of the Ministry of Internal Affairs of the LPR’.
1244 Decree of the Council of Ministers of the DPR No 158 ‘On approval of the Regulation on the Ministry of Justice of the Donetsk People’s Republic’ (27 May 2019); Order of the Head of the DPR No 219/04/02 ‘On approval of the Regulation on the Ministry of Justice of the DPR’ (12 April 2017).
- official systematisation of normative legal acts;
- legalization of documents;
- rendering free legal aid and legal education of the population;
- compulsory execution of decisions of courts and other bodies (officials); execution of criminal sentences;
- assistance in the conclusion, observance and fulfilment of obligations under international treaties;
- forensic activities;
- monitoring law enforcement;
- anti-corruption expertise of regulatory legal acts (draft regulatory legal acts);
- providing methodological assistance in organizing legal information for the population; methodological guidance of legal work in executive bodies, state enterprises, institutions, organisations.\textsuperscript{1245}

The examples of the DPR Ministry’s decisions and policies include:

- Order of the Ministry of Justice of the Donetsk People’s Republic No. 202-OD | On approval of the Regulations on the official website of the Ministry of Justice of the Donetsk People’s Republic;\textsuperscript{1246}
- Order of the Ministry of Justice of the Donetsk People’s Republic No. 537-OD On approval of the form of the certificate of state registration (legalisation) of a non-profit organisation;\textsuperscript{1247}
- Order of the Ministry of Justice of the Donetsk People’s Republic No. 499-OD On amendments to the Procedure for maintaining the Inheritance Register.\textsuperscript{1248}

The latest acts of the Ministry in the LPR regulate, e.g., issues of notary assistance, territorial jurisdictional of State notary offices, liquidation of private notary offices, order of conducting notary acts; registration of the acts of civil state (marriages, etc.) and property rights, order of conducting auctions in relation to confiscated property, etc.\textsuperscript{1249}

\textbf{MINISTRY OF FOREIGN AFFAIRS (‘MFA’)}

In the DPR, the MFA is regulated by the Decree of the Council of Ministers.\textsuperscript{1250} According to the Decree, the key functions of the DPR’s MFA include:

- development of a strategy of external policy of the DPR;
- realisation of the external course of the DPR;
- ensuring of the proper operation of diplomatic and consular institutions of the DPR abroad;
- ensuring safety of the DPR’s citizens abroad and maintenance of contacts with them;
- protection of the DPR’s national interests in the international arena, etc.\textsuperscript{1251}

Though an MFA exists in the LPR, its constituent document does not appear to be publicly available; neither does the LPR’s MFA have its own website.\textsuperscript{1252}

\textsuperscript{1245} Decree of the Council of Ministers of the DPR No 158 ‘On approval of the Regulation on the Ministry of Justice of the Donetsk People’s Republic’ (27 May 2019), para. 1.2; Order of the Head of the LPR No 219/04/02 ‘On approval of the Regulation on the Ministry of Justice of the LPR’ (12 April 2017), para. 1.1.
\textsuperscript{1246} Order of the Ministry of Justice of the DPR No 202-ОД ‘On approving the Regulation on the official website of the Ministry of Justice of DPR in the information and telecommunications network “Internet”’ (5 March 2021).
\textsuperscript{1247} Order of the Ministry of Justice of the DPR No 537-ОД ‘On approval of the form of the certificate of state registration (legalisation) of a non-profit organisation’ (28 May 2021).
\textsuperscript{1248} Order of the Ministry of Justice of the DPR No 499-ОД ‘On amendments to the Procedure for maintaining the Inheritance Register’ (20 May 2021).
\textsuperscript{1250} Decree of the Council of Ministers of the DPR No 1-32 ‘On Approval of the Regulations and Structure of the Ministry of Foreign Affairs of the Donetsk People’s Republic’ (10 January 2015).
\textsuperscript{1251} Decree of the Council of Ministers of the DPR No 1-32 ‘On Approval of the Regulations and Structure of the Ministry of Foreign Affairs of the Donetsk People’s Republic’ (10 January 2015), para. 2.
\textsuperscript{1252} See profile of the Ministry in Government of LPR, ‘Ministry of Foreign Affairs of the Luhansk People’s Republic’.
In the DPR, for example, the MFA coordinates the DPR’s representation in the Minsk process; participation in the UN Security Council and Arria formula meetings; development of the Concept of the External Policy of the DPR; informing the population of the DPR controlled territories about events in support of the DPR in the world; etc.\textsuperscript{1253}

In the LPR, open source information indicates that the MFA undertakes activities in the sphere of international representation of the LPR; comments on events connected with the LPR’s foreign affairs; issues orders regulating, e.g., the process of signature and ratification of treaties, and participates in this process; etc.\textsuperscript{1254}

\textbf{MINISTRY OF CIVIL DEFENCE, EMERGENCIES AND DISASTER RELIEF}

The Ministries operate pursuant to the regulations approved by the Decree of the DPR’s Council of Ministers and by order of the Head of the LPR, respectively.\textsuperscript{1255}

The Ministries issue regulatory legal acts and other documents on civil defence, protection of the population and territories from emergencies; creates, reorganises and liquidates bodies, divisions, services, formations and other forces, institutions and organisations under the jurisdiction of the Ministry; reacts to the instances of natural disasters and emergencies; informs organs about potential threats to the latter; forms public security systems; controls and holds accounts on dangerous substances; prognose potential threats, etc.\textsuperscript{1256}

The Ministry’s latest orders in the DPR concern emergency forecasting procedures,\textsuperscript{1257} various control procedures,\textsuperscript{1258} changes in legal acts,\textsuperscript{1259} etc.

The Ministry’s acts in the LPR concern such issues as fire control and fire security rules, order of providing emergency psychological help to victims of emergencies, rules on using the civil defence buildings, instructions on organising self-rescues operations for miners, etc.\textsuperscript{1260}

\textbf{MINISTRY OF EDUCATION AND SCIENCE}

The functioning of the respective Ministries of both the DPR and LPR are regulated by the decrees of the Councils of Ministers of the DPR and LPR.\textsuperscript{1261} According to these decrees, the Ministries develop policies in the sphere of education and science, submit for consideration by the Council of Ministers of the DPR draft laws, normative legal acts of the Head of the DPR and the Council of Ministers and other documents that require a decision of the Council of Ministers of the DPR. The Ministries also develop policies in the spheres of educational standards and programmes, realise educational projects and competitions, organise educational process and examinations, grant and withdraw scientific degrees, organise monitoring of the effectiveness of the educational process, approves establishment of

\hspace{1cm}\textsuperscript{1253} Website of the MFA of the DPR, ‘News’; Website of the MFA of the DPR, ‘Documents’.
\hspace{1cm}\textsuperscript{1254} See e.g., Order of the Ministry of Foreign Affairs of LPR No 09/13-QD ‘On approval of the Order of the organisation of the procedure of exchanging ratification notes’ (4 February 2019); TASS, ‘Foreign Ministry of the DPR said that the extraordinary meeting of the contact group was again wasted’ (10 December 2021).
\hspace{1cm}\textsuperscript{1255} Decree of the Council of Ministers of the DPR No 35-1 ‘On the establishment of the Ministry of Civil Defense, Emergencies and Elimination of Consequences of Natural Disasters’ (26 September 2014); Order of the Head of the DPR No YТ-158/19 ‘On approval of the Regulation On the establishment of the Ministry for Civil Defense, Emergencies and Elimination of Consequences of Natural Disasters of the DPR’ (19 March 2019).
\hspace{1cm}\textsuperscript{1256} Decree of the Council of Ministers of the DPR No 35-1 ‘On the establishment of the Ministry of Civil Defense, Emergencies and Elimination of Consequences of Natural Disasters’ (26 September 2014), paras 2-6; Order of the Head of the DPR No YТ-158/19 ‘On approval of the Regulation On the establishment of the Ministry for Civil Defense, Emergencies and Elimination of Consequences of Natural Disasters of the DPR’ (19 March 2019), Section III; Website of the Ministry for Civil Defense, Emergencies and Elimination of Consequences of Natural Disasters of the DPR, ‘Powers of the Ministry of Emergency Situations of the DPR within its competence’.
\hspace{1cm}\textsuperscript{1257} Order of the Ministry of Civil Defense, Emergencies and Elimination of Consequences of Natural Disasters of the DPR No 399 ‘On approval of the Regulation on the emergency forecasting procedures and identification of potentially dangerous objects’ (16 December 2020).
\hspace{1cm}\textsuperscript{1258} Order of the Ministry of Civil Defense, Emergencies and Elimination of Consequences of Natural Disasters of the DPR No 223 ‘On approval of the Regulation on the procurement of goods and services at the expense of the budget...’ (22 June 2021); Order of the Ministry of Civil Defense, Emergencies and Elimination of Consequences of Natural Disasters of the DPR No 188 ‘On approval of the Regulation on the control in the internal waters and territorial sea of the DPR...’ (31 May 2021).
\hspace{1cm}\textsuperscript{1259} Order of the Ministry of Civil Defense, Emergencies and Elimination of Consequences of Natural Disasters of the DPR No 97 ‘On amending the Order of ME of the DPR dated 4 September 2019 No 293...’ (18 March 2021); Order of the Ministry for Civil Defense, Emergencies and Elimination of Consequences of Natural Disasters of the DPR No 123 ‘On amending the Order of ME of the DPR dated 4 September 2019 No 293...’ (8 April 2021).
\hspace{1cm}\textsuperscript{1260} Website of the Ministry for Civil Defense, Emergencies and Elimination of Consequences of Natural Disasters of the DPR, ‘Orders of the ME of the DPR’.
\hspace{1cm}\textsuperscript{1261} Decree of the Council of Ministers of the DPR No 13-43 ‘On approval of the Regulation and structure of the Ministry of Education and Science of the Donetsk People’s Republic’ (22 July 2015); Decree of the Council of Ministers of the DPR No 02/04/05/15 ‘On approval of the Regulations on the Ministry of Education and Science of the Lugansk People’s Republic’ (7 January 2015).
educational institutions, holds certain competences in the spheres of the supervision of juveniles and education of persons with disabilities, etc.\textsuperscript{1262}

In the DPR, the Ministry coordinates various projects:
- ‘Stop Fake’ project to expose alleged Ukrainian propaganda;\textsuperscript{1263}
- Educational complex ‘KM-School’\textsuperscript{1264} for the creation of a single space for training and development of the younger generation in the DPR;
- The Educational Vector\textsuperscript{1265} program, a joint project of the Ministry of Education and Science of the DPR and the First Republican TV Channel;
- Project ‘Defenders of the Republic’\textsuperscript{1266} for the development of traditions of cooperation between military and civilian educational institutions.

The Ministry’s latest orders concern issues of allocation of budget for education,\textsuperscript{1267} state standards for education,\textsuperscript{1268} examinations\textsuperscript{1269} and defence of thesis.\textsuperscript{1270}

In the LPR, the Ministry issues acts in several major spheres: general regulations, regulations in the spheres of preschool education, school education, professional (college) education, high education, additional professional education and scientific activities.\textsuperscript{1271}

For example, by its orders, the Ministry announces contests and conferences, regulates educational process in the circumstances of the Covid-19 pandemic, issues of nutrition in educational institutions, educational standards, educational programmes, etc.\textsuperscript{1272}

\textbf{MINISTRY OF HEALTHCARE}

In the DPR and LPR, their respective Ministries function pursuant to the governments’ regulations.\textsuperscript{1273} The Ministries form and implement state policy and regulatory measures in the fields of:

- circulation of medicines, disinfectants, immunobiological products, and other medical products;
- organisation of disease prevention, including infectious and socially dangerous diseases, HIV/ AIDS;
- medical care, medical rehabilitation;
- pharmaceutical activities, including ensuring the quality, effectiveness and safety of medicines for medical use, in the field of circulation of medical devices, trafficking in narcotic drugs in the healthcare sector, psychotropic drugs and precursors;
- sanitary and epidemiological measures;
- conducting forensic and forensic psychiatric examinations;
- providing services in the field of sanatorium and resort business;

\begin{footnotesize}
\begin{itemize}
\item[1263] Ministry of Education of the DPR, ‘Stop Fake’ project.
\item[1264] Ministry of Education of the DPR, ‘KM School’ project.
\item[1265] Ministry of Education of the DPR, ‘Educational Vector’ project.
\item[1266] Ministry of Education of the DPR, ‘Defenders of the Republic’ project.
\item[1267] Order of the Ministry of Education and Science of the DPR No. 580 (1 July 2021).
\item[1273] Decree of the Council of Ministers of the DPR No. 6-5 ‘On approval of the Regulations on the Ministry of Healthcare of the Donetsk People’s Republic’ (17 February 2020); Decree of the Council of Ministers of the LPR No. 172-17 ‘On approval of the new version of the Regulations on the Ministry of Health of the Luhansk People’s Republic’ (11 April 2017).
\end{itemize}
\end{footnotesize}
organisation of high professional, additional professional and secondary professional education in the field of training specialists for the healthcare sector.\textsuperscript{1274}

In the DPR, the Ministry’s acts regulate, e.g., organisational questions of providing medical aid to the population, approving clinical protocols, registration of medical products and medicines, licensing of medical and pharmaceutic activity, etc.\textsuperscript{1275}

In the LPR, the latest regulations of the Ministry concern, e.g., organisational questions of providing medical aid to the population, particularly vulnerable groups, medical documentation, scheduling of vaccinations, medical conditions and obstacles for blood donors, etc.\textsuperscript{1276}

\textbf{MINISTRY OF FINANCE}

In the DPR and LPR, their respective Ministries function pursuant to the governments’ regulations.\textsuperscript{1277}

In the DPR, the Ministry of Finance is a specially authorised body for licensing in the field of printing and minting money, forms of securities, postage stamps, and other print products protected from counterfeiting, issuing, distributing and conducting lotteries, insurance, auditing, provision of funded pension services, etc.\textsuperscript{1278}

In the LPR, the Ministry develops state policy and legal regulation in the areas of:

- budgetary activities;
- public debt;
- accounting and financial reporting;
- production, processing and circulation of precious metals and precious stones;
- anti-counterfeit;
- formation of a unified state tax and customs policy.

The LPR Ministry also coordinates and directs the activities of the State Committee of Taxes and Duties, the State Customs Committee, and the State Treasury.\textsuperscript{1279}

The examples of the relevant regulations and activities in the DPR include:

- Order No. 310 ‘On Approval of the Procedure for Registration / Deregistration with the Authorised Body of Primary Financial Monitoring Subjects’;\textsuperscript{1280}
- On 3 June Representatives of the Ministry of Finance took part in the work of the V International Scientific and Practical Conference;\textsuperscript{1281}
- The Ministry has developed the Tables of correspondence of the variable codes of the budget classification of the Donetsk People’s Republic as of 04/01/2021 in order to implement methodological guidance in the budgetary sphere and ensure a unified approach to the application of budget classification codes.\textsuperscript{1282}

\textsuperscript{1274} Decree of the Council of Ministers of the DPR No. 6-5 ‘On approval of the Regulations on the Ministry of Healthcare of the Donetsk People’s Republic’ (17 February 2020), para. 1.1; Decree of the Council of Ministers of the LPR No. 172-17 ‘On approval of the new version of the Regulations on the Ministry of Health of the Luhansk People’s Republic’ (11 April 2017), para. 1.1.

\textsuperscript{1275} Ministry of Healthcare of the DPR, ‘Medical technical documentation’; Ministry of Healthcare of the DPR, ‘Licensing of pharmaceutic activity’.


\textsuperscript{1278} Decree of the Council of Ministers of the DPR No. 13-33 ‘On approval of the Regulations on the Ministry of Finance of the Donetsk People’s Republic’ (22 July 2015).

\textsuperscript{1279} Decree of the Government of the LPR No. 246-21 ‘On approval of the Regulations on the Ministry of Finance of the Luhansk People’s Republic’ (30 March 2021), para. 1.1; Sections II-III.

\textsuperscript{1280} Order of the Ministry of Finances of the DPR No. 310 ‘On approval of the procedure of registering/ unregistering of subjects to primary financial monitoring’ (24 November 2020).

\textsuperscript{1281} Ministry of Finances of the DPR, ‘Representatives of the Ministry participated in the 5th scientific and practical conference’ (3 June 2021).

\textsuperscript{1282} Ministry of Finances of the DPR, ‘Tables of correlation of the changing codes of the budgetary classification of the Donetsk People’s Republic’ (1 April 2021).
In the LPR, though major important regulations in the sphere of finance are issued by the LPR’s government, the Ministry also issues bylaws concerning, e.g., annual state budget, order of conducting accounting activities, classification of budgetary revenues and expenses, etc.

**MINISTRY OF ECONOMIC DEVELOPMENT**

In the DPR and LPR, their respective Ministries function pursuant to the governments’ regulations. The Ministries conduct state policy and carry out the functions of regulation, control and supervision, provision of public services and management of state property in the areas of strategic planning of the economic and social development, consumer protection, procurement for budget funds, state statistics, business development, export regulation, investments, etc.

In the DPR, the examples of relevant decisions and policies include:

- Order of the Ministry of Economic Development of the Donetsk People’s Republic No. 54 On approval of the Methodology for assessing the effectiveness of a public-private partnership, municipal-private partnership and determining the comparative advantage and form of the Proposal for the implementation of a public-private partnership, municipal-private partnership;

- Order of the Ministry of Economic Development of the Donetsk People’s Republic No. 15 On approval of the Price Monitoring Procedure;


In the LPR, the regulations issued by the Ministry concern, e.g., public procurement procedures, maintaining the registries of participants of procurement processes and importers acting in bad faith, maintaining the registry of approved investment projects, order of statistical monitoring in the sphere of licensing of certain activities, etc.

**MINISTRY OF INDUSTRY AND TRADE**

In the DPR, the Ministry acts pursuant to the Decree of the Council of Ministers of the DPR “On approval of the Regulations on the Ministry of Industry and Trade of the Donetsk People’s Republic in a new edition”.

In the LPR, the Ministry acts in accordance with the Decree of the Government of the LPR “On approval of the Regulations on the Ministry of Industry and Trade of the Luhansk People’s Republic”.

The main tasks of the Ministry in both Republics are:

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1283 Ministry of Finances of the LPR, ‘Normative legal base. Decrees’.
1284 Ministry of Finances of the LPR, ‘Orders’.
1285 Decree of the Council of Ministers of the DPR No. 30-1 ‘On approval of the Regulation on the Ministry of Economic Development of the Donetsk People’s Republic’ (10 October 2019); Decree of the Council of Ministers of the DPR No. 496 ‘On approval of the Regulations on the Ministry of Economic Development of the Luhansk People’s Republic’ (20 September 2016).
1287 Order of the Ministry of Economic Development of the DPR No. 54 ‘On approval of the methodology of evaluation of projects’ (20 April 2021).
1288 Order of the Ministry of Economic Development of the DPR No. 15 ‘On approval of the price monitoring procedure’ (8 February 2021).
1292 Ministry of Industry and Trade of the DPR, ‘Main Page’.
development and implementation of state policy, and legal regulation in the field of industry, trade, public catering and services;

development and implementation of a strategy for the development of an industrial complex, trade, public catering and the sphere of consumer services, saturation of the market with industrial goods, products of industrial and technical purposes and processing, consumer goods, within the competence of the Ministry;

implementation of state policy in the field of foreign trade, export promotion, as well as expansion and strengthening of foreign trade relations, within the competence of the Ministry;

development and implementation of state policy, legal regulation in the field of technical regulation, ensuring the uniformity of measurements, standardization, confirmation of conformity and metrology.

The most important decisions in the sphere of Industry and Trade in the D/LPR are issued by the Joint Economic Council consisting of the Heads of the D/LPR. Examples of the latter include, e.g., decisions on the single lists of quarantine objects in both the DPR and LPR, sanitary measures, single customs tariffs, etc. 1295


Further, the Ministry of Industry and Trade of the Donetsk People’s Republic has developed a Strategy for the formation of a technical regulation system in the Donetsk People’s Republic, which is being approved by the Scientific and Technical Commission for Standardisation. 1296

In the LPR, the government issues major decisions and regulatory acts in the field of trade and industry, e.g., on price regulations, issues of licensing, order of purchase of goods by the budgetary institutions of the LPR, granting tariff exemptions to enterprises, etc. 1297

The Ministry issues regulations in narrow spheres, such as approvals of forms of documents used in the sphere of licensing of goods, orders on conducting inspections of equipment, orders on filling in customs documents, etc. 1298

**MINISTRY OF COAL AND ENERGY OF THE DPR / MINISTRY OF FUEL, ENERGY AND COAL INDUSTRY OF THE LPR**

In the DPR and LPR, their respective Ministries function pursuant to the governments’ regulations. 1299 The Ministries develop and implement policies for the development of the fuel and energy complex, including energy, fuel, oil and gas, coal industries, as well as wind energy and other alternative energy sources and energy saving, main types of fuel and energy resources necessary for life support, etc. 1300

In the DPR, the examples of regulations include:

- Regulation on the electricity tariffs for civilians; 1301
- Safety rules in coal mines; 1302
- Licensing of trade in petroleum products; 1303

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1295 Ministry of Industry and Trade of the LPR, ‘Decisions of the Joint Economic Council’.
1296 Ministry of Industry and Trade of the DPR, ‘Technical regulations, standardisation, ensuring the uniform measurement standards’.
1297 Ministry of Industry and Trade of the DPR, ‘Documents. Decrees’.
1300 Decree of the Council of Ministers of the DPR No. 1-25 ‘On approval of the Regulation and structure of the Ministry of Coal and Energy of the Donetsk People’s Republic’ (10 January 2015), para. 1.1; Decree of the Council of Ministers of the DPR No. 58 ‘On approval of the Regulations on licensing of trade in petroleum products’ (27 March 2015).
1301 Order of the Ministry of Coal and Energy of the DPR No. 51 ‘On the tariffs for electricity for the population’ (27 March 2015).
1303 Order of the Ministry of Coal and Energy of the DPR No. 58 ‘On approval of the Regulations on licensing of trade in petroleum products’ (16 June 2016).
• Regulations of mine rescue services.  

In the LPR, the Ministry’s regulations concern, e.g., electricity consumption rates, safety in mines, safe transportation in mines, State energy control measures, fire protection in mines, instruction on conducting mining works, etc.  

MINISTRY OF AGRO-INDUSTRIAL POLICY AND FOOD OF THE DPR / MINISTRY OF AGRICULTURE AND FOOD OF THE LPR  

Both the DPR’s and LPR’s respective Ministries function pursuant to each government’s regulations. In general, the Ministries are tasked with regulating and policy-making in the following spheres:

• agrarian industry and food security of the state;
• agriculture, including plant growing (including seed growing, horticulture, nursery and viticulture) and animal husbandry (including breeding and beekeeping);
• protection of plant varieties;
• quarantine and plant protection;
• veterinary medicine;
• food and feed safety;
• regulation of the market for agricultural products, raw materials and foodstuffs;
• regulation of the food and processing industry market (production of food products, soft drinks, mineral waters and other bottled waters, tobacco products);
• rational use and protection of agricultural land, conservation, restoration and enhancement of soil fertility;
• sustainable development of rural areas;
• safe handling and application of pesticides and agrochemicals;
• control over the production and circulation of grain and its processed products, etc.  

In order to perform these functions, the Ministries undertake various activities, such as coordination, monitoring, collection of data, issuing of regulations, etc.  

The recent documents issued by the DPR Ministry include, for instance: methodical recommendations for sowing spring crops; coordination of the interdepartmental working group to consider the appeals of agricultural producers; setting limits for the export of agricultural goods; concluding and terminating lease agreements between the DPR and entrepreneurs (on water objects); recommendations on working with cattle; orders on how to pursue documentation in agricultural fields of activities, etc.  

The latest regulations issued by the LPR Ministry concern, e.g., granting subsidies for agricultural equipment, phytosanitary rules and control, order of importing and exporting pesticides and agrochemicals, quarantine inspections, licensing procedures in the sphere of agriculture, etc.  

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1304 Order of the Ministry of Civil Defence, Emergencies and Liquidation of the Consequences of Natural Disasters of the DPR, Ministry of Coal and Energy of the DPR No. 202/220 ‘On efforts to ensure mine rescue services for mine enterprises’ (13 July 2018).


1307 Decree of the Council of Ministers of the DPR No. 40-2 ‘On approval of the Regulation on the Ministry of Agriculture and Food of the Luhansk People’s Republic’ (12 December 2019), para. 1.1, Sections 2-3; Decree of the Government of the DPR No. 565/20 ‘On approval of the Regulation on the Ministry of Agriculture and Food of the Luhansk People’s Republic’ (14 August 2020), para. 1.1, Sections II-III.

1308 Decree of the Council of Ministers of the DPR No. 40-2 ‘On approval of the Regulation on the Ministry of Agriculture and Food of the Luhansk People’s Republic’ (12 December 2019), Section 3; Decree of the Government of the DPR No. 565/20 ‘On approval of the Regulation on the Ministry of Agriculture and Food of the Luhansk People’s Republic’ (14 August 2020), Section III.

1309 Ministry of Agro-industrial Policy and Food of the DPR, ‘Documents’.

1310 Ministry of Agriculture and Food of the LPR, ‘Documents. Orders’.
MINISTRY OF COMMUNICATION OF THE DPR / MINISTRY OF COMMUNICATIONS AND MASS COMMUNICATIONS OF THE LPR

The Ministries operate pursuant to the regulations approved by the D/LPR governments. 1311

According to Decree, the DPR Ministry is carrying out functions for the development and implementation of state policy and regulatory legal regulation of the communications industry, which includes the following areas:

- information technologies in the formation and operation of information resources, information systems of public authorities, local authorities of the DPR;
- the formation and development of digital government, including electronic interaction of public authorities, local authorities of the DPR;
- protection of the rights of subjects of personal data;
- electronic signature;
- telecommunications, including the radio frequency resource in the radio frequency bands for civil use;
- postal service, special postal service;
- projects in the communications industry. 1312

In turn, according to the relevant Regulation, the LPR’s Ministry is responsible for developing and implementing state policy, legal regulation, supervision and control in the following fields:

- information technology, telecommunications and postal communications;
- mass communications and mass media: electronic (including the development of the Internet and television systems, digital, broadcasting and radio broadcasting and new technologies), printing and publishing activities;
- personal data processing;
- state property management and provision of public services in the field of information technology, including in part and the use of information technologies for the formation of state information resources and providing access to them,
- advertising activities;
- protecting children from information that is harmful to their health and/or development. 1313

In the DPR, examples of orders of the Ministry include:

- On amendments to the Rules for accreditation of certification centers; 1314
- On approving the tariffs of postal services; 1315
- On the inclusion in the Register of radio electronic means and emitting devices that can be used on the territory of the DPR in the radio frequency bands for civil use. 1316

In the LPR, the government issues major regulatory acts in the field of telecom and communications, e.g., on the rules of providing telephone connection services, data transfer services, rules of advertising on social issues, radio-control,

1312 Decree of the Council of Ministers of the DPR No. 22-6 ‘On approval of the Regulation on the Ministry of Communications of the Donetsk People’s Republic’ (30 April 2020).
1313 Decree of the Government of the LPR No. 590/19 ‘On approval of the Regulation on the Ministry of Communications and Mass Communications of the Luhansk People’s Republic’ (17 September 2019), para. 1.1, Sections II-III.
1315 Order of the Ministry of Communication of the DPR No. 127 ‘On approving the tariffs for universal postal services’ (17 August 2021).
1316 Order of the Ministry of Communication of the DPR No. 127 ‘On amending the procedure of maintaining the Register of radio electronic means and emitting devices which can be used in the territory of the Donetsk People’s Republic in the radio frequency bands for civil use’ (21 April 2021).
The Ministry's latest regulations additionally concern such issues as plans of conducting inspections, order of the registration of media, assessing the quality of social advertising, order of issuing licenses for media agencies, etc.\textsuperscript{1317}

**MINISTRY OF CONSTRUCTION, HOUSING AND COMMUNAL SERVICES**

In the DPR and LPR, the Ministries operate under the governments' decrees approving the regulation and structure of the Ministries.\textsuperscript{1319}

The Ministries ensures the development and implementation of state policy in the fields of: subsoil use, territorial development, housing policy, construction, architecture, urban planning, building materials industry, products and structures, construction industry, housing and communal services, as well as the formation of state policy in the fields of: architectural and construction control and supervision, control in the field of housing and communal services, the implementation of functions for the provision of public services, management and coordination of activities in these areas, intersectoral regulation, executive, control and supervisory functions, other state executive functions provided for by the legislation.\textsuperscript{1320}

In the DPR, examples of orders of the Ministry include:

- No. 121-npa On the approval of average indicators for determining the cost of construction,\textsuperscript{1321}

- No. 03-OD On amendments to the Procedure for organising the procurement of goods at the RCP ‘Water supply of the budgetary sphere’\textsuperscript{1322}

In the LPR, many acts regulating the key issues in the field of construction, housing and communal services are issued by the LPR’s government, e.g., resolutions on accepting newly constructed objects into service, order of deploying trade objects in cities and villages, order of conducting construction works, etc.\textsuperscript{1323} In addition to them, the Ministry issues orders in specific spheres, such as inspecting projects of construction objects, regulating prices on services of the enterprise LuhanskVoda supplying water to households, order of disconnecting certain households from heating and water supply, etc.\textsuperscript{1324}

**MINISTRY OF TRANSPORT OF THE DPR / MINISTRY OF THE INFRASTRUCTURE AND TRANSPORT OF THE LPR**

In the DPR and LPR, their respective Ministries function pursuant to the governments’ regulations.\textsuperscript{1325}

According to the regulations, both Ministries conduct state policy in the fields of road, rail, aviation, sea, river, urban electric transport, road facilities, passenger and freight traffic, ensuring the safe operation of transport, providing public services and operational management of state property under its jurisdiction.\textsuperscript{1326} In addition, the LPR Ministry

\textsuperscript{1317} Ministry of Communications and Mass Communications of the LPR, “Documents. Orders”.

\textsuperscript{1318} Ministry of Communications and Mass Communications of the LPR, “Documents. Orders”.


\textsuperscript{1320} Decision of the Council of Ministers of the DPR No. 13-36 ‘On approval of the Regulations on the Ministry of Construction, Housing and Communal Services of the Donetsk People’s Republic’ (17 December 2016); Decree of the Council of Ministers of the LPR No. 02-04/13/15 ‘On approval of the Regulations on the Ministry of Construction, Housing and Communal Services of the Luhansk People’s Republic’ (20 January 2015), Section III; Ministry of Construction and Housing and Communal Services of the LPR, “Documents. Orders of the Ministry”.

\textsuperscript{1321} Decision of the Ministry of Construction, Housing and Communal Services of the DPR No. 121 ‘On approval of the indicators to estimate the costs of construction’ (22 March 2021).

\textsuperscript{1322} Decision of the Ministry of Construction, Housing and Communal Services of the DPR No. 03-OD ‘On introducing changes to the procedure of procurement of goods of the RKP “Public sector water supply”’ (22 January 2021).

\textsuperscript{1323} Ministry of Construction and Housing and Communal Services of the LPR, “Documents. Orders of the Ministry”.

\textsuperscript{1324} Ministry of Construction and Housing and Communal Services of the LPR, “Documents. Orders of the Ministry”.

\textsuperscript{1325} Decree of the Council of Ministers of the LPR No. 11-34 ‘On approval of the Regulation on the Ministry of Transport of the Donetsk People’s Republic’ (26 September 2016); Decree of the Council of Ministers of the DPR No. 02-04/199/15 ‘On approval of the Regulation on the Ministry of Infrastructure and Transport of the Luhansk People’s Republic’ (10 June 2015).

\textsuperscript{1326} Decree of the Council of Ministers of the DPR No. 11-34 ‘On approval of the Regulation on the Ministry of Transport of the Donetsk People’s Republic’ (26 September 2016), para. 1.1; Decree of the Council of Ministers of the LPR No. 02-04/199/15 ‘On approval of the Regulation on the Ministry of Infrastructure and Transport of the Luhansk People’s Republic’ (10 June 2015), para. 1.1.
regulates the fields of infrastructure (road facilities, operation and safety of navigation facilities, ensuring transport security, organisational and legal measures for traffic control on highways, outdoor advertising, etc.).

Examples of orders of the Ministry in the DPR include:

- Order of the Ministry of Transport of the Donetsk People’s Republic No. 247 ‘On approval of the Procedure for the provision of services by bus stations (bus stations), dispatch stations,’
- Order of the Ministry of Transport of the Donetsk People’s Republic No. 274 ‘On approval of the Procedure for state registration of railway rolling stock in the Donetsk People’s Republic.’
- Order of the Ministry of Transport of the Donetsk People’s Republic No. 275 ‘On approval of the organisational, technical and technological requirements for the implementation of activities by operators of railway rolling stock, containers.’

The latest regulations issued by the Ministry in the LPR concerned, e.g., approving traffic routes in cities, regulating traffic movements (for example, closing the roads), maintaining registries of bus routes, conducting inspections in the sphere of transport, etc.

MINISTRY OF LABOUR AND SOCIAL POLICY

In the DPR and LPR, their respective Ministries function pursuant to the governments’ regulations. The Ministry in both republics is engaged in the development and implementation of state policy and legal regulation in the areas of providing state social assistance; social protection of citizens, particularly vulnerable categories of population; provision of social services to the population; pension provision; regulating labour and monitoring of the compliance with labour standards, etc.

Examples of orders of the Ministry in the DPR include:

- Order of the Ministry of Labour and Social Policy of the Donetsk People’s Republic No. 193 / D ‘On approval of Amendments to the Procedure for the appointment and payment of social benefits.’
- Order of the Ministry of Health of the Donetsk People’s Republic No. 1003/34 / D ‘On approval of amendments to the Conditions of remuneration of workers in health care institutions and social welfare institutions.’
- Order of the Ministry of Labour and Social Policy of the Donetsk People’s Republic No. 140 / D ‘On approval of the Procedure for using a part of monthly insurance payments, pensions, state social assistance for persons fully supported by the state …’.
In the LPR, most acts regulating key issues in the field of social policies are issued by the LPR’s government, e.g., on the order of payment of pensions, creating working places for people with disabilities, providing vulnerable categories of population with payments and holiday presents, approving holiday dates, etc. According to the information on the Ministry’s website, the Ministry undertakes practical steps as to realisation of the government decisions, e.g., informing citizens on the possibilities and procedure of obtaining pensions, on the work of employment service centres, etc.

**MINISTRY OF REVENUES AND DUTIES OF THE DPR**

The Ministry operates pursuant to the Law “On Tax System” of 2015 and is responsible for all the procedures connected with tax payments, taxation and fiscal operations. The Ministry issues bylaws on the transfer of fiscal data; accreditation of those who perform economic activity abroad or with foreign stakeholders and registration of foreign economic agreements (contracts); the rules on filling in documents on taxation operations, creation and maintenance of the republic’s registers in the sphere of taxation, etc.

**MINISTRY OF INFORMATION OF THE DPR (‘MI’)**

Similar to other ministries, the MI’s functioning is regulated by a Decree of the government of the DPR. The key tasks of the MI include:

- the development and the realisation of the DPR’s policy in the sphere of media, press and advertising;
- law- and policy-making in these areas;
- maintenance of registries (e.g., of the media agencies operating in the DPR with licenses) and registration procedures in the mentioned areas;
- development of a uniform practice of the application of normative acts in the mentioned areas;
- licensing of television broadcasting, analysing information in the public domain and its broadcasting by media.

For the performance of its functions, the MI issues bylaws, for instance, on the procedure for monitoring compliance by licensees with license requirements in the implementation of television broadcasting and/or radio broadcasting; the procedure for issuing permission for the distribution of products of a foreign periodical print on the territory of the DPR; the procedure for placement of the advertising; etc.

**MINISTRY OF CULTURE OF THE DPR**

Similar to other ministries, the MC’s functioning is regulated by a Decree of the government of the DPR (from 2015, 2016 and then 2019). The main functions of the MC are:
ensuring the implementation of policies of protection, control and supervision in the fields of culture, art, cultural heritage (including archaeological heritage), sale of antiques, export, import and return of cultural values, archival affairs, cinematography, copyright and related rights;

- coordination of the related activities of executive authorities and local government bodies;
- assistance in touring and exhibition activities,
- establishment and development of contacts at the international level of creative teams, culture and art organisations, educational institutions in the field of culture;
- informing the population on matters in the cultural sphere;
- assistance in the protection of the rights and legitimate interests of artists and their unions, enterprises, institutions, organisations and educational institutions in the sphere of culture and art, etc.  

The MC coordinates various cultural projects on the history and culture of Donbas and the “Humanitarian program for the reunification of the people of Donbas”.

The MC also maintains two registries:

1. List of monuments of history and culture of the DPR, and
2. List of architectural and urban planning monuments of the DPR.

The latest orders and decrees of the MC concern, e.g., the change of names of some cultural institutions and approval of their status; announcements and coordination of public events, concerts and contests, etc.

Ministry of Youth, Sports, and Tourism of the DPR

The Ministry’s functioning is regulated by the Decree of the Council of Ministers No.3-31 “On Approval of the Regulations on the Ministry of Youth, Sports and Tourism of the Donetsk People’s Republic in a new edition”.

According to the Decree, the Ministry:

- provides for the formation and implementation of state policy for youth, sports, health and tourism, defines priority areas of activity, works on the improvement of physical and spiritual development, patriotic education of the population;
- Submits for consideration to the Head and the Government of the DPR drafts of normative legal acts and other documents on issues within the competence of the Ministry;
- Provides coordination and control of the activities of the executive authorities and administrative-territorial units of the DPR in the fields of youth policy, physical culture, sports and tourism, including enterprises, institutions and organisations that are under the control of the Ministry.

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1348 Ministry of Culture of the DPR, ‘Projects supported by the Ministry of Culture of the DPR’.
1349 Ministry of Culture of the DPR, ‘Humanitarian program for the reunification of the people of Donbas’.
1350 Ministry of Culture of the DPR, ‘Registries’.
1351 Ministry of Culture of the DPR, ‘Documents’.
1352 In the LPR, the respective functions are performed by the Ministry of Culture, Sport and Youth – see more information below.
The Ministry’s latest bylaws concern regulations for holding competitions, standards of training for different sports, accreditation of sports federations and on the recognition of sports in DPR.

**MINISTRY OF CULTURE, SPORTS, AND YOUTH OF THE LPR**

The Ministry functions pursuant to the regulation approved by the LPR’s government. The Ministry ensures the formation and implementation of state policy and legal regulation in the fields of:

- culture, art, cinematography and art education;
- preservation, use, promotion and protection of cultural heritage sites;
- religion and spiritual development;
- interethnic relations;
- physical culture and sports;
- youth policy;
- tourism;
- international relations, international cooperation and foreign economic relations in the mentioned fields of activity.

The latest regulations issued by the Ministry concerned, e.g., professional standards in various sports, approving the list and schedule of the republican sport, art and youth events and contests, setting procedure of receiving additional art education, collecting data on archaeological sites, order of visiting museums, etc.

**MINISTRY OF NATURAL RESOURCES AND ENVIRONMENTAL SECURITY OF THE LPR**

The Ministry operates pursuant to the government’s regulation. The Ministry is responsible for pursuing state policy and normative regulation in the fields of:

- environmental protection and environmental security;
- management of production and consumption wastes, except for radioactive wastes;
- protection, use and reproduction of natural resources, including state supervision on the use and protection of subsoil;
- organisation and functioning of specially protected natural areas;
- state environmental expertise;
- protection, use and reproduction of water and fish resources, regulation of fisheries, forestry, hunting and water management;

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1354 Order of the Ministry of Youth, Sports and Tourism of the DPR No. 01-09/96 'On approval of the norms and requirements of the uniform sports classification' (8 October 2018); Order of the Ministry of Youth, Sports and Tourism of the DPR No. 01-09/97 'On approval of the state standard of sports training in the category of sports "modern pentathlon"' (16 August 2019).

1355 Order of the Ministry of Youth, Sports and Tourism of the DPR No. 01-09/55 'On approval of the state standard of sports training in the category of sports "freestyle wrestling"' (31 March 2021); Order of the Ministry of Youth, Sports and Tourism of the DPR No. 01-09/266 'On approval of the state standard of sports training in the category of sports "dance sport"' (29 December 2020); Order of the Ministry of Youth, Sports and Tourism of the DPR No. 01-09/225 'On approval of the state standard of sports training in the category of sports "wushu"' (18 December 2020).

1356 Order of the Ministry of Youth, Sports and Tourism of the DPR No. 01-09/112 'On state accreditation of the sports federation (union, association) and granting the status of republican in the sports category "sambo"' (3 June 2021); Order of the Ministry of Youth, Sports and Tourism of the DPR No. 01-09/113 'On state accreditation of the sports federation (union, association) and granting the status of republican in the sports category "mini-football"' (3 June 2021).

1357 Order of the Ministry of Youth, Sports and Tourism of the DPR No. 01-09/48/1 'On unification of the recognised sports categories, altering the name of a recognised sports category, introducing the relevant amendments to the Ministry’s Order of 19 March 2021 No. 01-09/48/1 Part 1 'On approval of the list of sports disciplines in the DPR-recognised sports categories and its inclusion in the register of the DPR’s sports categories' (19 March 2021).


identifying, preventing and suppressing crimes and administrative offenses under the jurisdiction of the Ministry.\footnote{Decree of the Council of Ministers of the LPR No. 430/17 ‘On approval of the Regulations on the Ministry of Natural Resources and Environmental Security of the Lugansk People’s Republic’ (11 July 2017), para. 1.1.}

The latest regulations issued by the Ministry concern, for example, the temporary order of fishing in the territory controlled by the LPR, prohibition of fishing in certain areas, setting periods when hunting is permitted, the order of collecting and storing seeds of forest plants, etc.\footnote{Council of Ministers of the LPR, ‘Acts of the executive organs of State power. Ministry of Natural Resources and Environmental Security’.